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Judiciary Committee
February 25, 2015

[LB25 LB212 LB292 LB482]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 25, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB25, LB482, LB212, and LB292. Senators present: Les Seiler, Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: Colby Coash, Vice Chairperson.

SENATOR SEILER: Good afternoon. The bewitching hour has arrived. We've got a quorum. And welcome to the Judiciary Committee. I am Les Seiler from Hastings. I'm Chairman of the committee. The committee members are, from my right: Matt Williams from Gothenburg; Adam Morfeld from Lincoln; Bob Krist from Omaha. Senator Chambers will be joining us shortly. Josh Henningsen is our legal counsel. From my far left is Dr. Laura Ebke from Crete. Senator Patty Pansing Brooks from Lincoln will be joining us. I don't know if Senator Colby Coash from Lincoln will join us today. He's got some other bills in some other committees. Committee clerk: Oliver VanDervoort. And our pages are Drew and Jonathan and they will be assisting you. And if you've got written materials to hand out and your testifier's sheet, make sure you've got it filled out before you come up to testify, hand it to one of the pages, and they'll take it from there. Slide up to the microphone because it's not so much for amplification, it's for the transcribers to be able to hear you clearly, and we want your testimony to be clear and so that we know exactly what you're testifying to. We will follow the bill of the agendas. LB25, LB482, LB212, and LB292 will be the bills we will be hearing today. You will be on a three-minute red light. And at the red light, I don't mean to be mean, but when it comes on you stop and if you don't I'll stop you. Now, if you've got really important testimony that somebody on the committee is interested in, they may ask you to proceed with your testimony, but that's only if they are wanting you to proceed. Silence your cell phone. I'll do the same. Senator Krist, will you introduce LB25.
[LB25]

SENATOR KRIST: Yes, sir, thank you. Good afternoon, Senator Seiler, fellow members of the Judiciary Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District: northwest Omaha, along with the north-central portion of Douglas County and the city of Bennington. I appear before you today in introduction and support of LB25. The major change in LB25 is to allow juveniles to consent to extending the juvenile court's jurisdiction until age 21. This change would allow our juveniles to receive services that they otherwise would be denied by aging out of the juvenile court's jurisdiction. LB25 requires the juvenile to consent to the extended jurisdiction, requires the court to specify the specific services, and only allows jurisdiction to be extended six months at a time. LB25 would also clarify the court jurisdiction over 17-year-olds alleged to have committed a misdemeanor. LB464 from 2014 transitions this jurisdiction to the juvenile court in 2017, but LB25 clarifies that concurrent jurisdiction between the juvenile court and the county and district courts is in place

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until that time. I'll make a couple editorial comments and obviously I'll be here to close. The first is that the 21 issue last year was taken off of LB907 because the fiscal note would have killed the LB907 by itself. This is a much more realistic fiscal note. And it should be emphasized that these individuals who would receive services can only receive them for six months at a time and then the court would have to reinstate that service there. And again, the individual and the...individual, the judge, and lawyer have to agree that it's in the best interest of the child. I can give you 1,000,001 examples of why this is a good thing, but I think there will be people who want to talk about that. I may save it for closing for examples. And then also just a quick note on the transition: Last year, the 17-year-olds was an oversight in the LB907 process that Senator Seiler remembered. So with that, I will stop my introduction and allow people to come in and testify. [LB25]

SENATOR SEILER: Any questions of this...? Seeing none, thank you. First proponent of this will...of this bill. [LB25]

SENATOR KRIST: I'm not making a will yet (laughter). [LB25]

DENNIS MARKS: Mr. Chairman, Senators, my name is Dennis Marks, M-a-r-k-s. I'm a public defender with Sarpy County where I've been representing juveniles for the last 18 years. I'm here to testify in support of this bill. I think it's a continuum of LB561 that Senator Ashford introduced a couple years ago, and what I mean by that is by having the ability to continue jurisdiction of the juvenile court to age 21 will help juveniles modify their behaviors, it will help reduce recidivism, which is to say engaging in criminal activity, and that is going to make our communities safer, so...which was really the pillar of LB561. I think it's going to help in two ways. I think it will help judges in transfer hearings, whether they be from juvenile court to adult court or adult court to juvenile court. I handle all the transfer cases in Sarpy County and I've had numerous cases where--borderline cases--where a judge has not decided to transfer a case to juvenile court because of several concerns. One, the juvenile was going to be 19 and juvenile court jurisdiction was going to terminate. The second was the concern that the rehabilitation and treatment program that that particular juvenile needed was going to last beyond age 19. And supervision was...is the third issue. But I had one case that didn't get transferred because the judge was concerned that my client would not be able to pay restitution by the time she turned 19. This bill, and as far as transfer cases go, this bill is not going to make any difference on those cases which are not appropriate to transfer to juvenile court. What I guess I'm trying to say is it's not going to open the floodgates for those cases involving transfers. There's other cases that don't involve transfers that this bill will help. Juveniles need additional time to complete rehabilitation programs. I have clients who have multiple traumas. They have been victimized. They have mental health issues, substance abuse issues, and this bill will assist my clients get the necessary treatment to make them productive members of society, to help modify their behaviors, reduce the recidivism. And that makes the community safer, it makes the individual healthy, and it also

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helps with the family in healing with some of the issues that they've dealt with. This therapy that they're required to have takes time and oftentimes needs to extend beyond age 19. And I have clients who are more than willing to voluntarily stipulate to continue to receive treatment. We don't have a lot of trials in juvenile court because my clients typically admit, they come forward, and they say, I did it. They're very cooperative and they want to become healthy. So with that, I'll take questions if you have any. [LB25]

SENATOR SEILER: Any further questions of this witness? Yes, Senator. [LB25]

SENATOR PANSING BROOKS: Okay. Mr. Marks, thank you for testifying. I'm just interested if you could explain the difference of why some of the language talks about...I guess it's a traffic offense and it's just my lack of familiarity with this law, I guess, but why it says 17 years of age and then on section...on page 7, it talks of 18 or younger. So are those consistent? [LB25]

DENNIS MARKS: Well, I think what they want to do is they want to keep the traffic in adult court and not in juvenile court... [LB25]

SENATOR PANSING BROOKS: Okay. [LB25]

DENNIS MARKS: ...because the...in juvenile court there are no convictions, so there are no points. There's really... [LB25]

SENATOR PANSING BROOKS: Okay. [LB25]

DENNIS MARKS: And the question becomes, what do you do for rehabilitative services? [LB25]

SENATOR PANSING BROOKS: Got it, thank you very much. [LB25]

DENNIS MARKS: Yeah. [LB25]

SENATOR PANSING BROOKS: Just trying to (inaudible). [LB25]

SENATOR SEILER: I have a question. You've read this bill, I assume. [LB25]

DENNIS MARKS: I have. [LB25]

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SENATOR SEILER: The part that I was looking for is...let's say that they...one of the parties misses the six-month request. Let's say it's in the seventh month. Both the prosecutor and the defense counsel are real busy and blow it. Can you stipulate it back? Do you think that language is broad enough to...for the both of you to stipulate that, yes, the program ought to continue? [LB25]

DENNIS MARKS: I would like to answer that in the affirmative, but I think the answer to that is, no, realistically. [LB25]

SENATOR SEILER: That's the way I read it. Okay. Any other questions? Thank you very much for your testimony. [LB25]

DENNIS MARKS: Thank you. [LB25]

SENATOR SEILER: Next proponent. [LB25]

BRIDGET HUGGINS: Mr. Chairman, Senators, my name is Bridget Huggins, H-u-g-g-i-n-s, and I live in Papillion, Nebraska. I'm here in support of LB25. I've been married to my husband Peter for over 24 years and we have two children, Alex, 18, and Isabel, 16. I'd like to tell you about my son Alex. My husband and I adopted Alex from a Russian orphanage when Alex was eight months old. Alex had already suffered several traumatic events: abandonment by his birth mother; severe neglect in the orphanage; and then adoption. As a young child it was apparent that Alex had significant deficits in his emotional development and we tried for many years to find the right help for him, but we never had any significant improvement. And then finally two years ago Alex was diagnosed with attachment disorder. Infants learn how to form attachments from the love and care they receive from their caregivers, but this did not happen for Alex in the orphanage. And even though we surrounded him with care and unconditional love, it was not enough. Alex needed a specific type of intervention. And then, when he was 16, he started getting into trouble with the law and he entered the juvenile court system. Over the past two years, Alex has received a number of interventions from the juvenile court. The first intervention was in the home where he received patient therapy at the Attachment and Trauma Center of Nebraska, which is in Omaha, and he made some progress but it wasn't enough. Secondly, he was placed in a group home setting at the Omaha Home for Boys. And again, this helped but this was not enough. And now he is at the Crittenton Children's Center in Kansas City. This is a residential treatment facility. The court placed him there because Nebraska does not have a trauma-focused residential treatment facility. I'm pleased to report that Alex is making significant progress at Crittenton. Therapy is helping him to reduce his aggression, lower his impulsivity, and to improve his decisionmaking. Alex's healing is also helping our entire family. Here's our challenge: Alex turns 19 at the end of June this year when under the current law he

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will age out of the juvenile system. While he's making progress, we expect he will still need assistance, assistance that the juvenile court can provide. If LB25 were in force today, Alex could continue his treatment at Crittenton past his 19th birthday and the juvenile probation office would be able to supervise him as they are doing now. I'm aware that there are many Alexes in Nebraska and I think they would all benefit from this bill. I appreciate the opportunity to speak to you today. Thank you. [LB25]

SENATOR SEILER: Any questions? Thank you for bringing it. I have a question. The trauma center that your son is in, in Kansas City, what's...give us a little description of what it does and how is it different than the treatment centers here, if any. [LB25]

BRIDGET HUGGINS: It specifically looks at children who have suffered a trauma and all of the research today is leading to different types of intervention than the standard, perhaps, behavioral interventions or placements at places like Boys Town or Omaha Home for Boys. And they look more at repairing the attachment component between the child and their caregivers, and they have a whole bunch of different therapies that they use for that. [LB25]

SENATOR SEILER: Okay, thank you very much. [LB25]

BRIDGET HUGGINS: You're welcome. [LB25]

SENATOR SEILER: Thank you for your testimony. Next testimony in favor of the bill. [LB25]

KARA LeGROW: Chairman and Senators, my name is Kara LeGrow, K-a-r-a L-e-G-r-o-w. I've worked with the state kids through the foster care system and group home system at Boys Town for 28 years now. We took, as we started doing foster care in our family, we took the highest level needs of kids. Many of these kids came already diagnosed with multiple diagnoses such as attachment disorder, fetal alcohol effects. We ended up adopting six of them. The one I'm here today to talk about is also in the situation similar to the previous story. He had started to display severe behaviors into his high school years. We were skilled and knew we did not want to move him into a placement. We wanted to fight for it at home but we were losing the battle. By the time he was arrested, he was 17.5 years old and the juvenile justice system came to our aid. Our family was to the point where we weren't sleeping at night to protect the community from our son. I apologize. But we got hope. He found...he also had a severe history of childhood trauma. We got the diagnoses that we needed. We got the placement that he needed, also out of state, to address the severe trauma needs. And he turns 19 in August. He...his placement is supposed to end in November but he turns 19 in August. And I also have a secondary concern that we're not addressing through that placement, and that is his substance abuse issues that kind of intensified and got things out of control. We are concerned as a family. He's coming home, whether we like

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it or not, because he turns 19. And we know the placements...he's fighting. He's working. He's wanted the help. He has had much help. But he is having to end his treatment because of his age. This bill is in support of my family. It helps the oversight over my son that when he returns I still have someone helping us, aid us in his needs. Many of the foster children come this way, already damaged. They're delayed by years of development. They are behind, two to three years, other kids their age because of what they've experienced. And it's not going to be rare that these higher level need kids, that they need help beyond 19. I just really would appreciate this bill because of the support it would be to all those kids I've worked with. [LB25]

SENATOR SEILER: Thank you for your testimony. Any questions? Thank you very much. Next proponent. [LB25]

JULIET SUMMERS: (Exhibit 1) Good afternoon, Chairman, members of the committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here on behalf of Voices for Children supporting this bill. As of yesterday there were 602 total 18-year-olds under the supervision of juvenile probation and in 2014 there were 226 juveniles who were already 18 at the time they were adjudicated and placed on probation. These numbers may be expected to increase as LB561's provisions roll in, expanding original juvenile court jurisdiction to a greater number of older teens. Under the current law, as you've heard, that jurisdiction and probation oversight cut off automatically when a youth turns 19 regardless of whether or not she's completed the terms of her probation, finished a course of court-ordered treatment, or otherwise successfully rehabilitated herself. So you've already heard a couple really compelling stories. But I think another not-uncommon story is that of a sort of garden-variety substance user. Imagine a 17-year-old charged with marijuana possession. An overloaded juvenile docket means it takes a few months to get her case in and heard and adjudicated, so she isn't formally placed on probation or ordered to do anything until after she turns 18. The judge orders a chemical dependency evaluation and getting that completed and back takes another couple months. That recommends some sort of outpatient treatment and takes a little while for her probation officer to help her mom get that set up, get payment figured out, get transportation organized, and get her started in treatment. So we know that the National Institutes of Health's National Institute on Drug Abuse reports that most addicted people require at least three months in either inpatient or outpatient treatment and longer terms of treatment are better, produce better outcomes. By the time this young woman is starting her treatment, she has barely any time to reap its benefits and turn herself around as the law currently stands. LB25 would provide a little bit of breathing room for young adults like this one and the stories you've already heard. Because the bill requires that any extensions be voluntary, incremental, and specific, it's unlikely to affect more than a handful of cases. It's going to be a rare case where everyone in the room agrees, including the child, to remaining on probation. Offering the opportunity to fully complete a rehabilitative plan is a good policy both for that child who's going to be asking for the help and also for the community that's going to reap the benefit of a fully rehabilitated young adult. We thank Senator Krist for bringing

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this bill and we respectfully urge this committee to advance it. I would be happy to take any questions. [LB25]

SENATOR SEILER: Any questions? Thank you for your testimony. [LB25]

JULIET SUMMERS: Thank you. [LB25]

SENATOR SEILER: Next proponent. Next person in favor of the bill. Seeing nobody, any opponent? Go ahead. [LB25]

SHAKIL MALIK: (Exhibit 2) Good afternoon, Chair, Senators. My name is Shakil Malik, S-h-a-k-i-l; last name Malik, M-a-l-i-k. I'm here on behalf of the Nebraska County Attorneys Association testifying in opposition of the bill. For your convenience I've reduced much of my testimony to written form so you can review it at your leisure. Items I want to talk about today is, first of all, I'm not here to oppose the concept of the bill. I'm not here...nobody disagrees that juveniles should continue to be able to get services if they still have needs. It's more about the framework of this bill and the language that's used and the way this is accomplished. First of all, there was a hole opened up in LB464. You heard testimony earlier alluding to the chaotic nature of its drafting process. We did bring this to...actually, I personally brought this to the former Judiciary counsel's attention back in December to try to get it included into this bill because I was provided an advance copy. That was ignored. That was never done. Right now, as it stands, juvenile court jurisdiction now ends at age 18, not age 19, in Nebraska. That was effective January 1, 2015. So any program that would purport to extend it, such as Bridge to Independence or even this proposed program, would not function because the court will lose jurisdiction at 18 and these programs don't kick in until 19. I think that's something that's essential to get added into this bill to get it fixed. The other item I wanted to talk about is the way this bill forms-- actually, creates--yet another category. We've already done categories for Bridge to Independence. Now we're going to have this term called "young adult." We have this term. It doesn't link to any of the other juvenile statutes, so it doesn't specify who is going to provide the rehabilitative services, who is going to do coordination, because it doesn't say anything about allowing the juvenile to remain on probation. And as you all remember, LB561 and LB464 moved all of this activity over to probation to handle. There's nothing in here. It just says the court may order stuff. Well, who's going to pay? Is the county going to be paying it? HHS paying it? Probation paying it? What I propose, and I just drafted some revised language, is to actually incorporate this into the existing statutes if you're going to go with this idea so, you know, we maintain the same payers, the same supervisors. And then finally, the last thing is in the Bridge to Independence Program it was specifically formulated so county attorneys and excess parties, you know, when you're not in a confrontational stage, this is by consent, you know, do you really need us there if you're just providing services? It's not...you know, we're not getting the kid

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arrested or detained. It's just services. So that would be something else we'd ask you to consider because, as you all know, we're quite burdened over our caseloads already across the state and, you know, if...like I said, we don't have any issue with the services. It's more about addressing those underlying issues remaining from LB464 and doing this in a way that makes sense, that doesn't create even more confusion, so we're not right back here next year amending it yet again. And with that, I'd take any questions if the committee has it. [LB25]

SENATOR SEILER: Well, we can solve the financing problem. We'll just take it out of the county attorneys' budget. How's that? [LB25]

SHAKIL MALIK: Well, (laughter) I...that's always a possibility (laughter). [LB25]

SENATOR SEILER: Thank you very much for your consideration and recommendations. Any questions? Thank you very much. [LB25]

SHAKIL MALIK: Thank you. [LB25]

SENATOR SEILER: Next opponent. Anybody in the neutral? [LB25]

MELANIE WILLIAMS-SMOTHERMAN: Good afternoon, Senators. My name is Melanie Williams-Smotherman. I'm...that's M-e-l-a-n-i-e, Williams, hyphen, S-m-o-t-h-e-r-m-a-n. I'm the director of the Family Advocacy Movement, an organization that advocates for families and youth who are in the child welfare and juvenile court systems. And I didn't come specifically to speak to this bill today, but it was compelling enough. And I also didn't think I would ever agree necessarily with Shakil Malik on these issues, but I have to say that I'm coming also with trepidation, not because, again, philosophically I disagree with services being provided. I think that's incredibly important. And I hear families all the time talk about the very limited choices they have to receive the services that are necessary to keep their children safe, to keep their family safe, and the community safe. I think that these are two different discussions we should be having: services versus court involvement. I'm concerned because a lot of the work that I do is observing juvenile court personally, following families' cases. I am very much a critic of the way juvenile court is handled. I think there is woefully poor due process protections in juvenile court. I think that the reason that children and youth end up there instead of adult court is because it's supposed to be rehabilitative. However, with that in mind, it also comes with poor due process. It comes with arguably broken accountability processes. And I find it interesting that not one youth is here today to advocate for staying in the juvenile court system longer under the jurisdiction of judges and all of the various players in that industry in order to get services. When youth age out, and in Nebraska it's older than other states, they're 19 years old and they are no longer juveniles. They're adults and I think that that should afford to them higher due process under the systems

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that we look to for, you know, following civil rights protections and constitutional rights and liberties. I think that we cannot ignore the deficiencies of juvenile court when it comes to providing for these very important considerations for our citizens when we are also considering the importance of services for youth. And the last thing that I'm going to mention is the term "voluntary" and "services" is used very often and I think that we use them inappropriately because too often there is coercion, it's not voluntary. I don't know what the alternative would be for these youth when they are presented with this voluntary choice. But I do know that when they are under the jurisdiction of the juvenile court their voice is often not heard. Thank you. [LB25]

SENATOR SEILER: Any further questions? Thank you for coming and your testimony. Any other in the neutral? Seeing none, the written testimony will be included in the record and, Senator Krist, you may close. [LB25]

SENATOR KRIST: Thank you, Senator Seiler. I don't often specifically close with reference to comments of testimony. I find it...that that's not productive, but I think I need to point out a few things. Besides the criticism of the juvenile court process, which we're not going to change here today or change with one piece of legislation, I think we've made significant improvements in the juvenile justice system and a compelling reason to continue to make those changes over the last four or five years. And I intend to keep up the effort and make sure that the juvenile court system and juvenile justice by itself continues to march forward. I'd ask you, members, to...members of the committee, to look at page 7 of the bill, line 22. And I just make this point for legislative record: Section 4, the juvenile court's jurisdiction...and this is a change to the existing statutes because it's underlined: The juvenile court's jurisdiction over a young adult may be extended beyond 18 years of age, but in no case beyond 21 years of age--so I think the critique that this is somehow convoluted in terms of being 18 or 19 is not founded--the young adult is alleged to have committed an offense under supervision (sic--subdivision) (1), (2), (3)(b), or (4) of this section, 43-247; the young adult was 18 years of age or younger when the offense was committed. I don't know how much clearer that can be. But with that, I would stand to take any questions. [LB25]

SENATOR SEILER: I have one. Again, the question that bothers me is if the prosecutor and the defendant blow the six-month statute. I don't see anything in here that allows a judge to continue a good program. [LB25]

SENATOR KRIST: And I would agree with the testifier and with your assessment, Senator Seiler. [LB25]

SENATOR SEILER: Okay. [LB25]

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SENATOR KRIST: And I think that that's... [LB25]

SENATOR SEILER: I thought maybe I'd missed something. [LB25]

SENATOR KRIST: ...probably something we should do, LC, maybe look at a change for amendment as we put it out of committee. [LB25]

SENATOR SEILER: Okay. Any further comments? Okay, that will close the hearing on LB25. Senator Krist, I have you as introducing LB482. [LB482]

SENATOR KRIST: True. Are we going to that one right away? [LB482]

SENATOR SEILER: Right away... [LB482]

SENATOR KRIST: Okay. [LB482]

SENATOR SEILER: ...unless you've got a hearing somewhere else. [LB482]

SENATOR KRIST: (Exhibit 1) No, I just thought Senator Chambers was in between but that's fine. I am ready. I'm going to apologize, to start out with, for the long introduction to this bill, but I believe that it is warranted in this matter. Good afternoon, Senator Seiler, members of the Judiciary Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t. I represent the 10th Legislative District in northwest Omaha, along with north-central portions of Douglas County and the city of Bennington. I appear before you today in introduction and support of LB482. As you know, one of my most pressing interests in serving on this committee was to ensure that issues in the juvenile justice arena continue to be addressed. To that end, I have held juvenile justice roundtables and talked with stakeholders about continuing to improve how our state serves the needs of this important group. I've also cochaired the Juvenile Detention Alternative Initiative in this state for the past three and a half years, attended MacArthur Foundation's Models for Change, and the JDAI roundtable discussions hosted by the Annie Casey Foundation. Committee has passed...this committee has passed landmark legislation that would greatly change the way we deal with juveniles in our state. LB482 is another important piece of the same puzzle. As a state, we are taking steps towards treating kids and their specific behaviors with more appropriate, age-sensitive, tailored approaches. LB800, LB561, and LB464 have all given priority to treating kids in their home and their communities when appropriate and when available. Last year specifically, this Legislature passed an important piece of legislation that prevented court involvement for kids who are missing school until there was a showing that all school- and community-based programs were made available to the child. We know from our

work on that bill and from the many heartbreaking stories that you have heard from your constituents that the court involvement, detention, and removal from the family home can have significant consequences in how an adolescent in the process of socialization and emotional stability develop and begin to self-identify. It is a continuation of that important concept that is contained in LB482 for the youth committing what are commonly referred to as status offenses, a range of behaviors prohibited by law for children but not adults. While problematic actions like running away, skipping school, defying authority are not criminal in nature, they often stem into underlying issues in the family relationship and at home or identify mental health needs. Primarily, status offenders are those juveniles who skip school, are not following the rules at home, or are leaving home without permission. Sounds like the definition of a kid, doesn't it? For these youth who pose no risk to public safety, drastic responses and court involvement can actually exacerbate the problems and increase the risk that these youths will go on to commit delinquent offenses in the future and populate our jails. Instead, the best response to status behaviors is immediate, community-based, and tailored to the individual child. LB482, like the bills this committee has championed before, is intended to encourage or, said more directly, require certain steps to be taken before a youth can be placed out of their home. This mimics the changes made last legislative session in LB464 which requires schools to make an effort to work with families prior to making a referral for truancy filing. Before a status offender can be placed in an out-of-home placement, the court would have to make a finding that all available community resources has been exhausted and that maintaining the juvenile in the home presents a significant risk of harm to the juvenile or the community. Adding this requirement brings the treatment of status offenders in line with the changes that are...that have occurred to juveniles adjudicated as delinquents, or law violators, per LB561 from two years ago and LB464 from last year. The focus is to work with juveniles in the home and in the community. The bill also would prohibit placing a status offender in a juvenile detention facility, which would include a staff-secure facility, unless it strictly meets the definition of a staff secure, including that access to and from the facility is from staff supervision only, rather than through any locked access points. Already under our state law youth who come before the court solely on status offenses may not be detained in a secure youth facility or committed to the youth rehabilitation and treatment centers. However, Nebraska state law allows status offenders to be confined at the staff-secure level. By statute, a staff-secure facility may not include any construction designed to physically restrict the movement and the activities of the young people housed there, though it may include restrictions of movement or activities solely through staff supervision. Both Douglas and Lancaster Counties have created staff-secure wings in their otherwise-secure detention facilities where these youth are often housed. But we all know the old adage, which I don't like, but something about putting lipstick on a pig. LB482, like Senator Chambers' LB212, seeks to end indiscriminate shackling in the courtroom. It deals only with the courtroom. We will have a letter from a juvenile court judge who already prohibits the use of shackles in his court, so we know this can be done. And I forgot to hand these out, so I'll just stop now and make sure they're being distributed to you. It's from Judge Johnson in the Douglas County area. We have been through a

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month and a half of hearings. We have another month to go. And as we sit through these afternoons, it can be easily understood or we can...it's easy to lose sight of what we are talking about. We are talking about kids and we are talking about their futures and we are talking here about ways to keep these kids in an environment and communities where their futures are not predetermined to be a part of an adult prison crowding we spent our entire last week reviewing. We have a chance here with an early solution. Let's treat our children right, get them the appropriate solutions, and perhaps we have saved one more person from reoffending. With that, I will take any questions. [LB482]

SENATOR SEILER: Any questions? Seeing none, thank you. [LB482]

SENATOR KRIST: Thank you. [LB482]

SENATOR SEILER: You're going to stick around for closing? [LB482]

SENATOR KRIST: Sure. Can I sit in my chair? [LB482]

SENATOR SEILER: Yeah, absolutely. First proponent. [LB482]

DENNIS MARKS: Good afternoon, Chairman, Senators. Again, my name is Dennis Marks, M-a-r-k-s. I'm a public defender with Sarpy County, 18 years doing juvenile work. I'm here to testify on behalf of LB482. I'm going to address the status offense portion; the shackling portion I'll address in LB212. And to be quite honest, your introduction gutted half my speech. But I do want to emphasize the status offender, what that definition is, and again that's conduct which if committed by an adult would not constitute a crime. And a great example of that I think is if a high schooler misses 20 days of high school, they're going to get charged with truancy from school. If you're in college and you skip 20 days' worth of classes, you may not pass but you're not going to get a truancy charge. I also want to emphasize for context purposes kind of what...where the status offense fits in. I always think of offenses as a stepladder when I'm talking to my clients. The top of the stepladder are the felonies, followed by the misdemeanors, followed by the infractions, which is paraphernalia and drug possession of marijuana, less than an ounce. And then the bottom step are the status offenders. And you, Senator Krist, described some of those offenses. I'm here to testify in favor of the status offense portion because we in Sarpy County do this. We place juveniles charged with status offenses, if they need to be detained, they're in a staff-secure facility. We don't use the secure facilities. We try to limit the length of detention as best we can. As you alluded to, the Annie Casey Foundation with JDAI has some wonderful statistics and research that shows that detention of status offenders and other youth for prolonged periods of time is not productive. There's also a study out there by Edward Mulvey who indicates that as juveniles get older their recidivism rates go down, except for one segment

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of the youth and that is the low-level offenders who are placed in facilities. Their recidivism rates increased and that would apply to detained status offenders. I think it's crucial that all community services get used first before an out-of-home placement occurs. We have some wonderful services, family support workers, intense family preservation. And if that doesn't work, then there's a provision in there where a status offender who may constitute a danger to themselves or others, an out-of-home placement can be secured. And there are situations where that does exist and that does happen. But it's important because the status offenders are generally symptomatic of other things, such as mental health issues, trauma, fetal alcohol, low cognitive functioning, ADHD, mental health issues, things that they didn't ask to have imposed on them and things that they didn't want but things that they have to deal with. And we can get them the help they need, preferably in the home. I'll take questions. [LB482]

SENATOR SEILER: Yes, Senator Morfeld. [LB482]

SENATOR MORFELD: Thank you, Chairman. I think maybe I was reading the judge's letter here when Senator Krist said it. Can you give me some other examples of status offenses other than truancy? [LB482]

DENNIS MARKS: Well, they have this offense, which shocked me when I first started working as a juvenile public defender, called "uncontrollable." It's being wayward and habitually disobedient which, as Senator Krist aptly pointed out, is being a kid. If you want to get technical, a curfew, if you think about curfew as a status offense, because if you're 18 years old you're not going to get charged with curfew. Minor in possession of tobacco, an 18-year-old is not going to get charged with that offense. Those are also status offenses. And the status offenses are defined...the definition is contained in the juvenile code, but those are some other examples, truancy from home. [LB482]

SENATOR MORFELD: Okay. [LB482]

DENNIS MARKS: And then there's the catchall: deports. So those are some examples. [LB482]

SENATOR MORFELD: Thank you. [LB482]

SENATOR SEILER: Senator Williams. [LB482]

SENATOR WILLIAMS: Thank you, Chairman Seiler. Mr. Marks, you testified I believe that the facilities that you have in Sarpy County would currently meet the definitions of this legislation. [LB482]

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DENNIS MARKS: Correct, that is a staff-secure... [LB482]

SENATOR WILLIAMS: Are you aware, are there services or are there facilities in Douglas County, too, that would meet them? Lancaster County? [LB482]

DENNIS MARKS: I'm not familiar with Lancaster. I know Douglas County has a...has the Douglas County Youth Center which has a secure wing and I know they have a staff-secure wing but, I must confess, I have not been down there yet. [LB482]

SENATOR WILLIAMS: My concern and my question is other counties across our state in more rural areas that...do you see any issue with them being able to comply with this? [LB482]

DENNIS MARKS: Not if you make it a law, not if you pass this legislation. I can't really speak to their resources and their abilities. I can tell you that Sarpy County is lucky enough to have the officials with the foresight and the passion to work with youth and do the same things that Senator Krist has outlined in this bill. [LB482]

SENATOR WILLIAMS: Thank you. [LB482]

DENNIS MARKS: Okay. [LB482]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB482]

DENNIS MARKS: Thank you. [LB482]

SENATOR SEILER: Next proponent. [LB482]

JULIET SUMMERS: (Exhibit 3) Good afternoon again, Chairman Seiler 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 here on behalf of Voices for Children in Nebraska supporting this bill. What's coming around is a copy of my written testimony but also an issue brief, "Data Snapshot," that we just released on the issue of status offenders which will contain some answers to some of those questions. A substantial portion of the children arrested, filed on in juvenile court, and confined in facilities in Nebraska have not only not committed a serious or violent crime, they haven't committed a crime at all. Nebraska...Voices for Children in Nebraska supports this bill because it will strengthen protections to keep low-risk youth out of court, out of detention facilities, and in their own homes. This approach has the potential to prevent undue trauma to these children and their

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families and also to save the taxpayers significant tax dollars. I'm...oh, I've got the status offender brief going around, but I'll highlight some of the numbers that you'll find in there. Eleven percent of all youth arrests in 2013 were for status offenses. The majority of those arrests were MIPs or MITs (phonetic). These youth are predominantly high-school age, probably largely due to the truancy from school filings, but 21 children age 10 or younger were filed on in juvenile court for status charges. Those are fourth-graders or younger. Children of racial and ethnic minority groups are disproportionately represented, as they are across data measures, making up 31 percent of the total youth population in Nebraska but almost 40 percent of those charged in the juvenile court in 2013 with status offenses. Additionally, the most recent data that we have on out-of-home placement of these juveniles from a national census taken in 2011 showed that Nebraska judges placed status offenders in residential facilities at more than four times the national rate. Beyond the trauma to the child and family of being charged in court and removed from the home, court involvement is costly to communities and out-of-home placement even more so. That's not going to be a surprise I think to anyone on this committee. National research and reforms implemented by other states have shown that the best way to get the most bang for the buck for the juvenile system is to screen away low-risk youth and focus more time, resources, and dollars on those high-risk youth. So we have a couple examples that have worked really well. In Florida, there's a statewide network that operates 24/7 to assist families in crisis and a cost-benefit analysis done in 2011 showed the state saved more than \$160 million in juvenile justice placement costs. And in a parish in Louisiana, the launch of a multiagency resource center reduced the delay between families seeking help and receiving it from an average of 50 days to two hours. There's no reason to believe Nebraska jurisdictions couldn't take similar approaches with similar success because we already have state funding made available by LB561. Combining the protections of LB482 with community-based aid grants points courts and communities in the right direction toward meeting these children's behavioral needs immediately and in the home, where they belong. Thank you for your consideration of this bill and I'd be happy to take any questions. [LB482]

SENATOR SEILER: I do have a question. [LB482]

JULIET SUMMERS: Sure. [LB482]

SENATOR SEILER: The LB shows a fiscal note and it shows zeroes all the way across and you're talking about other jurisdiction that became a positive? [LB482]

JULIET SUMMERS: Yes, absolutely. I think it may be harder to predict where the savings would be, as opposed to, when creating a fiscal note, it's easy to identify costs. And a lot of it does depend on the way communities and counties would use those grant dollars in order to create some of these services. So I think Judge Johnson's letter references, for instance, Omaha

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already has some resources available that families can call on, rather than calling the county attorney and getting the court involved. If more communities had those services available, you're not going to be spending money on lawyers, on judges, and you're not going to be spending it on costly, costly detention. I think the average cost of detention per night in Nebraska is in the realm of \$200. If you have a kid who's staying even at the staff-secure side for any length of time-- average stay is around a month--that adds up. That's tens of thousands of dollars a year. [LB482]

SENATOR SEILER: Okay, thank you. I have no further. Anybody else? Seeing none, thank you for your testimony. [LB482]

JULIET SUMMERS: Thank you. [LB482]

SENATOR SEILER: Next proponent. [LB482]

ANNE HOBBS: Good afternoon, members of the Judiciary Committee. My name is Dr. Anne Hobbs. It's A-n-n-e H-o-b-b-s. I'm the director of the Juvenile Justice Institute with the University of Nebraska at Omaha. I'm here to talk briefly on the issue of status offenders, in support of LB482, but I want to focus most of my comments on the indiscriminate shackling of youth in court. Some of our...the prior speakers have addressed, there's a great deal of research on the poor outcomes for youth that are low-level offenders that are sent to detention facilities. There's also a great deal of research on adolescent development that shows us that part of normal adolescent development may be having some of these status offenders or having some of these...committing some of these status offenses. I really want to address the second aspect of this bill which regards the indiscriminate shackling in juvenile court or in court. The most common argument in favor of indiscriminate shackling is courtroom safety and order. Shackles, however, are not necessary to ensure safety. Both of which...safety can be achieved by restricting other things or having the presence of court personnel, law enforcement officers, bailiffs, or simply locking the courtroom door. This may seem like maybe something that hasn't been tried before, but Florida courts provide a really good example and some really good data. Florida courts have relied successfully on these alternatives to ensure courtroom safety. In two years after Florida's rule took effect, there's only been one instance of disorderly behavior reported in the entire state. But even before the Florida Supreme Court eliminated indiscriminate shackling in 2009, the Miami-Dade County halted this practice in 2006 and after they did this they conducted a five-year study. The study revealed that since that time 200,000...I'm sorry, 20,000 detained youth had appeared before the court unbound, so not in any kind of restraint, and in that time no child had harmed or escaped from court. I think this kind of success provides us some kind of hard data on what type of risk youth may provide or may present in court. So I'd be happy to try to answer any questions that you have. [LB482]

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SENATOR SEILER: Any questions? Thank you very much for... [LB482]

SENATOR MORFELD: Senator. [LB482]

SENATOR SEILER: Oops. Excuse me. Senator Morfeld. [LB482]

SENATOR MORFELD: Thank you. And you may have...if you had this data, you may have already...you would have said it in your testimony. But is there any other states that we can look to, other than Florida, that have some data on this? [LB482]

ANNE HOBBS: Yes, the American Bar Association has done a study on this. And I just pulled out Florida for the sense of brevity. [LB482]

SENATOR MORFELD: Yeah. [LB482]

ANNE HOBBS: But I could forward that document to Senator Krist. [LB482]

SENATOR MORFELD: That would be fantastic. I'd appreciate that. [LB482]

ANNE HOBBS: Okay. [LB482]

SENATOR MORFELD: Thank you. [LB482]

SENATOR SEILER: Anything further? Thank you. You may step down. Further proponent. [LB482]

JERRY DAVIS: (Exhibit 4) Good afternoon, Senators. My name is Jerry Davis, J-e-r-r-y D-a-v-i-s. I am the national vice president for advocacy and public policy for Boys Town and I also serve on the Juvenile Law Advisory Committee of the National Council of Juvenile and Family Court Judges, here to speak on behalf of LB482. I'll speak most of my comments on the shackling portion, but I do want to speak as a service provider on the status offense portion. Over the last ten years, agencies like Boys Town, and Boys Town specifically, have demonstrated the effective use of community-based programs for kids who are involved with the court. In fact, ten years ago, we were serving approximately 85 percent of those type children and youth in some form of out-of-home care. This past year we served close to 30,000 young people across the country and over 92 percent never left their home and community to get help and a significant number of these young people are already involved with the court in some way. But as I said, I'll speak most

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to the shackling portion. There's a number of states, Senator, that have gone through looking at shackling and reducing the indiscriminate use: North Carolina, Pennsylvania, South Carolina, Oregon, North Dakota, California. There's a number of those. And while I don't represent the national council in this comment, what I did pass around to you is a draft resolution that's been put forward by the juvenile law committee and is working its way through the national council and will likely be supported this fall. And basically what that resolution affirms is that there's a significant negative impact to shackling. It often traumatizes young people, particularly those who are not used to going to court very often. It really changes how the adults in court look at that particular young person. It changes how we adults look at that kid and it interferes with their ability to participate well. It's hard for them to communicate with their attorney, with the judges, and all of that when they're kind of going through this rather traumatic state. So while we fully support that the court must be able to protect the safety of the court, of the young people who are in court, and the community, we've seen from the results of a number of states that indiscriminate shackling is not necessary to do that. The states that I mentioned have seen no increase in the types of things that were feared when shackling was reduced. And with that, I'll take questions. [LB482]

SENATOR SEILER: Yes, Senator Pansing Brooks. [LB482]

SENATOR PANSING BROOKS: Thank you, Dr. Davis, for coming. I was interested, I presume that at Boys Town you must have instances where people do become sort of out of control, and so can you speak to maybe...I mean maybe at one point you considered shackling and you've changed policies. Could you speak to that a little bit? [LB482]

JERRY DAVIS: You know, Senator, we have not really ever considered shackling very often. [LB482]

SENATOR PANSING BROOKS: Okay. [LB482]

JERRY DAVIS: That's a police function. So if a young person is so out of control, then in the community we would use a community piece. If it were one of our residential facilities, we would do that. We did at one point years ago use a significant amount of seclusion and, last-ditch effort, restraint. That has been almost eliminated with the young people that we're working with, and we're working with some of the most involved mental health and behavioral health kids in this country. [LB482]

SENATOR PANSING BROOKS: And have you...thank you. Have you had higher incidence of injury to those working there or to those dealing with a situation where they might want to restrain or at least slow down the behavior? [LB482]

JERRY DAVIS: You know, we really have...on a very episodic basis I would say possibly, but the data is not real clear on that. We track all those incidences and I don't have it off the top of my head, but in general, no. When we first start up a new program, it is not unusual to see the incident rates go up a little, down a little. But relatively quickly, when you get a healthy, family-styled atmosphere, established in a program, the kids learn to govern themselves with remarkable, you know, speed. So, no, I would say we haven't. [LB482]

SENATOR PANSING BROOKS: Thank you. [LB482]

SENATOR SEILER: Thank you, Doctor, for testifying today. [LB482]

JERRY DAVIS: You're welcome. [LB482]

SENATOR SEILER: Next proponent. [LB482]

MELANIE WILLIAMS-SMOTHERMAN: Good afternoon again. My name is Melanie Williams-Smotherman, M-e-l-a-n-i-e W-i-l-l-i-a-m-s, hyphen, S-m-o-t-h-e-r-m-a-n. And like some of the other speakers, I'm going to take a portion of what this bill is and speak to the shackling portion for Senator Chambers' bill. But I do appreciate Senator Krist bringing the issue of status offenders being removed from their homes, put in detention facilities, and the harm that that causes, not to mention the undue cost for that, which is secondary. As a child and family advocate, I observe a lot of these cases, as I mentioned. I go to juvenile court. I observe the proceedings. I see the harm that is done to the youth who are not offenders in any way other than being children who may misbehave or who have expectation...there are expectations on these kids to do something that would not be considered a crime if they didn't do it as an adult. And I turn not just to my own observations but also to well-documented research that a lot of people have alluded to. But another really important study that I think should be mentioned is a study that was published in the Justice Quarterly in 2006. The title is, "Who will Graduate? Disruption of High School Education by Arrest and Court Involvement." It's a fairly lengthy and well-cited study that suggests that even the slightest involvement that's unnecessary for youth who are not considered, you know, hardened delinquents is so detrimental. Walking into a courtroom in and of itself for a youth who is just being a kid is so detrimental that it affects not only their future education but the way they self-perceive in all aspects of their lives. And I would suggest that we do have status offenders currently residing in these youth detention centers. And the difference between staff-secure and secure to a child is I think...is not distinguishable enough. For us it means something, but for children, they know that they're in a facility away from their families and they are not able to leave willingly. And so for them, they are, you know, criminalized through this process and I think that there is long-term detriment to them that we all pay for. So I

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guess I wanted to just come up and offer my support for this bill on both pieces, but I'd like to speak to the shackling piece in Senator Chambers' bill. [LB482]

SENATOR SEILER: Okay. Any questions? Thank you for your testimony. [LB482]

MELANIE WILLIAMS-SMOTHERMAN: Thank you. [LB482]

SENATOR SEILER: Any further proponents? [LB482]

ROBIN QUARLES: Mr. Chairman, members of the committee, my name is Robin Quarles, R-o-b-i-n Q-u-a-r-l-e-s. I'm coming before you all today not as an expert, not as an attorney or a guardian ad litem. I'm coming to you simply as a parent and I want to speak to you about my oldest daughter Jamila (phonetic) Quarles, who is now 21. We are one of those "unicorn" families that the Legislature talked about last year when they were revamping the truancy law, those families that weren't really caught up in the courts, didn't really happen. My child was a student at Central High and she started going through depression. I went to her counselors, I went to assistant administrators when she started skipping school and having problems, and I got zero assistance. As soon as the truancy law passed, it gave the schools the okay to just pass on their responsibilities to the county attorneys and that's exactly what they did. We had the unfortunate luck of ending up in the courtroom of Judge Elizabeth Crnkovich and, boy, that's where our life really took a turn for the worse. We were ordered to counseling, supposedly family counseling. My daughter went to the counseling. I went with her. I was told to stay out of the room. I was never privy to any of the records until the day we went back for our final court hearing. Services were just not given to us, at all. And at one point during our court case, my 15-year-old was asked if she wanted an attorney. Her friends told her it's not a felony, it's nothing to be worried about, you'll probably get probation, you won't need an attorney, and she refused the attorney. I then promptly stood up and said, no, we want an attorney. I was told to be quiet and we were never given an attorney. My daughter ended up in Boys Town with a great family, but it wasn't a place that she should have been in the first place. This was an 18-month saga that took 6 months just to place her because the state didn't want to pay for it and didn't know what to do because she'd never been in any trouble, there was no abuse in the home, and they were trying to figure out why she was taken out of the home in the first place. We would have gladly taken any help that would have been given to us, but none was offered to us. This was our alternative, to take a child that's never been in any trouble and to place them in a facility. And I really urge you to support this bill. This is wrong and children belong in the home when that's the best place for them to be, when there's no abuse or anything detrimental to their health or the health of their family members. If it's not indicated, that's the best place for them to get the help. Thank you. [LB482]

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SENATOR SEILER: Any questions? Thank you. Any further proponents? Opponents? You may... [LB482]

SHAKIL MALIK: (Exhibit 5) Good afternoon again, Senators. My name is Shakil Malik, S-h-a-k-i-l, last name Malik, M-a-l-i-k, deputy county attorney with Douglas County Attorney's Office, appearing on behalf of the Nebraska County Attorneys Association. I'm standing here today on behalf of the County Attorneys Association in opposition to this bill. A couple points I want to talk about. And first of all, once again, we have no opposition to services. We have no opposition to efforts to reduce penetration of status offenders. You know, myself, I sit on the Nebraska Coalition for Juvenile Justice diversion committee. I'm now a Georgetown fellow for diversion. You know, I've worked on JDAI. I mean, it's something we try to be as proactive with as we can, but there are really some problematic issues in this bill. First of all, briefly touch on it, for peace officers it adds a completely new section regarding options they can use to address status offenders they're coming in contact...the problem is, there's already another section with options in there. If you're going to add that in, I think it needs to be consolidated because right now you have two separate sections giving instructions to officers. The main part I want to talk about, and I'll reserve my comments for shackling when Senator Chambers' bill comes up, is Section 5 requires county attorneys to provide or make referrals for reasonable efforts before filing a (3)(b) action. First of all, you know, that's a funding issue. It takes personnel. It takes efforts. It takes coordination. Tomorrow this committee is considering a 10-percent reduction to our community-based services aid. For Douglas County alone that would be \$150,000, \$500,000 across the state. You have new duties being considered. And then if we don't provide those efforts or don't document them, that's an affirmative defense. Well, as...and if you who are lawyers on this body may know, we have the issue of counsels testifying. How can we possibly offer evidence on what we've done in our own case? You're talking about at that point special prosecutors having to be appointed to carry on the prosecution. So we're talking about increased cost that way. Also, with putting these restrictors in there, you know, you're putting a limitation on our prosecutorial discretion and ability to file and that's fine. If you don't want status offenders in court, then I think that's something to look at, like some jurisdictions have done where they've completely removed status offenses from the code. That might be an option instead of putting the limitations that put more burdens on us. And finally, the last thing I talk about, there is a prohibition on taking fingerprints. The juveniles that are alleged or may have (3)(b) issues, well, (3)(b)'s are runaways and, as many of you are aware, a lot of the time...well, I don't want to say a lot, but there are definitely times where juveniles won't identify and police or sheriff has to do fingerprints, run them through databases to find out who they are. You know, we cooperate at the local and the national level with a number of compacts and agreements to be able to do this. Now, I can understand not warehousing these fingerprints or using them further. But to put a blanket prohibition on even taking them, I think really, you know, we're cutting off our nose to spite our face at that point to be able to deal with missing juveniles and missing children who are

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running away. So those are specifically issues I want to bring that are of concern to the members of our body. And with that, I'd take any questions. [LB482]

SENATOR SEILER: Seeing none, thank you. [LB482]

SHAKIL MALIK: Thank you. [LB482]

SENATOR SEILER: Further opposition? Seeing none, in the neutral? [LB482]

TOM McBRIDE: (Exhibit 6) Good afternoon, members of the Judiciary Committee. My name is Tom McBride, T-o-m M-c-B-r-i-d-e. I'm the executive director of the Nebraska Juvenile Justice Association. I'd like to thank Senator Krist for bringing this bill forward and for his continued work on the well-being of young people and families in Nebraska. The mission of the Nebraska Juvenile Justice Association is to improve juvenile justice services by serving as a resource for collaboration, leadership development, and education. And while we support LB482, we would like to make one suggested change. I'd like to divert from that for a second and offer that in my life I've seen the juvenile justice system in operation in a lot of different fashions: 11 years in working with adult corrections in men's and women's side; 26 years as a provider of services to mental health/behavioral health youth and families until my retirement; but even before that, 40-some odd years ago, where I had the opportunity stand before a juvenile court judge or a county judge and say...make the decision when he said, Mr. McBride, would you like to choose to go to the state training center or the United States Army? And juvenile justice has changed considerably since that time and thankfully so. What we would like to suggest as a potential change to this would be Section 1, subsection (7), number (sic) (a), and add language that would direct community-based services to be delivered at the level of need currently being demonstrated by that individual. Otherwise, we have seen so much in the past where children, youth, in having to divest of all of the community-based services, where they actually don't receive the initial services at the level that's necessary for them, but because they have to go through all the community-based services, that maybe they're in talk therapy for three months when in fact they should be in something like day treatment or another community-based service like that. So we would just like to see that the community services are made available at the assessed current level of need for that juvenile. Other than that, we would support LB482. Thank you. [LB482]

SENATOR SEILER: (Exhibit 7) Any further questions? Seeing none, thank you for your testimony. Anyone else in the neutral? Seeing none, Senator Krist, you may close. I'll add...the written materials will be added to the transcript. [LB482]

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SENATOR KRIST: Thank you, Senator Seiler. For the record and potential education for those of the members of the committee that do not know, last year and the year prior we started, with the help of two pieces of legislation, LB464 and LBB561, we started a community-based aid pot of money. That money started out in the \$5 million range and we committed ourself as a Legislature to accelerate that. And this year there will be over \$11 million made available to the counties. Most of the counties have used that appropriately, some not so much, so I've redefined in another one of my bills how you can use it. And the testimony of Mr. Malik brings up the...a point that I think I need to make. First of all, the 10-percent reduction he talks about is not true. It's a 10 percent "set-aside" trying to develop the data collection piece that everybody has been screaming about needing over the last four or five years. It uses the Crime Commission database and expands it to be able to have a queryable system whereby we can reach out and find out where that child is. It has the cooperation of education and the protocol involved would mean that not everyone could see everything that they want to see, only the things that they need to see, and draw down from the system. So not only is it inaccurate to say it's a 10 percent reduction, but we continue to increase the money that the counties are using. And again, I would say, most of the counties are using it correctly. It was never intended to add additional lawyers to prosecute truancy issues, as it was used in some counties, and you can take that to heart if it's your county. So it's a 10 percent "set-aside" and it's not 10 percent across the board for the rest of its existence. It's trying to get that database system up and running. Those, by the way, to your point, Senator Williams, I think there's going to be some facilities out there that are not going to be able to comply immediately with the statutes and treat kids like kids, but evidence-based programs and the need to comply with statutes would allow those counties to draw down on those county aid monies. And the one thing that I've heard that we have done well in the last few years, and I'm hoping that Mr. Shea (phonetic), who is in the audience, or several others may take an opportunity to put it on the record, is that when we put money down into the counties at the local level so that they can use it, they're using it wisely and they're complying with the statutes and they're using it at the lowest level possible to take care of our kids. That was the intent and it's working well. So I thought it would be interesting, not necessarily in closing on this bill but to bring us all up to speed on that particular part of the process. And I'd be happy to answer any questions. [LB482]

SENATOR SEILER: Thank you, Senator Krist. [LB482]

SENATOR KRIST: Thank you. [LB482]

SENATOR SEILER: That closes the hearing and, Senator Chambers, would you open on LB212. You may proceed. [LB482]

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SENATOR CHAMBERS: (Exhibit 1) Thank you. Mr. Chairman, members of the Judiciary Committee, I'm Ernie Chambers and represent the 11th Legislative District in Omaha. Because this bill is brief, I want to read it so that it's in the record and it will comprise my testimony. It's straightforward and I do have an amendment which I will tell you about when I finish.

"Restraints shall not be used on a juvenile during a juvenile court proceeding and shall be removed prior to the juvenile's appearance before the juvenile court unless the juvenile court makes a finding of probable cause that: (a) The use of restraints is necessary: (i) To prevent physical harm to the juvenile or another person; (ii) Because the juvenile (A) has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or (B) presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior; or (iii) Because the juvenile presents a substantial risk of flight from the courtroom; and (b) There is no less restrictive alternative to restraints that will prevent flight or physical harm to the juvenile or another person, including the presence of court personnel, law enforcement officers, or bailiffs. (2) The juvenile court shall provide the juvenile, the juvenile's attorney, or the juvenile's parent or guardian an opportunity to be heard before ordering the use of restraints. (3) For purposes of this section, restraints includes handcuffs, chains, irons, and straitjackets." And that's where my amendment would come in. On page 2, line 21, I would strike the word "and" and insert these words, "and electronic restraint devices." I wanted to read this for the reason that I gave, but also to make my...make sure I stay on point. Throughout this society, not just in the juvenile court but in schools, even churches, children are often treated with cruelty. They are handled as things or objects without feelings, without memory, without a conscience or a consciousness of what is being done to them. I am very displeased with the way the juvenile court in Douglas County operates, at least one judge and her name is Crnkovich. It's an issue that has troubled me for years and I'm doing some research to see what can be done to remedy that situation. The reason I mention this judge by name is so that I will be not...I will not be making a blanket statement that encompasses others who may not be involved and for purposes of this hearing I won't go into specifics. I touched on that because every time I have the opportunity to raise that point, I do so. I doubt that Douglas County will be able to get another juvenile judge as long as Judge Crnkovich is on the bench. If you have any questions of me with reference to this bill or anything that I've said, I will answer those questions. [LB212]

SENATOR SEILER: Senator Krist. [LB212]

SENATOR KRIST: You've taught me, if nothing else, that it's important to start establishing a legislative intent at the time when introductions are made, all through the dealing with a piece of legislation. And having not been a lawyer or been in a courtroom in capacity, but having observed as a jury member and, of course, Matlock, you know, it always seems to me interesting that in an adult court setting we allow the person who is being charged to dress up in a suit or at least civilian clothes yet, when I visited the juvenile courts, they seemed to parade the children through in their orange suits, yellow suits, jumpsuits and, most times, shackled. So I think it's

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important that we understand that that...your words are true in the fact that we treat them differently even in the different court system. And the amazing thing to me is it's not supposed to be a punitive situation in most cases in the juvenile court. I'll shut up and let you comment if you wish. [LB212]

SENATOR CHAMBERS: I think children are often treated in an inhumane, dehumanizing manner, and adults would not stand for it. Adults would not want it to happen to them. And those who are so quick to be willing to inflict pain on children are the first ones who'd cry out if, say, a cop went upside their head with a stick. And many times you'll hear religious people say that the Bible says spare the rod and spoil the child--insanity, in my point of view. And this bill is dealing with restraints, but there are other matters which I think can be handled other than by way of legislation that I intend to talk to the Chief Justice about because--it is a he at the time--he is the administrator, chief administrator of the court system, and I'm sure that some of these things that we have concerns about can be addressed by him. If they cannot be or will not be, we will have to make a litany of specific mandates on how children are to be handled in court and we would start with the basics--any creature, so we can deal with it in a way they understand, born of a man and a woman is a human being entitled to every right and privilege contained in the Constitution of the United States of America and the state of Nebraska and is not to be deprived of any right or privilege without due process of law--and just go on down the list. And if somebody says, why do you have to do that, then I would say, that's the kind of backwards state Nebraska is--the judges don't understand, the prosecutors don't care, and apparently they haven't gotten the message. Now I really don't think that's going to be necessary. But from what I've said, you can see why I wanted to read from this bill, to stay on point and not stray too far afield, because I'm capable of keeping us here till midnight, which I don't want to do and I'm sure nobody came for that purpose. (Laughter) But the children, it sounds like a corny statement, but the children are my heart, if I had a heart. (Laughter) And the verse in the Bible that I often quote is based on a situation where little children were being brought to Jesus when people claimed to worship. And his disciples, hardheaded, insensitive, concerned about grown people, said, don't bring these children here, we've got more important things to do. Now, when I deal with these Bible stories--which I think, by and large, are fairy tales--I kind of add to them. So Jesus said, now hold up, as people say, you've been with me all of this time, you've heard the things that I say, and you're going to send these little children, the helpless ones, the defenseless ones, away so that all of these others can take my time? Well, I want you to understand something. You've heard me talk about heaven. Well, heaven is a place where you'll find these little ones. And if you in your attitude and your conduct fail to become like one of these little ones, that's one place you're not going to go. And there are only two places you can go. You're going to go to heaven or you're going to go to that place which I will not give a name to because I don't use that kind of language in mixed company. But I have something else I want to tell you. Any man, any person who offends against one of these, my little ones, it was better for him that a millstone be hanged around his neck and he be drowned in the depths of the sea--and that comes

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from the one who's supposed to be the lamb of God, who takes away the sins of the world. Now, I'm not the lamb of God. I don't take the sins away from anybody. And if somebody who was supposed to be as gentle as that has that kind of attitude toward people who mistreat children--I don't have the restraints and constraints he has--I think they are unfit, unworthy to be given any consideration or any respect whatsoever, even that courtesy title that we give to them. And often when we are dealing with bills before the Legislature, I hear lawyers, generally from the county attorney's office--we're worried about this, we're worried about that--but none of them go to the welfare of the child. And I mean dealing with these not as miniature adults but as those who don't have the experience, who don't have the knowledge, who don't have the understanding to commit acts that are...that could be considered to be malicious. So when they want to say, I'm going to take this child and try this child as an adult, they don't want to be treated the way they ought to be treated, because when they've been trained in the law, I'm not pleased when they come here and say, "harsher punishments" and "listen to me because I'm a county attorney." That's the very reason I'm inclined not to listen to them. But I show them more regard than they show the children. They may have something of value to say so I will listen. There was one here, and I told you I should have stuck to this, but Joe Kelly was here representing the County Attorneys Association. He wanted harsher punishments, representing that association, and I condemned and criticized him because some officers who formerly were police employees of the Lincoln Police Department had been caught on camera assaulting people. The county attorney wouldn't do anything. And that's the way they are. Cops can kill people and the county attorney says nothing, then they're going to come here and tell us about how children ought to be dealt with. So I went right after Joe Kelly publicly and he would have the opportunity to respond. And I told him how displeased I was about the fact he wouldn't do anything about those cops. And I had taken the time to write him a 25-page treatise with references to court cases, statutes, to speak their language. It meant nothing to him. But after I embarrassed him here, you know what he did? He went to the judge and asked the judge to appoint a special prosecutor to look into that case. Suppose I had been weak-kneed and sniveling and said, because he's a county attorney, I'm going to leave him alone. He is a grown man and when he comes here and deals with this grown man he's going to be treated that way. And that's just a little message to people who come here so they can understand what's going through my mind. I will not put this on every county attorney or representative of the County Attorneys Association when they come. But when I have something specific to say, I'm going to say it. And another message that they can take back: Don't be coming here saying, we're county attorneys and it's going to be our way or no way. We enact the laws. We talk about their jurisdiction. We talk about their authority. We place and impose responsibilities and duties on them. And if they think they're bigger than the Legislature, they'll find out that while I'm here they are not. When they are dealing with people accused of crimes, they are overbearing, they are threatening, and they make a practice to overcharge individuals so that it's a way to coerce from them an agreement to plead to a crime. Upwards of 90 percent of criminal cases are handled by way of a plea. And whenever you read about it in the paper you'll see, in exchange for a plea, they dismissed this charge, that charge, and the other

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charge, but they don't want anybody to criticize them but I will. So when they come here, they better remember what they learned in law school as freshperson...freshmen: He who seeks equity must come with clean hands. And a lot of times they don't bring clean hands. They bring arrogance, they bring disrespect for the Legislature, and they're accustomed to dealing with people who are helpless and can be harmed by them. But I want them to deal with me like that. Anyway, I tried to keep everything brief and on point by reading. But when I'm asked a question, then I will answer it as fully as I can and that's what I've attempted to do. [LB212]

SENATOR KRIST: At the risk of getting into another exchange, (laugh) I just want to point out that both your bill and my bill deal with shackling and unnecessarily restraining children. But it came to my attention after visiting and actually seeing it that when we do send these juveniles to a detention facility like YRTC-Kearney and Geneva, again, they are shackled in the back of a meat wagon, as I would refer to it, not restrained by a seat belt, and transported in some cases. And I believe that that also should be an extension of either yours or mine, to make sure that they are treated with respect when it's warranted throughout the process of the detention as well. So thank you, sir. [LB212]

SENATOR SEILER: Any further questions? Senator Williams. [LB212]

SENATOR WILLIAMS: Thank you, Senator Seiler, Senator Chambers. And that was part of my question of how we put those together. And I know you've looked at Senator Krist's bill also. Are there other differences, besides adding something maybe about transportation, that would be differences between LB212 and LB482? [LB212]

SENATOR CHAMBERS: Well, these two bills, they can easily be put into one. But I didn't copy off Senator Krist. If you look at the dates, mine was introduced seven days before his, because I don't want anybody to think I would try to steal his idea. And here's what I mean by that: It shows that people can have similar ideas without even having talked to each other about them when there's a serious problem. And if you're unaware that somebody has addressed it, you attempt to do the same thing. But I have no pride of authorship and anything that anybody else thinks ought to be put into this type of legislation to ensure the dignity of our children, the proper treatment...and I don't even like the term "shackled." That's what they do to these animals in the packing house. I don't know if you all, if you've ever worked there, but they would stick pigs, then they'd bash cattle with, well, in the old days, when I was younger and wore a younger man's clothes, with a big hammer and they might have pneumatic hammers that do it now. But at any rate, anything that would reduce any person, adult or a child, to the level of being treated like an animal is something that I don't want to see happen. So any ideas that anybody on the committee would have that ought to be in this kind of legislation, since we're approaching the issue, I think it ought to be put there. And since Senator Krist's bill already is more comprehensive than mine,

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some of the wording I would do a little differently from the way his is, but as far as the idea I would not change it. And I do want that--electronic devices--put into it because they keep up with technology and they can remote control, you know, remote shock a child, which they wouldn't want done to them. But I wish that every county attorney representative who came here had to be in one of those belts, one of those vests, and whenever I didn't like what he or she said, I'd hit the button. They'd say, that's not fair. I'd say, well, you're showing...the way children are treated, certainly, you can take what you put on children. But they can't and nobody puts them there. Mr. Chairman, I'm probably somewhat far afield from the way you conduct business here and I don't want anybody to allow my conduct to reflect on you or the committee. I take full responsibility for what I've said. And from the way I've conducted myself, the people should be able to see that I'm uncontrollable (laughter) and in some cases highly emotional. And if they don't want to get on the fighting side of me, don't talk about somebody mistreating children. And by the way, I have a wall in my office, pictures of little children, some of them sitting on my lap, some of them have their face next to mine. And I understand, although I will never have that position, how the Pope must feel when people bring him the child and will say, touch my child and bless my child. But what I say when your child touches me: I'm the one who am blessed, because little children and animals seem to have a way of sensing things about people and they come to me. They do. Yesterday I heard a light tapping on my door and I knew it wasn't the raven (laughter) and from the location on the door, it was either somebody crawling or very, very small. So I opened the door and there was this little-bitty girl and she had braces and she was with her mother and her father and she wanted to come in and see me. And I invited her in, and her parents. The father came in. And I showed her the wall with the pictures of all these little children and I said, if you send me a picture, your picture will be on the wall the next time you come. So her father asked could he take a picture right there and I said he certainly can. So children make children of all of us. I said, I--some of us--I will get down here where the child is since she cannot get up here where I am. So I squatted down and she came over and protectively put her little hand on my shoulder and we posed for the picture. And the father pulled out one of these highly advanced technological marvels that I call "gadgets," and he's looking through it, he's looking through it, and he kind of moved. And I said, you know, the way he's doing, he's going to make it look like we're the ones moving. She laughed. I said, he's awfully nervous, isn't he? And she laughed again. She said, yes, he is. I said, so if we just wait for him, he will get it correct, which he did. And I'll tell you why I go through that: It's necessary I think for those of us who have been on the earth a long time to have experiences that remind us of different days, better days, more innocent days, and try to remember what we thought or how we felt when we were small. Even then, we didn't have the words to express things but we knew when our feelings were hurt and we didn't like that at all. So I go out of my way to make sure that I don't hurt any child's feelings. And if I see anybody harming a child, even if it's their own, I don't interfere in what people are doing, but I might try to find a way to say something to the child. And I feel I have the privilege of discussing these kind of matters because of the subjects that we're dealing with here today. So if somebody thinks that I have a grievance against them and

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they want to make up to me, then bring their child or their grandchild as the emissary because around children I always behave. But don't leave that child home and come and see me because then we have a little different situation. And that's all I'll say, but I had to take advantage of the opportunity. [LB212]

SENATOR SEILER: Senator Chambers, I'm a lot more tolerant at 3:00 than I am at 7:00 (laughter). [LB212]

SENATOR CHAMBERS: (Laugh) Okay. [LB212]

SENATOR SEILER: Thank you. Any other questions? [LB212]

SENATOR CHAMBERS: Thank you. [LB212]

SENATOR SEILER: First proponent. [LB212]

JULIET SUMMERS: (Exhibit 2) Good afternoon again. I'm Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here on behalf of Voices for Children in support of this bill. All children have the right to be treated fairly before the law. We support LB212 because it will greatly improve the treatment of children in our court system with minimal risk or cost. It is consistent with known best practices in handling young offenders, and it's in line with a growing national movement that has proven success in other states. As current practice holds, any child coming to a juvenile court hearing from a detention facility, whether secure or staff secure, and regardless of age or the nature of the charge, could be appearing in court in chains. There is no blanket rule, so courthouses and courtrooms across the state handle it differently. But who are these children? They're actually mostly there for nonviolent offenses. According to data from the Juvenile Detention Alternatives Initiative pilot sites, the majority of children incarcerated by the juvenile court are there on technical violations. So in Douglas County, in 2013, a child was approximately five times more likely to be in the youth center on a warrant for missing court or taking off from a placement than for a felony crime. These are the children who are coming to court shackled. It's also worth nothing that, as youth of color are disproportionately represented at our detention facilities, this practice also disproportionately affects them, further perpetuating the criminalized image of minority persons in our society, particularly young black men. So why does courtroom shackling matter? Wearing restraints in court is bad for adolescent identity development, detrimental to a child's ability to understand and participate in the proceedings, and ultimately it's not necessary in the vast, vast majority of cases. Experts in the field of adolescent psychology have weighed in on this, highlighting the delicate process of self-identification that's happening in adolescence. A child who appears in court chained like a criminal begins to see himself that way. At the same time, the presence of shackles make the courtroom a more

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threatening and stigmatizing environment where justice is felt as punitive, rather than restorative, which is the opposite of what the juvenile court is meant to be and do. You're going to hear further testimony on national organizations and other states that have been pursuing this reform, so I'll skip ahead a little bit. But I will say, in the status quo we subject many children to a harmful practice for fear of the actions of a scant few. Successful implementation in other states has demonstrated that flipping this presumption, as this bill would seek to do, would not increase the risk to public safety. By establishing a rebuttable presumption that most children before the juvenile court are not inherently dangerous or likely to flee, LB212 protects youth from the humiliation and harmful labeling that the shackles impose, but it leaves judges the discretion to use those restraints in those very, very few cases where they are truly required for public safety. Voices for Children in Nebraska thanks Senator Chambers for bringing this legislation and we would urge this committee to advance it. Thank you for your consideration. [LB212]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB212]

JULIET SUMMERS: Thank you, Chairman. Oh, I would also say, I think you received Judge Johnson's letter on LB482. That letter also references this bill and I do have extra copies if you'd like it for the record. [LB212]

SENATOR SEILER: If we've got...we've already got it. We'll make it part of the record. [LB212]

JULIET SUMMERS: Okay. [LB212]

SENATOR SEILER: You've got a copy? Okay, we've got a copy. [LB212]

JULIET SUMMERS: Thank you, Chairman. [LB212]

SENATOR SEILER: Next proponent. You may proceed. [LB212]

DAVID SHAPIRO: (Exhibits 3 and 4) Chairman Seiler and Senators, my name is David Shapiro. I'm from Washington, D.C., where I am the manager of the Campaign Against Indiscriminate Juvenile Shackling. Thank you for giving me the opportunity today to speak on LB212. My testimony also applies to the shackling reform language in LB482. I am working across the country to help improve outcomes for children. I have included the National Juvenile Defender Center position paper, a couple affidavits from medical and mental health professionals, and other documentation in your packets that I've sent around. Like bills introduced in other states and like other laws and court rules already in place across the country, LB212 maintains

courtroom safety while ending the unnecessary and harmful practice of automatically shackling all youth in juvenile court. In Nebraska, youth who are in custody are routinely brought before the court in leg irons, handcuffs, and belly chains, regardless of their age, physical development, or offense. They appear this way without regard to actual safety or flight risk. Young people describe being shackled as making them feel like an animal. Parents report the experience of seeing their children in shackles as heartbreaking. In at least 13 states, judges make individual determinations whether to restrain a young person based on safety and flight risk. This past year, South Carolina, Alaska, and Washington state ended the practice of automatically shackling all youth in juvenile court settings. Incidentally, South Carolina's bill passed both houses unanimously. You'll hear from others and have heard already about the experience of Miami-Dade County in Florida where they've ended automatic juvenile shackling. Here is the experience of just two other additional jurisdictions. Pima County, which is Tuscon, Arizona, implemented individualized shackling determinations last March. The court there reports that, as of July of last year, 889 youth have appeared without...unrestrained without incidence. In Los Angeles, the juvenile court handles about 6,000 cases a year and the vast majority of youth are unshackled. If there is a threat of violence or flight, the judge makes a determination to shackle the youth; otherwise, no shackles are used. The harms of indiscriminate shackling are well documented and broadly recognized. The American Bar Association passed a resolution calling for the end of indiscriminate shackling of juveniles on February 9 of this year. Other professional organizations supporting shackling reform include the Association of Prosecuting Attorneys, the National Child Traumatic Stress Network, the American Academy of Child and Adolescent Psychiatry, and the Child Welfare League of America. Shackles have a direct impact on youth the moment they step foot into the courtroom. Research documents that shackled children have a harder time following judges' instructions, taking notes, recollecting narratives, even appearing truthful. Overall, youth wearing only handcuffs are less likely to communicate effectively and more likely to come across poorly to judges, not simply because of what they look like in shackles, but because of how shackles impact their ability to present themselves. Shackling also involves a sense of loss of control, powerlessness, betrayal, fear, humiliation, and pain. The experience of indiscriminate shackling brings up earlier childhood trauma and increases the likelihood that the effects of this trauma... [LB212]

SENATOR SEILER: Sir, sir,... [LB212]

DAVID SHAPIRO: I'm sorry. [LB212]

SENATOR SEILER: No problem. Go ahead with your testimony. [LB212]

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DAVID SHAPIRO: ...will reverberate through their lives for years to come. And those are just some of the reasons that we should think critically about this practice. Thank you for your time and, please, throw some questions at me (laugh). [LB212]

SENATOR SEILER: The reason I let him continue is anybody who comes call the way from Connecticut to talk to us deserves to finish his statement. Thank you. [LB212]

DAVID SHAPIRO: Cheers. [LB212]

SENATOR SEILER: Any questions? Senator Williams. [LB212]

SENATOR WILLIAMS: Thank you, Senator Seiler. Mr. Shapiro, would like to ask you a question because of your experience traveling around the country seeing different pieces of legislation. We have two pieces here and we clearly have the willingness. You heard Senator Chambers' testimony of wanting to get this as right as we possibly can. Do you have suggestions that you have seen other places that would even make this legislation better than it is? [LB212]

DAVID SHAPIRO: I think both pieces are excellent. I liked the idea of adding the electronic restraint devices that Senator Chambers mentioned. I also think that having this opportunity to be heard is very important and we might look to strengthen that to make sure that the attorney has the chance to be heard and make that a requirement, as opposed to just allowing the juvenile or the attorney or the juvenile's parent or guardian that we know that someone who is representing the child in court has that voice. I think that that would be an important component. But the rest about preventing the harm and where it's necessary, that there's basically this presumption against the use of shackles, I think, is all well and good and it's in both pieces and I have no complaints. I think they're both very strong. [LB212]

SENATOR WILLIAMS: Okay, thank you. [LB212]

SENATOR SEILER: Any further questions? Thank you very much for your testimony. [LB212]

DAVID SHAPIRO: Thank you. [LB212]

SENATOR SEILER: Next proponent. [LB212]

DENNIS MARKS: Mr. Chairman, Senators, my name is Dennis Marks, D-e-n-n-i-s M-a-r-k-s, and I've been a public defender in Sarpy County representing juveniles for 18 years. I'm here to

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testify in support of LB212 on behalf of the Nebraska Criminal Defense Attorneys Association. Before I go forward, I just want to make sure that we're clear. We're not talking about the end of shackling. We're talking about indiscriminate shackling. We're talking about a one-size-fits-all policy. It's clear from the bill that there are three situations where shackling in the courtroom is appropriate, so we're talking about the other offenders who don't fit into those three categories and those are generally your low-level offenders. They're not your violent offenders, your disruptive juveniles, or those who are...constitute a flight risk. I think it's important that this bill allows a judge to make the decision, as opposed to a transport company or detention facility personnel or some policy that doesn't differentiate between offenders and whose policy tends to treat juveniles like adults. Now I know one of the concerns that I've heard from prosecutors is that it's too time consuming. But I really think Senator Chambers' provision in there for a probable cause hearing I think eliminates that concern. Judges make probable cause findings all the time. For instance, in a detention hearing, if a juvenile is going to be detained for longer than 48 hours, a juvenile judge has to make a probable cause finding. And probable cause, it's hard...it's kind of hard to define, but basically what a judge does is he or she looks at the totality of the circumstances and determines whether a reasonable person would find whether that juvenile would come under the court's jurisdiction or control. A judge does that in his office prior to the hearing. If he determines that that juvenile should be shackled, defense counsel or parents of the juvenile could contest it and we could go on the record. It'll only take a few minutes. On the other hand, if the county attorney believes that shackling should occur and a judge finds probable cause that it doesn't, I think they give...they are given the opportunity to be heard on that, as well. It only will take a few minutes, but that probable cause provision I think eliminates about 90 percent of the need for a contested hearing. The county attorneys that I've spoken to have said that, by and by, and I don't disagree with them, the judges generally get it right, so. I'll stop. I've got some other things I could talk about that...but it'll take longer. I'll stop right here and I'll take any questions that you might have. Senator. [LB212]

SENATOR SEILER: Senator. [LB212]

DENNIS MARKS: (Laugh) I'm sorry. [LB212]

SENATOR CHAMBERS: In all things pertaining to children, isn't the mantra "what is in the best interest of the child"? Isn't that what we always hear as a guide? [LB212]

DENNIS MARKS: That's the judges' standard in determining consequences... [LB212]

SENATOR CHAMBERS: Then why would we need legislation like this if these grown people are doing what's in the best interest of the child? Are...is it your testimony that this bill need not

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be passed because these things are not going to happen anyway? Is that what I'm understanding you to say? [LB212]

DENNIS MARKS: You are correct. We...I think we need a uniform policy so that we just don't have locations that do shackle and some that don't. [LB212]

SENATOR CHAMBERS: Will judges and people who are dealing with these children anywhere in the state have to do anything differently because this legislation would be on the books? [LB212]

DENNIS MARKS: Well, they're going to have to decide whether or not that juvenile that's in front of them should be shackled but, again, that should only take a few minutes. [LB212]

SENATOR CHAMBERS: I couldn't hear you. [LB212]

DENNIS MARKS: A judge, the only thing they're going to have to do differently is make an individual, case-by-case determination as to whether that youth should be shackled in front of them. Other than that, there's nothing else that they should have to do. [LB212]

SENATOR CHAMBERS: So you think judges are complying with what this bill would require already. [LB212]

DENNIS MARKS: No, I do not. I think this bill is needed so that they will. [LB212]

SENATOR CHAMBERS: So the legislation is needed... [LB212]

DENNIS MARKS: Absolutely. [LB212]

SENATOR CHAMBERS: ...because they're not going to automatically do what's in the best interest of the child. [LB212]

DENNIS MARKS: They would have been doing it by now if that were the case. [LB212]

SENATOR CHAMBERS: I just wanted the record to be clear. Thank you. [LB212]

DENNIS MARKS: Yep. [LB212]

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SENATOR SEILER: Any further questions? Is...oh, go ahead. [LB212]

SENATOR PANSING BROOKS: No, that's okay. Sorry. I was just wondering, just to clarify what you were saying to Senator Chambers, do you believe that this sets a more stringent standard that the judges will then more loosely or, let's see, less frequently use restraint by this bill? [LB212]

DENNIS MARKS: I do. I think you're going to see shackling in the courtroom reduced significantly. [LB212]

SENATOR PANSING BROOKS: Okay, good. Thank you. [LB212]

SENATOR SEILER: You said you had some other items you'd like to talk about. I'll give you an opportunity at this time to go ahead. [LB212]

DENNIS MARKS: Some of them have been touched on and that is that statistics will show that 93 percent of juveniles involved in juvenile court have experienced at least one trauma and shackling oftentimes triggers those feelings. And it's been alluded to earlier, the hopelessness, and it can even affect their demeanor in the courtroom. And so suddenly a juvenile is now considered to be defiant and oppositional and argumentative and manipulative and it's really simply a response to the trauma that they are experiencing at that particular moment. The other thing that was touched on is that we're...and, Senator Chambers, you mentioned it. We're treating these juveniles as miniature adults and that...we know from all the research and all the advances that have been made in the field of neuroscience and behavioral science and medical science over the last ten years that they're not. Their brains continue to develop and there's concepts out there of plasticity and malleability, which I won't bore you with, that in essence means that their life experiences wire their brains. And the trauma and stigma of shackling in the courtroom and outside the courtroom wire these juveniles' brains and not just for a day or a week or a month or a year. It's for the rest of their life. So I would just ask that you consider that. [LB212]

SENATOR SEILER: Any further questions? Thank you very much. Next witness. [LB212]

ELIZABETH NEELEY: (Exhibit 5) Good afternoon, Senators. My name is Elizabeth Neeley. I'm...E-l-i-z-a-b-e-t-h N-e-e-l-e-y. I'm the executive director of the Nebraska State Bar Association, here today in support of LB212. Many people who have testified already today have referenced the ABA's resolution urging the adoption of a presumption against the use of restraints. I have a copy. They do a great job of documenting both the evidence and the arguments in support of a presumption against the use of restraints. And so I just want to bring

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those to your attention. Many of you have heard these. The overwhelming majority of juveniles are in court for nonviolent offenses. Automatic shackling is unnecessary. States, such as Florida, who have recently ended indiscriminate shackling, have maintained safety and order. To Senator Krist's point earlier, our case law currently says that the use of visible restraints imposed on adult criminal defendants at trial and sentencing can only be employed, quote, in the presence of special need. Fairness at trial starts with the most fundamental tenet of American criminal jurisprudence, and that is the presumption of innocence. Adult courts have found that shackling undermines the presumption of innocence. Why aren't juveniles entitled to due process and the presumption of innocence also? Shackling can interfere with a juvenile's ability to participate in their own defense. The practice of automatically shackling children and adolescents is contrary to the purpose of the juvenile court, which is rehabilitative rather than punitive. And shackling, as we've determined already, is a degrading and shaming event. We know that many youth in the juvenile justice system are, in fact, suffering from trauma. The system must do what it can in order to not impose additional trauma. The bar supports the intent of LB212 because we believe it promotes fairness and the rule of law in juvenile proceedings; it provides for the imposition of restraints when needed for safety; it protects due process rights and the well-being of youth and upholds the rehabilitative principles of juvenile court. And we thank you very much for your consideration. [LB212]

SENATOR SEILER: Any further questions? [LB212]

SENATOR CHAMBERS: Just one comment. [LB212]

SENATOR SEILER: Yes, Senator. [LB212]

SENATOR CHAMBERS: Even in military settings prisoners are...now I know it's disregarded. They're not to be bound and paraded in front of other people. And for these judges, these prosecutors to be aware of it and they allow it to happen, it's impossible for me to have any respect for them or anything they say. When there's something they want heard--and I'm talking loud enough so people can hear because from up here I can see now that it's not easy for everybody to hear what's being said--I'm going to start holding their feet to the fire when they come with other things because their oath as a lawyer should lead them to be concerned that justice is done in every proceeding of which they are a part. And I appreciate this document that you gave to us. I promise you, I'll read every word of it. So thank you. [LB212]

ELIZABETH NEELEY: Thank you. Thank you. [LB212]

SENATOR SEILER: Any further questions? Seeing none, thank you. Next proponent. [LB212]

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VAUGHN CROWELL: (Exhibit 6) Mr. Chairman, members of the Judiciary Committee, my name is Vaughn Crowell, V-a-u-g-h-n C-r-o-w-e-l-l. I live in Omaha, Nebraska. I am a registered nurse but I am not here to represent any nursing organization. I'm here to represent myself. When I started my nursing career as a registered nurse, one of my first jobs was with a mental health...as a mental health nurse on a locked child/adolescent unit in Omaha. I had the opportunity to work closely with MDs, psychiatrists, psychologists, counselors, therapists and, on occasion, with law enforcement. Imagine, if you will, the following scenario unfolding: Two uniformed officers are returning a child to the locked unit. The staff member accepting the child looks with disgust as the officers remove the restraints from the child. One of the officers notices the look and states, we're only doing our job. The staff replies, every time you do your job, I have to start my job all over again. We understand that there is a shock-and-awe value in the use of restraints. However, when this is done only because we can and not because we need to, it becomes destructive to the goal of rehabilitation and only serves to widen the gap of mistrust of authority and society in general. LB212 adds an element of reason to situations that all too often have none by requiring the voice of the parents and child's advocate to be heard regarding the necessary use of restraints. In your consideration of LB212, I will ask you to review the following affidavits from Dr. Donald Rosenblitt, Dr. Gene Griffin, Dr. Julian Ford, Dr. Gwen Wurm, Dr. Robert Birdwell, and Dr. Marty Beyer. These affidavits can be found at the National Juvenile Defender Center on their Web site under the Campaign Against Indiscriminate Juvenile Shackling. I contacted Dr. Beyer by e-mail and got permission to use her affidavit and testimony. Dr. Beyer indicated the affidavits were public domain and I was free to use them. I see I have a yellow light here and I have some important things to mention, so I'm going to skip over to, Senator Chambers, in Section 2, where it talks about requiring the parent and/or the juvenile's guardian or attorneys to weigh in on situations where they need it. The third, fourth, and fifth pages of the information I gave you are court documents where I have highlighted, and this is an order that put my wife and I in handcuffs and then in jail for a six-hour period at a court proceeding in the courtroom of Judge Elizabeth Crnkovich on May 5, 2011. Now, please, where I've highlighted, "father of said child," and that's me, "stated he ordered his son to remain home," flip to the next page, it's written, "It is therefore ordered that the Douglas County Sheriff take Vaughn (Crowell) and Teri Crowell into custody until such time as they comply with the order of the court to advise of their son's whereabouts or until further order..." The last page is the notice in lieu of summons we received with my name and my address, which hasn't changed for 30 years, so...and I realize parents and attorneys are on their own. You know, they're at the mercy of the court. But this same mentality is being applied to children. Clearly, the court knew where my child was because she acknowledges I stated I told him to stay at home. They had my address. So why did I...sorry. Thank you. Any questions? [LB212]

SENATOR SEILER: Yes, Senator Krist. [LB212]

SENATOR KRIST: Go ahead, finish. [LB212]

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VAUGHN CROWELL: My question is, first, why were we handcuffed and sent off to jail and then held there for six hours? And I've been struggling with getting some resolution of this for the four years. I've been nonstop. I've contacted some of you folks. I've done affidavits of...in fact, part of the affidavit, in court I was told to shut up and calm down. Now, somehow, that was spelled in the transcript as "please calm down." The word "shut up" was completely gone and it was exchanged for "please." And I filed complaints with the Judicial Qualifications Commission, five complaints, and they've all been dismissed. Now I'm not going to go off on a personal rampage here, but this type of mentality that we see on the bench is the same application to these kids that they ain't got a fighting chance. So Section 2 of your bill, Senator Chambers, that allows the voice of reason, at least the parent, to be heard without being told to shut up I think is very important. And irregardless if it goes in yours, Senator Krist, or yours, Senator Chambers, that aspect of a voice other than those advocates that might be there, or the judge, the parent has to be heard. Thank you. [LB212]

SENATOR SEILER: Senator Krist. [LB212]

SENATOR KRIST: Just a follow-up. Part of what happened to you is the reason that I am so adamant about what I do. Thank you for bringing these things to us. I'm serious. Thank you, Mr. Crowell. [LB212]

VAUGHN CROWELL: You're welcome. [LB212]

SENATOR CHAMBERS: I wanted to make sure everybody was through. If you have some time, not today but...and you're in the area, stop in and we'll have a conversation. The reason I say that: I get so much printed material, I even get boxes, I can't go through it. I don't have the time. But if you'd come and we can talk, then it won't...I won't have to do a lot of reading, I can ask you questions, because I am trying to do something and I need some concrete instances. So my door is open. I just want you to know that. [LB212]

VAUGHN CROWELL: I certainly will. I'll get ahold of your legislative aide, Senator Chambers, per your schedule. [LB212]

SENATOR CHAMBERS: Okay. [LB212]

SENATOR SEILER: Any further questions? Thank you for coming and testifying. [LB212]

VAUGHN CROWELL: Thank you. [LB212]

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SENATOR SEILER: Next proponent. [LB212]

GEORGE DUNGAN: Good afternoon. My name is George Dungan. That's D-u-n-g-a-n. I'm here for the Lancaster County Public Defender's Office and we are here in support of LB212. I've been a public defender in the juvenile unit for a relatively short amount of time. I've been there for about nine months. In the time that I've been there I've worked with hundreds of shackled juveniles, restrained both in court and at the detention center. I love my job. I love working with kids. But some days my job is absolutely heartbreaking. I only need to look back to yesterday to recall a day that is heartbreaking in a demonstrative manner that shows just one of the few issues with shackling juveniles indiscriminately in court. I had a client come into court. She was shackled--her hands, her legs, her waist, all shackled--and she was there for not an underlying violent crime. She'd exhibited no violent behaviors in court. She'd exhibited no self-harming behaviors in court. And she was there for a hearing that was to determine whether or not she'd be going home. Now, in the convoluted making and creation of bills, sometimes facts and figures can tend to lose the humanity in an issue such as shackling juveniles. But yesterday in this hearing I was reminded of that humanity, as I am in many of these hearings, as I sat between this 16-year-old girl, with no violent past, and her mother. About halfway through the hearing they both started crying. And we're not talking small tears here; we're talking full-on sobbing in court. The mother was able to reach over to the Kleenex box and be able to wipe her eyes and get the tears out of her eyes. My juvenile client, on the other hand, was unable to reach the Kleenex on the very table in front of her. So I reached in, I grabbed the Kleenex, and I gave it to her. And as she contorted her body, because her hands were so close to her chest that she couldn't reach her eyes, I could hear the shackles jangling as she wiped the tears from her eyes during this hearing determining whether or not she was going to go home. And that's an image that sticks with you. I've also had an 11-year-old client come into court, an 11-year-old client who presents like a small child, wearing clothes that are too baggy for him because they didn't have clothes big enough for him at the detention center, and the chains were still taut around his stomach, stumbling into the courtroom over the shackles on his legs. I've had juvenile clients who have been unable to raise their right hand in order to testify, to give testimony in order to get themselves to go home. I'd have juvenile clients whose pants have fallen down in court and they have exposed themselves and they have been unable to reach their own pants and they have had to ask for help to pull this up. Indiscriminate shackling of juveniles is harmful; it is wrong; it is humiliating. And we as a society have gotten together and we've agreed that juveniles should be treated different than adults. The Supreme Court has decided that, legislatures have decided that, and it's time that our laws regarding shackling of juveniles also reflect that. And so I would ask that you do consider supporting LB212 here today and I'm able to answer questions if you'd like. [LB212]

SENATOR SEILER: Senator Chambers. [LB212]

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SENATOR CHAMBERS: Which court did you say you observed that in? [LB212]

GEORGE DUNGAN: This was in Courtroom 43 down at the courthouse. [LB212]

SENATOR CHAMBERS: Who was the judge? [LB212]

GEORGE DUNGAN: Judge Thorson. [LB212]

SENATOR CHAMBERS: Who? [LB212]

GEORGE DUNGAN: Judge Thorson. [LB212]

SENATOR CHAMBERS: I don't know that one. Okay. [LB212]

GEORGE DUNGAN: She's a good judge. [LB212]

SENATOR CHAMBERS: Oh, it's "she"? [LB212]

GEORGE DUNGAN: She is a good judge. [LB212]

SENATOR CHAMBERS: She's under a bad influence. [LB212]

SENATOR SEILER: It's Lancaster, right? [LB212]

GEORGE DUNGAN: Lancaster County, correct. [LB212]

SENATOR CHAMBERS: Oh. Lancaster County? [LB212]

GEORGE DUNGAN: Here, yes. Correct. [LB212]

SENATOR CHAMBERS: So then there...oh, I'm glad you corrected...I meant made that clear. A number of these judges need to be looked at and judges can be impeached if the judicial system does not want to police itself. And we are going to need concrete examples. And even if we don't take something completely to impeachment, public exposure I think would be a very good thing. So as I've said to others, I'd like to talk to you. And whatever you can give me in the way of specific information in cases without revealing anything about a child that ought not to be made

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public, you know, we put a nom de plume or, in this case, nom de guerre, because they are in a war, but something has to be done. And I appreciate the testimony you gave today. [LB212]

GEORGE DUNGAN: Thank you. [LB212]

SENATOR SEILER: Any further questions? Thank you for your testimony. Next proponent. [LB212]

MELANIE WILLIAMS-SMOTHERMAN: Hello again. I am Melanie Williams-Smotherman, M-e-l-a-n-i-e Williams, hyphen, S-m-o-t-h-e-r-m-a-n. I am here to speak in favor of LB212. And since there...I wanted to also make a point that while it is remarkable that someone is coming all the way from Washington, D.C., and I'm interested in hearing much more of what he has to say, families often take work off and they, even coming from Omaha, which we have a parent here, a couple parents, they have a lot also to share that's valuable. And it's hard to get everything in, in three minutes, and I know you appreciate that. There's a lot to do. But I'm going to skip a lot of my testimony and get right to something that I consider myself more of an expert on, and that is the personal witness of a young man, 11 years old, who at the age of 8, through no fault of his own, was taken into the system, into the child welfare system, with allegations of neglect. And he never made it back home. He's been in the system for years being turfed from institution to institution. We were told that he was placed on psychotropic medication early on because he wouldn't stop crying for being removed from his family. He's experienced extreme traumas while he's been in the system until his outburst one day led him to attack a child for a racial slur and that allowed the system to turf him to the DCYC at age 11 where I witnessed him being led into court in shackles. It was one of the most disgusting images I could have imagined. And had I not seen it with my own eyes, it wouldn't have become a point of discussion in front of the Douglas County Board of Commissioners. But we have brought this issue to the public via every opportunity we've had to speak publicly. And Douglas County Sheriff was asked by Douglas County Commissioner Mike Boyle about the practice and he was asked if he shackles every child that is being led to court and the answer is: of course. Children as young as eight are being shackled. And his very dismissive response was, have you ever seen a kid run? Well, I'm happy that these bills are being considered to take the decision about what is in the best interest of children and the effect that this has on kids and families in our communities out of the hands of people who use this practice for convenience and not because it is, in fact, what children need. So I'm done. Thank you. [LB212]

SENATOR SEILER: Yes, Senator. [LB212]

SENATOR KRIST: Did you have final comment? [LB212]

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MELANIE WILLIAMS-SMOTHERMAN: The only comment I would make is that these children are not criminals. These children are children and they are subjects of what is being done to them and the way that it's being done to them. I think the practice that we as adults are allowing to happen to little children in criminalizing them for being kids...and, you know, my kids watch television. They see what people in shackles are. They're murderers. You know? That's what they see. They see hardened criminals who are now being represented on their own bodies in these orange jumpsuits. In the case of this young man, it was a blue jumpsuit, but it was a jumpsuit. And, you know, it's not just shackling while in court, which is prejudicial for the judge and, you know, I agree that that's harmful, you know, when they can't help with their own defense and they are being embarrassed in court, but being led through the courthouse in shackles is incredibly embarrassing, it's humiliating, and it should stop. [LB212]

SENATOR KRIST: Thank you very much. [LB212]

SENATOR SEILER: Anything further? Thank you very much. Any further proponents? All right, begin. [LB212]

ROBIN QUARLES: Mr. Chairman, members of the committee, once again, my name is Robin Quarles, Q-u-a-r-l-e-s. I now want to speak on my middle child, because a lot of people know that once you're in the juvenile justice system it's easier for them to keep digging into your homes. My middle child also had the inconvenience of being before Judge Elizabeth Crnkovich. She had missed several days of school. For two years in a row we had been going back and forth to doctors trying to figure out what was wrong with her only to find out that she has severe food allergies and constantly has to carry an EpiPen. We've had episodes at school where they've actually had to call the ambulance and we've been in emergency rooms behind this. So since I was already in court with one child and my second one was sick a lot, we ended up in front of Elizabeth Crnkovich again. It was not a good time and before she got all of the doctors' references she decided that--her words, not mine--I was a bad parent and endangering my child because I wouldn't send her to school and decided to take her out of the home. My then-16-year-old child asked the judge if she could ask her a question and the judge conceded. And she said, I don't understand, why am I being taken out of the home for being sick and for my mother taking care of me, to which Judge Crnkovich gave her some condescending answer, which my daughter did not accept--she's a highly intelligent person, honors classes--and said, I don't accept that answer, don't talk to me like I'm a child, talk to me like I'm a young adult, to which Judge Crnkovich was incensed and hit the panic button. And I think that's one of the things that we're not talking about here. We're talking about children who are being shackled, bringing them in the courts or inside the courts. But what happens afterward? This woman used the panic button and the court descended with sheriffs and my daughter was led out of the courtroom. Now my daughter was five-foot-two and 80 pounds. She would be here today to testify, but we had a death in the family and she's not taking it very well or you would be able to see her physical

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demeanor and you would question why a judge would actually use shackles on someone who weighs less than 100 pounds. And this had great psychological effects on my child. When she finally did come home, 16 months later, she would sleep with me for months, at least 6 months. She's not thinking about moving out. She doesn't want to go anywhere. And when we were asked to testify, it wasn't until she graduated from high school that she even decided it was even safe to speak out on any of these issues because she was afraid that if her health failed her again and we ended up back in court, especially if we ended up back in Crnkovich's court, that it would not be favored well upon us. So I really just ask that you guys support this bill because children shouldn't be shackled. [LB212]

SENATOR SEILER: Thank you. Yes, Senator Pansing Brooks. [LB212]

SENATOR PANSING BROOKS: Thank you for coming and speaking both times today, Ms. Quarles, appreciate it. [LB212]

ROBIN QUARLES: Thank you. [LB212]

SENATOR PANSING BROOKS: And I'm sorry about the hideous things you've gone through as a family. I was just wondering, I'm trying to clarify, she came back 16 months later, so was she taken then for... [LB212]

ROBIN QUARLES: She was also taken out of the home, yes. [LB212]

SENATOR PANSING BROOKS: And... [LB212]

ROBIN QUARLES: So not only...and that's why I thought it very important to speak on both bills, because, you know, taking children out of the home for nonviolent offenses, and when people say that it doesn't have an effect, it does have an effect. My oldest child that I testified about earlier has not graduated because not every credit that Boys Town or every class that Boys Town has transfers over to OPS. We were ready for that. We were...I was actually told that by someone who used to work for OPS who is at UNO now, because I'm a student there. And we tried to take steps and I tried to prepare her for that, like, if you really want to come home and you don't want to graduate there, you want to graduate from OPS, you need to be prepared. And depending on who you're talking to or what program you're going through to finish your high school diploma, one person will say, okay, we'll take this from Boys Town and account for this, oh, no, we won't take that. Now my middle child did graduate. She thrived at Omaha South. She was captain of the cheerleading team. She was on the volleyball team. It was never a matter of her not thinking that school was important. It was a matter of health issues. And we were floored

when the sheriffs came in, so much so that when we got out of the earshot and we were leaving the courtroom and got out of earshot of the judge, one of the sheriffs said to me, I'm saying this off the record, if you ever pull me into court I will say that I never said this, but she has no business being a judge, she's not very good at her job, she doesn't know how to handle children, and I would have never put her in cuffs. He laughed. He said, are we serious, I'm putting her in cuffs, because he didn't even know why he was called in. He was like, well,...and she pointed to my daughter and he looked like, are you...this kid? She wasn't even 100 pounds soaking wet and they had to make them tighter. Her wrist is probably about as big as mine. Mine is about five inches. And they had to make them tighter just for them to work, simply because she had the nerve to question why she was being taken out of the home for being sick. And like I said, sleeping with me in my bed for months at a time, and still sometimes she gets that way: anxious, anxiety attacks. She still has anxiety attacks. It's just...it's horrible. There are other ways to deal with children besides putting them in handcuffs or shackling them or taking them out of the home for nonviolent offenses. And I just...you know, if our motto is "Nebraska Nice," we're doing a really bad job of it. [LB212]

SENATOR PANSING BROOKS: Well, I'm sorry that all happened and I'm sorry about the death in the family. But I know that any one of us would be happy to meet her if she does come down sometime to Lincoln. We'd be happy to meet her and talk with her about her experience, so. [LB212]

ROBIN QUARLES: We would definitely like for that to happen, definitely. [LB212]

SENATOR SEILER: Any further questions? Senator Morfeld. [LB212]

SENATOR MORFELD: I probably missed it. How old was your daughter at the time? [LB212]

ROBIN QUARLES: At the time, she was 16. [LB212]

SENATOR MORFELD: Sixteen, okay, thank you. [LB212]

SENATOR SEILER: Thank you for your testimony. [LB212]

ROBIN QUARLES: Thank you. [LB212]

SENATOR SEILER: Any further proponents? Seeing none, any opponents? [LB212]

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SHAKIL MALIK: (Exhibit 7) Senators, good afternoon again. Shakil Malik, S-h-a-k-i-l, last name Malik, M-a-l-i-k, deputy county attorney with the Douglas County Attorney's Office, representing the Nebraska County Attorneys Association, testifying on some issues with this bill, problematic areas for us. The bill does provide situations where, first of all, blanket bar on juveniles being restrained, the indiscriminate shackling, but then provides situations where a juvenile could be restrained, but it doesn't provide the mechanisms on how that would occur. For instance, one issue I've raised, and Mr. Marks who sits in the juvenile law section with me, which I'm a vice chair with the bar association, we discussed during conference calls when you have a juvenile who comes in for detention hearings--you know, we get them in within 24 hours, we've had kids come in, you know, high on methamphetamine in an upset, berserk state, all sort of things--if the juvenile is to appear in court to be able to have their say on shackling but they can't appear in court in shackles, how do you provide for safety? You know, who is even making the motion? Is a sheriff telling the judge? Does the judge bring it up on their own? You know, unfortunately, what I think will end up happening is a lot of this just falls by default onto the county attorney--well, you're the prosecutor, you have to deal with it. Well, the sheriff is the elected official. They're the...you know, handle court security. The judges, they're, you know, very clear in all the case law and statutes, they have control over their courtroom. In fact, you'll notice, if you look through Nebraska's statutes, there are currently, at least currently, no statutes regulating control and conduct of the courtroom. That's all left to court rule and the Supreme Court has generally declared themselves to be the sole controller of what happens in the courtroom. Now what I've done in an attempt to maybe get something more fleshed out and to also provide a nuanced approach, because what's been mentioned in earlier testimony is--you know, rule areas, will have different capabilities, different standards, different types of cases, and in urban areas different setups for courts--is just last week the state of Colorado took this issue up and what they did was, because they've been actually going at this for three years, what they finally have arrived at is a bill which directs their Supreme Court to enact and promulgate...their different districts to promulgate rules on how the use of restraints would occur, and that's something, an idea for this committee to consider. The language in the bill as it is, you know, that's boilerplate language that, as mentioned before, the National Juvenile Defender Center, which I reference in my memo, has put out there. But that doesn't mean that's the only way to do it. Many states have done it either with legislation or court rule or standards. There are different ways to do it. I'm just asking this committee to consider those and also to consider the collateral impacts it can have as far as how this actually happens on the ground level. And with that, I'd take any questions. [LB212]

SENATOR SEILER: Yes, Senator Morfeld. [LB212]

SENATOR MORFELD: So one of the problematic areas that you have in here that you note in your testimony is who is to ask the court for permission. So if we clarified that, would that change your position? [LB212]

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SHAKIL MALIK: You know, from the county attorneys' perspective, we're not the ones, you know, who are charged with keeping the courtroom safe. I mean we have our job to do. We have the job to take the case to the judge, you know, to ask what we think would be...you know, yes, best interests are important, but the first line of the juvenile code, the first two, three lines of it when it talks about how to construe the juvenile code--and I'm paraphrasing here--you know, it talks about public interest; you know, there are repeated references to community safety. You know, yes, you...you know, we have that role of balancing. You know, we look at the interest of justice. We're...we consider the child, but we also have to consider the community because, you know, it's always that balancing task. Obviously, we're in a different position than people who can advocate purely for the juvenile because, you know, we have to look at what about the bailiff that's sitting there, what about...even the defense attorney, I mean, you may have seen on the news--and, granted, it was in adult court--we had a Douglas County Public Defender get decked by a defendant just a few months ago. I mean, it does happen. I, you know, for three years I had the highest juvenile caseload in the state. And, yes, by and large, it was fine. But, yes, we have kids who try to sprint out and run out, have to be tackled by sheriffs. It happens. I mean, one thing to bear in mind is, in any of these discussions, only a small portion of the juveniles who are coming to the juvenile courts are being restrained because those are the juveniles who have actually entered secure detention. And I understand some places are doing staff secure. They'll shackle them too. Because this Legislature and the Office of Probation Administration has done so much work over the last few years to reduce the use of secure detention, our numbers, you know, in Douglas County are at ten-year lows or more. I mean, you know, we're well under where we used to be. It was to the point at one point where we were near 400 and now we've been in the 70s for number of kids in secure detention. You know, reform efforts have been having a lot of effect. And I hope that you understand that in all my testimony today I'm not criticizing these efforts. I'm saying, let's make sure we're doing this procedurally correct and doing this in a way that's going to work. [LB212]

SENATOR MORFELD: But back to my original question: So if we specified who would be in charge, say we say it's the county sheriff and then maybe there's...the court can also make a ruling as well, I mean, would that eliminate some of the problematic...I mean most of that, your only problematic area in here is the fact that it's really not specified who makes that ruling other than the court. So if we clarify that...I mean I understand you want us to punt it to the Supreme Court, but we don't need to do that. So I'm trying to make sure that we address the concerns that you have here. It seems like you're saying that you're more neutral, you just have a problem with it right here, but it doesn't seem like you're really neutral. [LB212]

SHAKIL MALIK: And, Senator, if I may respond? [LB212]

SENATOR MORFELD: Yeah. [LB212]

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SHAKIL MALIK: Part of the reason, too, especially today, I've come in opposition to all these bills is because, and he's not here today, but Senator Coash has told us for years he hates people coming neutral but then have negative things to say about the bill, because we've done that before on different bills. And so we try now just to be direct. [LB212]

SENATOR MORFELD: Negative neutral, okay. [LB212]

SHAKIL MALIK: Yeah, and here's what I'll say to that is, you know, it's one of those things where, you know, from the county attorney, we...the role...you know, look out for the public, look out for the juvenile, and then also, you know, we are the attorneys for the county, so we have county employees all around too. So as long as also there's proper safeguards so if we do think...or not we, but if there is an issue, you know, the judge can regulate the courtroom and provide for the safety of, you know, those who are in there. I mean that's also a concern of ours. But our direct concern is, you know, what is our...going to be our responsibility? You know, for instance, if I don't make a motion, am I going to get then sued because, you know, a kid acted out and a bailiff hurt his leg or...you know, because our bailiffs aren't armed. They call them bailiffs but, you know...or, you know, a court reporter got injured or even a judge. We've had people, adult and juveniles, rush at the bench when they don't like something a judge is saying, throw stuff at judges. It happens. I'm not saying it's out of control, always happens, but there are occasions. So that's kind of where we're coming from with our concerns. [LB212]

SENATOR MORFELD: Now I'm not a criminal defense attorney or a prosecutor, I'm an attorney but I haven't operated in this setting before, so this might be an obvious question. But adult offenders that are appearing or adult defendants that are appearing before the court, they're not all shackled, are they, coming in? [LB212]

SHAKIL MALIK: It depends. The...there's no... [LB212]

SENATOR MORFELD: But are...one second, I'm sorry. Are they all shackled or are they not? Is it a court rule? [LB212]

SHAKIL MALIK: You mean the ones who are detained or just in general? [LB212]

SENATOR MORFELD: Any defendant appearing before the court for a criminal charge. [LB212]

SHAKIL MALIK: No. [LB212]

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SENATOR MORFELD: So they're not, okay. [LB212]

SHAKIL MALIK: No, and neither are the juveniles either. [LB212]

SENATOR MORFELD: So...yeah, only the ones that are in the secured... [LB212]

SHAKIL MALIK: Correct. Just like the adults, if they're... [LB212]

SENATOR MORFELD: Okay. [LB212]

SHAKIL MALIK: If you're detained, you're shackled and... [LB212]

SENATOR MORFELD: Okay. [LB212]

SHAKIL MALIK: Yes, same way. [LB212]

SENATOR MORFELD: Okay. Do you...and in your background here you kind of criticize the fact that this language is adopted...is part of the National Juvenile Defender Center language and kind of take issue with some of their, quote, studies, and, quote, expert affidavits. Does the County Attorneys or a similar association have draft language or studies that look into this issue? Or is this not an issue you guys are concerned about? [LB212]

SHAKIL MALIK: Not that I've seen promulgated, and my point in bringing that up is there are more neutral-orientated groups out there. It's just...I just bring that to the committee's attention that there are...vice is implicit there. The information that's promulgated there, I get concerned when...I've seen this not just here but in all sorts of areas. Sometimes people come into this body with boilerplate law without adapting it to what the existing structure of our system is. [LB212]

SENATOR MORFELD: Okay. [LB212]

SHAKIL MALIK: So I'm just bringing that to the attention that this is...this was boilerplate. I found this on-line, like the stuff they were talking about. Even the study that they referenced from Florida, that was done by the same public defenders who pushed for the original law change to begin with. And me, just being somebody who's done research before, you kind of want neutral people who are checking your work and checking the outcome of what you're doing. So I'm just bringing that to the committee's attention when I see things like that. [LB212]

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SENATOR MORFELD: So being as though I'm not Colby...Senator Coash, you guys might be neutral to this actually, just with concerns and reservations, if... [LB212]

SHAKIL MALIK: You know, I have not heard any prosecutor ever say, and, you know, I sit on the legislative committee and I've talked to the Bar Association people, too, no public defender, no prosecutor ever said all kids should be shackled, because we have tons who come in. The kids who aren't detained are and it's fine. The issue is, especially now that you've kind of...you know, we've cut down on the amount of kids being detained where hopefully it's more severe cases, make sure we're not having a default: kids coming in unshackled, there's no real procure. How do we handle this? You know, it needs to be done in a controlled manner if we're going to go this way, I guess, is where we're coming from on this. [LB212]

SENATOR MORFELD: Okay, thank you for your testimony. [LB212]

SENATOR SEILER: Senator Krist. [LB212]

SENATOR KRIST: I just want to make sure that we put this in this record. We had a roundtable discussion and members of Douglas County Sheriff and detention facilities were...participated in that and they drew a clear line between certain kind of folks who are detained and others and they said 100 percent of the time. So I want you to tell me, 100 percent of the time, which of those detainees are coming in shackled? [LB212]

SHAKIL MALIK: So if a...and this is from my personal observations just working Douglas County Juvenile Court. The...if a juvenile is coming in from the Douglas County Youth Center in the secure side, they're being brought by sheriff's deputies in restraints. Now some judges, as alluded to with Judge Johnson or...and I've seen it where some other judge will say, you know, at least their hands, we don't want them bound. And then we also have kids being brought in from the Douglas County Youth Center by their personnel from the staff-secure wing. And those will come in with some restraints, different uniforms, so those are the two segments that are coming in. Now if you're not coming in one of those ways, if you're coming in from a group home, shelter, or just, you know, with your parents, whatnot, then, you know, there's not restraints being applied. [LB212]

SENATOR KRIST: And when we asked the sheriff that...why, it was policy, it was procedure, not that it was discriminate or indiscriminate, it is policy and it is procedure. So for the record, those people that are in secure that you said are all the time coming in shackled from the sheriff's department? [LB212]

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SHAKIL MALIK: Generally speaking, unless a judge either through telling them or, you know, through a policy that says unshackle them, you know, yes, they're coming in restrained. [LB212]

SENATOR KRIST: And what percentage of those people, just round figures, are status offenders versus violent offenders? [LB212]

SHAKIL MALIK: Well, the sheriffs would never bring a status offender in. It would be the Douglas County Youth Center personnel, the staff-secure kids, because the sheriffs only deal with the secure kids and, you know, as you know, by law the staff-secure...you know, the staff members can be secure. I can tell you, if you look off the population numbers, I mean, we have-- I'm going off memory again--you know, we normally have about 70-90 juveniles at any given time in the secure wing in the youth center, and then we'll have up to, you know, ranging from 5 to 10 up to a maximum of about 20-24 juveniles in the staff-secure wing. Now how frequently they're coming in, you know, it just varies from case to case, but that's kind of our population breakdown. [LB212]

SENATOR KRIST: Okay. Thank you. [LB212]

SENATOR SEILER: (Inaudible). [LB212]

SENATOR PANSING BROOKS: Thank you for your testimony, Mr. Malik. Well, so you're talking about what county that you deal with? [LB212]

SHAKIL MALIK: Douglas County. [LB212]

SENATOR PANSING BROOKS: Douglas County. So in...you're not speaking for all counties, because we're hearing that other places there's basically about 100 percent of the kids are coming in restrained. So I just...I really don't understand this stand because at one point you said that this is like a bar on the use of any kind of restraint when, in actuality, subsection (a) with its three or four Roman numerals and...no, three, and subsection (b), in actuality, do allow restraint in certain cases. So I guess I cannot understand, after the testimony we're hearing today, why you would even come in with all of these hesitations when you clearly under this law would have the...or under this bill would have the ability to restrain individuals. [LB212]

SHAKIL MALIK: The...well, and as I read the law, if I may respond, Senator, as I read the law it's saying that going forward, once this law is enacted, a juvenile can't be restrained in a juvenile court proceeding unless you happen to meet one of these three conditions and, you know, the judge makes those findings. And where I'm coming from is, okay, so we have those, how would

that actually be implemented? Because it's very vague, you can set a standard, but who is actually going to be responsible for making the motion? Who is going to be responsible for making the findings? What's the standard evidence even going to be? If we had such a hearing, what's...you know, I've heard the term "probable cause" thrown around. I mean, you know, there...you know, to firm it up is what we're looking for and, you know, that's where I'm coming from. And if I may respond to the 100 percent shackling, I don't know if that...I don't know how that would be possible unless, you know, if you have a kid coming in off the street...and if it's happening, it's happening. I haven't seen in the...I normally deal with Lancaster and Sarpy when I'm talking, dealing with other counties, you know, where the big three with separate juvenile courts...you would basically have then...like, let's say a kid got cited for shoplifting or something like that and didn't have diversion, they come to court. They would come into court free off the street with their parents. I haven't heard of where they would be then shackled and taken to court. You know, at least I've never heard of that in the three big counties which comprise, you know, at least two-thirds to 75 percent of the juvenile cases in the state. You know, the only ones who I've ever heard of that would be subject to restraint would be the ones who were coming from a secure or, in some cases, a staff-secure facility. [LB212]

SENATOR PANSING BROOKS: Wouldn't you think that, at least as I read it, by not specifying who has to file, it allows people...it allows various individuals to file. If somebody is bringing in a child and they're worried, it's not left up to the public defender to file. If the county attorney is worried that this person either might flee or might cause some kind of damage to others in the courtroom or to him- or herself, then it seems to me, by leaving it more vague, who can make a request for probable cause, that it allows all the people that are involved to try to do so. But it also allows that it's not a presumption for restraint. It's a presumption that we would not automatically restrain a child. And when you consider the rights of adults, I just don't even get why people are coming and arguing about this really. But thank you. I don't really think I have anything more to say. Thank you. [LB212]

SENATOR SEILER: Senator Chambers. [LB212]

SENATOR CHAMBERS: Did you write this statement... [LB212]

SHAKIL MALIK: Which statement? [LB212]

SENATOR CHAMBERS: ...that you gave us? I presume this is the one you gave us. [LB212]

SHAKIL MALIK: Yes. [LB212]

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SENATOR CHAMBERS: This is not a statement prepared by the County Attorneys Association. It's your personal statement? [LB212]

SHAKIL MALIK: I authored it, yes. [LB212]

SENATOR CHAMBERS: When the county attorneys come to us recommending legislation, everything they present to us was derived from and agreed to by prosecutors. So if they're going to be heavy on the prosecution side, why is it automatically objectionable, even if what you say is true, that defense attorneys, psychologists, and psychiatrists have contributed to these conclusions? That's to be expected, isn't it? [LB212]

SHAKIL MALIK: I wouldn't contest that at all. I'm just pointing it out for the committee. [LB212]

SENATOR CHAMBERS: Let me ask you a question. If this law is passed, you're saying that the county attorneys are not going to abide by it? What are the county attorneys required to do under this law? [LB212]

SHAKIL MALIK: Well, that's our question because it doesn't specify who is going to be required to do what under the law. [LB212]

SENATOR CHAMBERS: Well, how can you be in opposition to the bill if there's nothing in it that you can see that applies to the county attorneys? [LB212]

SHAKIL MALIK: Because right now the sheriffs are the ones, and that's why I mentioned the sheriffs are the ones who are bringing these juveniles in, or Douglas County Youth Center employees. They're county employees. When there's something involved with a county employee...I'm sorry. [LB212]

SENATOR CHAMBERS: Well, why aren't the sheriffs...are the sheriffs here objecting to this bill? [LB212]

SHAKIL MALIK: Captain Wayne Hudson is here from the Douglas County Sheriff's Office. [LB212]

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SENATOR CHAMBERS: So then we'll hear what they say. But for you: What in this bill do the county attorneys object to that pertains to county attorneys? What duty is it placing on county attorneys that they do not want to assume? [LB212]

SHAKIL MALIK: The duty is to be responsible for making these motions and making these base requests to the court for restraints to occur, to not occur, whatever the case may be. [LB212]

SENATOR CHAMBERS: So to have to request a statement from the court as to whether or not restraints ought to be used is too burdensome for the county attorneys? Is that what you're telling me? [LB212]

SHAKIL MALIK: It's... [LB212]

SENATOR CHAMBERS: If it is, just say yes. If that's what you're objecting to, that's what I want to find out. [LB212]

SHAKIL MALIK: It's a burden that we don't necessarily feel qualified to carry because it's normally been within the sheriffs to handle security matters and things of that nature. We're normally taking the case forward. [LB212]

SENATOR CHAMBERS: Show me...do you have a copy of the bill in front of you? [LB212]

SHAKIL MALIK: Not directly in front of me. [LB212]

SENATOR CHAMBERS: Do we have a copy that he could see, because I don't want him to be at a disadvantage? [LB212]

SHAKIL MALIK: Sorry, I lost my... [LB212]

SENATOR CHAMBERS: Now could you look at that language and show me what you're objecting to because it requires the county attorneys to do something that they don't feel they ought to do? Take your time. [LB212]

SHAKIL MALIK: If I may, Senator? [LB212]

SENATOR CHAMBERS: Yes. [LB212]

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SHAKIL MALIK: In the way courts are structured in Nebraska, there are a couple issues. One, the county is responsible for providing suitable courthouses or suitable facilities for the court. Then there's an implied duty. It's not explicit in statute like it is for the district court. In county court there's the implied duty for the sheriffs to provide for the security of the court and the court has promulgated security regulations... [LB212]

SENATOR CHAMBERS: I'm not interested in the sheriff right now. I want to know...you're here for the County Attorneys Association. [LB212]

SHAKIL MALIK: Correct. [LB212]

SENATOR CHAMBERS: Now show me in this bill where there is a duty placed on the county attorney. [LB212]

SHAKIL MALIK: It's stating that restraints shall not be used unless the court makes the finding of probable cause that restraints are necessary. We're really the only ones who would be in a position to raise that concern as it's currently written because it was mentioned defense attorneys...a defense attorney could never do that unless the juvenile is requesting to be restrained because a defense attorney can only act on a juvenile's expressed interest. They cannot act in their best interest. [LB212]

SENATOR CHAMBERS: So then you're looking at line 17, "The juvenile court shall provide the juvenile, the juvenile's attorney, or the juvenile's parent or guardian an opportunity to be heard before ordering the use of restraints." The county attorney is not the one that the appeal is made to. This presentation will be made to the court as I read the language. Isn't that right? [LB212]

SHAKIL MALIK: Made to the court by the county attorney, yes, because, if I may, Senator,... [LB212]

SENATOR CHAMBERS: But the parents are the ones who can demand the hearing. They're the ones who have the right to the hearing, not the county attorney. [LB212]

SHAKIL MALIK: As I read it, it says, the court shall provide an opportunity to the juvenile, the juvenile's attorney, the juvenile's parent or guardian before ordering use of restraints. I note that the county attorney is not even in there. That would imply they're...they're the part... [LB212]

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SENATOR CHAMBERS: So who is going to ask...if somebody objects to the restraints, who is going to ask the court to not require restraints? The county attorney is not going to ask that. Wouldn't it be the parent, the lawyer, or the guardian? [LB212]

SHAKIL MALIK: Correct, and...but if I may, Senator, who is going to ask the court to even use the restraints, because this bill says...it puts a blanket "restraints shall not be used...unless the (juvenile) court makes"...because I don't see the court having...you know, if you have a kid coming off detention for the first time, the court is not going to know whether the child should be restrained or not. Somebody would have to make that request to the court or tell the court. And so that's where I'm coming from, that it naturally is, unfortunately, going to fall to us then to have to do that because we have...Douglas County Sheriff is telling us, hey, this kid is dangerous... [LB212]

SENATOR CHAMBERS: In order...excuse me. In order for you to come here representing the County Attorneys Association, they had a meeting, didn't they, on this bill? [LB212]

SHAKIL MALIK: Yes. [LB212]

SENATOR CHAMBERS: Did you attend that meeting? [LB212]

SHAKIL MALIK: Yes. [LB212]

SENATOR CHAMBERS: And did they come up with the conclusion that you ought to draft the statement of the kind that you presented to us today? [LB212]

SHAKIL MALIK: Yes. [LB212]

SENATOR CHAMBERS: Did they look at your statement and agree with it or, or they just gave it to you,... [LB212]

SHAKIL MALIK: We didn't... [LB212]

SENATOR CHAMBERS: ...told you to do it, and you wrote the statement and you bring it now? [LB212]

SHAKIL MALIK: I wrote the statement. I brought it. [LB212]

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SENATOR CHAMBERS: So they didn't look at your statement before you presented it to us?
[LB212]

SHAKIL MALIK: Nope. [LB212]

SENATOR CHAMBERS: And if this bill is enacted into law in the way it is right now, what could the county attorneys not do that they currently do? What restriction is it placing on the county attorney? [LB212]

SHAKIL MALIK: None that I can see. [LB212]

SENATOR CHAMBERS: So what is it requiring them to do affirmatively that they don't currently do now? [LB212]

SHAKIL MALIK: The bill itself won't require...doesn't explicitly require us to do anything.
[LB212]

SENATOR CHAMBERS: Then I don't think they have a basis for objecting to the bill. But that's all that I have. [LB212]

SENATOR SEILER: I have a question. [LB212]

SHAKIL MALIK: Yes, Senator. [LB212]

SENATOR SEILER: In Douglas County, do they have a holding place where they bring these kids and hold them before they come up to court? [LB212]

SHAKIL MALIK: The securely detained kids, yes. [LB212]

SENATOR SEILER: Right. And when you say you're...the county attorney would present the application, they may put...you may present the application, but you've got to have a witness.
[LB212]

SHAKIL MALIK: Yes. [LB212]

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SENATOR SEILER: So you got your officer down in the holding tank that brought the kid to there. He's your witness you're going to use anyway. [LB212]

SHAKIL MALIK: If I may respond to that, Senator? [LB212]

SENATOR SEILER: Yes. [LB212]

SHAKIL MALIK: Actually, I think, as I envision it, I think what may end up happening a lot is it would either be an officer if something happened during transport or a youth center, who is also a county employee, or a lot of times actually our best source of information is actually, normally, the probation officer because they're the ones who are doing these intake assessments on the kids to find out what's going on. [LB212]

SENATOR SEILER: Well, they haven't taken them yet on the first offender so they don't know. [LB212]

SHAKIL MALIK: They couldn't possibly have been in secure detention without meeting with a probation officer because by law they have to have that detention screen done by intake probation in order to...you know, that... [LB212]

SENATOR SEILER: Prior to you filing charges? [LB212]

SHAKIL MALIK: In order to even enter secure detention they have to have that screening. That was... [LB212]

SENATOR SEILER: Okay. Okay. But there's your witnesses. [LB212]

SHAKIL MALIK: Yes. [LB212]

SENATOR SEILER: And you could...the defendant has got a right to be present when he's...when the evidence is brought, right, with the defense counsel? [LB212]

SHAKIL MALIK: It... [LB212]

SENATOR SEILER: You're not going to walk in there and get the restraint or the nonrestraint or the restraints without the defense counsel being present. [LB212]

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SHAKIL MALIK: Well, as currently written by the bill, it says that juvenile, juvenile's attorney, or juvenile's parent or guardian, you know, and then that was something, you know, if you have a juvenile who is combative but can't appear in court with restraints, how do you even have that hearing, you know,... [LB212]

SENATOR SEILER: That's where I'm headed. [LB212]

SHAKIL MALIK: Yeah. [LB212]

SENATOR SEILER: That's where I'm headed. But you could have the hearing. The judge says the restraints aren't necessary, take them off. [LB212]

SHAKIL MALIK: But by this bill that would actually be a violation to even bring the juvenile into the court with the restraints on because it says the restraints shall not be used. So you couldn't even get to that point because as soon as the juvenile walked in with restraints, the sheriff or whoever would be in contempt of court or in violation of the statute by even having the restraints on to begin with. [LB212]

SENATOR SEILER: Okay. That's a legitimate question. [LB212]

SHAKIL MALIK: And maybe I didn't communicate that well in my statement. That was one of the issues is we have this "chicken and the egg" problem with it. [LB212]

SENATOR SEILER: Okay, that makes more sense than what you said in your statement. Yes. [LB212]

SENATOR KRIST: I'm not as an experienced...I'm not a lawyer and not...don't have your experience, but it still doesn't make sense to me. If Section 1 says restraints shall not be used, then we're giving the first choice to the child. The child is being treated like a child. Restraints will not be used. And then it goes on to say, "finding of probable cause that: (a) The use of restraints is necessary." And whose responsibility would that be? It would be the witnesses, it would be the judge, because the judge is going to hold order in his own or her own courtroom theoretically. "To prevent physical harm to the juvenile or another person," that information would be the probation officer. It would be the people that had him in secure detention. So this is all theoretically, in my mind, and again, not being a lawyer but having a little experience reading these things, this needs to be done before the kid gets paraded through the courthouse and brought in. And I don't see that your...I don't see your testimony right now, and maybe when we get to the captain, he'll enlighten me. "Because the juvenile has a history of disruptive courtroom

behavior," we know that because he has been in the courtroom before or he's been in...okay, "(B) presents a substantial risk of inflicting physical harm on himself or herself and (sic--or) others...because the juvenile presents a substantial risk of flight," all of these pre...these are all preconditions in my mind to whether or not we put the shackles on to begin with. So the fact that someone in my roundtable discussions, and the captain who gets up here tells me, that's my policy, that's my procedure, that's not what I want to do and that's why my bill and Senator Chambers' bill are remarkably similar, because we're taking it back to the presumption that that kid doesn't need to be shackled. You need to present probable cause to shackle them. You know, again, I'm not a lawyer and I didn't spend the night in a Holiday Inn last night. But at the same time, I'm going to start out by saying this kid is a kid unless there's probable cause not to treat him or to protect himself from himself or herself or others. [LB212]

SHAKIL MALIK: If I may respond? [LB212]

SENATOR KRIST: Yeah, sure. [LB212]

SHAKIL MALIK: And that's what I'm asking, is...and that's why I've made reference to court rules, things like that. I'm asking them, flesh that out, say, you know, if...respectfully, if I may, say in the bill the court needs to make a finding, the court has to have a hearing, the court has to do it in this way, because what you're saying is good but it's not in the bill; and if it's not in the bill, the judge is going to... [LB212]

SENATOR KRIST: Okay. So the language in what we just talked about logically makes sense to you. [LB212]

SHAKIL MALIK: Yes. [LB212]

SENATOR KRIST: And it makes sense to me. So what we're talking about is potentially putting in, prior to the defendant, the child, whatever we're going to call them, leaving the facility in transport to the courtroom, the judge, in consult with da da da da da da, will determine whether this kid is shackled. [LB212]

SHAKIL MALIK: Yes. If I may, Senator, as you're aware, in Douglas County we do those pre-detention hearing conferences. We do the phone. So we can exchange information beforehand. [LB212]

SENATOR KRIST: Which... [LB212]

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SHAKIL MALIK: There just has to be something put in to actually have the court then take it up because we can...you know, we'll talk to defense, we'll talk to probation, we know what's going on. And I'm not trying to throw any judges under the bus, but if judge is like, okay, bring him in for detentions, you know, unless you tell them or a rule or something tells them they have to go through all this and listen and make these considerations, you know,... [LB212]

SENATOR KRIST: Now I buy it and now I think we have some work to do. But it's not going to change the fact that a child needs to be treated like a child. If we have to...I'm going through this discussion with the courts right now on a different issue. If they want us to tell them what to do rather than do what they should be doing, I have no problem doing that, because that's why I'm sitting in the chair. So thank you very much. I appreciate it. [LB212]

SENATOR SEILER: Any further questions? [LB212]

SENATOR CHAMBERS: Over here. [LB212]

SENATOR SEILER: Senator. [LB212]

SENATOR CHAMBERS: Were you in the room when I was presenting this bill? [LB212]

SHAKIL MALIK: Yes. [LB212]

SENATOR CHAMBERS: I don't know whether you could hear what I was saying where you were sitting, but could you hear what I was saying... [LB212]

SHAKIL MALIK: Yes. [LB212]

SENATOR CHAMBERS: ...about the Chief Justice being the administrator of the court system and that these things could be resolved by him if he chose to do so? [LB212]

SHAKIL MALIK: Yes. [LB212]

SENATOR CHAMBERS: And not having chosen to do so, there is legislation. And I mentioned that if there...the judge, if the court is not going to self-police, that's the term I use, then we're going to have to do things in statute. It shouldn't be necessary to put it in statute, but obviously it is. Now in reading the bill, you come to line 17: the juvenile court shall provide the juvenile, the juvenile's attorney, or the parent or guardian the opportunity to be heard before ordering the use

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of restraints. Now although that comes lower in the bill by location on the page, that could be done first of all. When they bring this child, the sheriff or whoever it is, the sheriff says, we have to have restraints on this child. And the parents, the guardian, or whoever would explain to the judge why the restraints shouldn't be there. The child doesn't have to be paraded into the courtroom for this discussion to occur. It can occur prior to the child's appearance, prior to the child being brought from wherever the sheriff is going to bring the child. If it's their practice to shackle all these children and it's my child, then I would say, I'm going to show the judge why my child shouldn't be shackled. The child doesn't have to be in the courtroom for that. We're not determining the merits of the child's situation. We're not even discussing why the child is there. We're going to determine whether any of these reasons that the bill sets out exist to justify that child being shackled. If the sheriff or whoever it is cannot show one of these, then the judge cannot order the shackling. And when you say that it might restrict what can happen in the judge's courtroom, there are laws that do that anyway. And we can go to great lengths to do things by statute which are done by court rule. We can take court rules and make statutes of them. So I still am not figuring what the county attorneys are talking about. Did you draw the short straw and that's why they sent you here to present this today? (Laughter) Because that's what they've been doing--they don't like to come to the committee when I'm here. [LB212]

SHAKIL MALIK: I actually rather enjoy coming to talk. I enjoy working on these bills. I've been doing it for a few years now and... [LB212]

SENATOR CHAMBERS: So why did they select you to come today? [LB212]

SHAKIL MALIK: I actually volunteered. [LB212]

SENATOR CHAMBERS: You volunteered, all right. I still don't see what you're saying (laughter) about this bill creating a problem for the county attorneys. I believe you're being sincere. But when I read the language, it's straightforward as far as I'm concerned. It would be like saying before a person can be charged with a crime, there must be probable cause. The probable cause has to be established by the state. And it's like saying, well, how can we be required to establish probable cause when we don't have the person before the court? And the court says, well, before you can bring the person before me, you have to show probable cause. It's like saying there are certain things that precede other things. The cops can say if they want to, let us arrest this person and then establish that there is probable cause. And the court says, no, before you make the arrest, you have to first show that a crime was committed, probable cause that the crime was committed, probable cause that this individual committed the crime. And if you can't make that connection, if you can't establish one or the other or both, then you can't arrest that person. You cannot charge that person. You understand all of these things. [LB212]

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SHAKIL MALIK: Yes. [LB212]

SENATOR CHAMBERS: And because you understand it, I'm lost in what you're saying. But I believe you're sincere and I don't have any more questions at this time. But that's all I have. [LB212]

SENATOR SEILER: I have one. Can you hold a hearing without the juvenile present? [LB212]

SHAKIL MALIK: That's... [LB212]

SENATOR SEILER: You can't do it for an adult, I know. [LB212]

SHAKIL MALIK: That's where it gets quirky. Generally speaking, Senator, you can't, and it's in the statute and case law. You can...that's what I was going to recommend. If you're going to have this hearing establish...if you provide for it in...I think the way to do it would be if you provide for in statute that the juvenile doesn't have to be present but also still... [LB212]

SENATOR SEILER: I'm not worried about the statute. I'm worried about the constitution. [LB212]

SHAKIL MALIK: Well, no, no, that's where I'm going. If you provide in statute the juvenile doesn't have to be present but then preserve the right for the juvenile to have a review with the juvenile is present, and we have that right now in the code...like, example: If a juvenile is detained, they can request a detention hearing. They have to be granted that detention hearing in 48 hours. You have to do something to preserve it because the whole thing is...you know, that's a problem with the juvenile code in Nebraska. We don't have uniform juvenile court rules and we don't have very many procedural statutes. Like, there's not even a statute for detention hearings. There's way more on the adult side, so a lot of this just gets filtered through due process. And with respect to Senator Chambers, sometimes logic and common sense, in respect to the judges there, get lost in that mix and that's where we end up with stuff like this. [LB212]

SENATOR SEILER: Yeah. Well, I agree with Senator Chambers on that one juvenile judge in Douglas County that common sense seems not to be showing up. But I was just wondering about the legal aspect of it. [LB212]

SHAKIL MALIK: Yeah. If we're doing a type of hearing, we don't do things in absentia. The only time we ever do anything like that would maybe be like a pretrial type thing, but nothing like substantive is ever done without the juvenile. [LB212]

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SENATOR SEILER: Okay, thank you. Any further questions? Thank you. [LB212]

SHAKIL MALIK: Thank you. [LB212]

WAYNE HUDSON: Good afternoon, Chairman and committee members. My name is Wayne D. Hudson. I'm a captain with the Douglas County Sheriff's Office. One of my primary duties is to oversee the security for the Douglas County Courthouse. [LB212]

SENATOR CHAMBERS: Excuse me, just one thing. For the sake of the transcribers, would you spell your name? [LB212]

WAYNE HUDSON: Yes. Wayne, W-a-y-n-e, Hudson, H-u-d-s-o-n. This duty includes the transportation and security of all juvenile inmates. I'm here today on behalf of Sheriff Timothy Dunning and the men and women of the Douglas County Sheriff's Office. We as an agency, along with the management of the Douglas County Youth Center and the Douglas County Juvenile Court judges, are opposed to LB212 in its current form. What is restriction on restraints going to accomplish? The judge and everyone involved in a juvenile inmate know that the juvenile is in custody. In speaking with representatives of the Douglas County Youth Center, if the issue is inmates being seen in restraints, then the court should take advantage of video hearings. This technology is already being used on a limited basis by the Douglas County Youth Center. LB212 states that restraints shall not be used on juvenile inmates during a court proceeding and shall be removed from the inmate before the court appearance. The bill does list several factors in which a juvenile court judge can allow the use of restraints on the juvenile inmate. One factor that was not listed for consideration is the current charges faced by the inmate, for example, if a charge of murder I is not a factor for the judge to consider when determining whether to use restraints. What I have witnessed during my ten years of court security and management is that juvenile inmates tend to exhibit impulsive, aggressive emotion during court hearings. The use of leg shackles and handcuffs during these hearings allow law enforcement to quickly neutralize disruptive behavior without the need for the use of the added force that can be necessary when the restraints are not used. LB212 states the judges must make a finding of probable cause if the juvenile inmate is to be placed in restraints. The probable cause hearing may involve the prosecuting attorney, public or private attorney, guardian ad litem, the juvenile, the juvenile parent or guardian, and the law enforcement agency responsible for security. The probable cause hearing could be...could add yet another layer of bureaucracy to an already busy judicial docket. The fear is that we may see a delay in first-appearance hearings before juvenile court judges. As a captain in charge of Douglas...as the captain in charge of the Court Services Bureau, I have more than ten years of experience managing court security issues. I have attended some of the best schools in court security, to include the United States Marshals Service court security program. I have also conducted many hours of research on court security

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best practices. The current restraint procedures used by the Douglas County Sheriff's Office was reviewed by the Commission on Accreditation for Law Enforcement Agencies, CALEA, and the National Center for State Courts. Both agencies found that...the DCSO to be fully compliant with national standards for the use of restraints. It should also be noted that the Douglas County Sheriff's Office never received a formal complaint from any attorney or a family member alleging a juvenile inmate's court hearing was unfairly influenced due to the use of restraints. I do want to clarify one potential, perceived misconception. [LB212]

SENATOR SEILER: Excuse me just a second. Your red light is on. [LB212]

SENATOR KRIST: Go ahead. I get the first question though. [LB212]

SENATOR SEILER: Okay. [LB212]

WAYNE HUDSON: Restraints are never used in front of a jury. In closing, the use of restraints is a common practice across the United States as a way of controlling adult and juvenile inmates during judicial proceedings. Restraints are used to protect the general public, court personnel, to include public and private attorneys and a prosecuting attorney, the juvenile court judge and his or her staff, the juvenile inmate, and law enforcement personnel. As law enforcement officers, we consciously understand the inherent risks that accompany the carrying out of our duties within the criminal justice system. These risks, however, should not extend to bystanders, including court personnel and members of the general public. It is our duty and responsibility to ensure that the judicial process is...can proceed in an environment free from interruptions and intimidation. Thank you. [LB212]

SENATOR SEILER: Senator Krist. [LB212]

SENATOR KRIST: Thank you for coming. And to go back to the first part of your testimony, you said you're here on behalf of the sheriff? [LB212]

WAYNE HUDSON: Correct. [LB212]

SENATOR KRIST: And who else? [LB212]

WAYNE HUDSON: The representatives of Douglas County Youth Center and four of our juvenile court judges. [LB212]

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SENATOR KRIST: Okay, I missed the four. Can you tell me who those four judges were?
[LB212]

WAYNE HUDSON: I've had communication with Judge Crnkovich, Judge Daniels, Judge Thomas, and Judge Johnson. [LB212]

SENATOR KRIST: And Judge Johnson said that he objected to removing the restraints?
[LB212]

WAYNE HUDSON: In a communication with Judge Johnson...I think we need to talk about exactly what are we talking about when we talk about restraints. [LB212]

SENATOR KRIST: Okay, okay, well, I...we'll get to that, but just...let's follow the line of questioning. I have a letter here from Judge Johnson in support of a lot of things. I've been in communication with him in the last couple days on a couple other issues. And you're telling me that Judge Johnson objects to the way this bill is written and the presumption that a child should not be shackled at the beginning and that's the way he runs his courtroom? That's essentially what you're telling me. [LB212]

WAYNE HUDSON: It is my understanding in the communication that was related to me that when this was presented to him, as far as taking off all restraints...in Douglas County, we always leave leg restraints on. We don't fully restrain. When I say fully restrain, I mean handcuffs, waist chains, and leg shackles. We don't... [LB212]

SENATOR KRIST: Okay, so it was communicated to you from Judge Johnson or you talked to Judge Johnson? [LB212]

WAYNE HUDSON: It was communicated to me from one of my sergeants from Judge Johnson.
[LB212]

SENATOR KRIST: Oh, okay, so now it's third party. I got it. Okay. So we'll discount, I guess, Judge Johnson because having talked to him about this I don't believe...I have no doubt that Judge Crnkovich would follow through with this. I have serious doubts that Judge Daniels would follow through with this in this way. And being part of JDAI, I think I can speak pretty definitively. So when you come here and you sit there and you represent those people, I would suggest, respectfully, that you talk to the people that you're representing. So you're there representing Sheriff Dunning and the members that are a part of your staff and Douglas County.
[LB212]

WAYNE HUDSON: Correct. Correct. [LB212]

SENATOR KRIST: Okay. So you gave us an example which I think is obtuse in the fact that you have a gangbanger, you have a killer, you have whatever. Do you not think that item on page 2, item (ii) under Section 1, because the juvenile has a history of disruptive courtroom...has been placed potentially harmful situations or presents a substantial risk of inflicting physical harm on himself or others, because that's the allegation, that's the charge against this child, that that isn't enough course of action to shackle them if it needs to be...if the child needs to be shackled? [LB212]

WAYNE HUDSON: Not in the sense that you just said because it says in a courtroom setting, disruptive in a courtroom, or a harm to himself or harm to others. The current charge, what they're in for, it doesn't fit that strict definition. [LB212]

SENATOR KRIST: Okay. Well, I'd be interested in how you would reword this because for me it does cover his presence in the courtroom but it also is a presumption that you're weighing this individual in terms of future harm to himself or to others because he or she has already done that. And that's why they're there, by the way. The last thing I think I'm just...I'm confused about is when one of your sheriffs, one of the members of Douglas County was here, they talked about a policy or a procedure and I think their exact words in that roundtable discussion was, because that's the way we do it. So I'll ask you the same question that I asked before. Who, 100 percent, comes into that courtroom shackled at the present time? Is there a status offender that comes from any situation, just status offender, that comes from any situation that the logical place or the logical course of action is to shackle them coming in to the courtroom? [LB212]

WAYNE HUDSON: I cannot speak to status offenders. We are not responsible, nor do we transport, guard, or escort status offenders to court. I can only speak to kids that are on the secure side. For the kids on the secure side, 100 percent of the kids that come to court have, at a minimum, leg shackles on. [LB212]

SENATOR KRIST: That's just the policy. [LB212]

WAYNE HUDSON: Policy. [LB212]

SENATOR KRIST: Okay, thank you. [LB212]

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WAYNE HUDSON: If they are in for murder I, murder II, manslaughter, or child abuse leading to death, then they have the full restraints on, which includes handcuffs, waist chain, and leg shackles. [LB212]

SENATOR KRIST: So I guess one more question, then a follow-on. To Senator Chambers' point, what do you see that is...we're telling you to do different than what you're doing right now? [LB212]

WAYNE HUDSON: I think it needs to be clearly defined. And I think the discussion before with the county attorney's office of when that probable cause hearing is to occur--do we bring the child over and have the hearing in restraints, not restraints?--I think that has to be clarified. [LB212]

SENATOR KRIST: You don't think that's in a...I mean, in my mind, the judge has that ability right now. I mean he knows what's coming into his courtroom. He knows what issue is coming into his courtroom. He knows by his docket what that child has been charged with or what the circumstances are. You're telling me that we need to tell the judge to do this before he brings him in the courtroom? [LB212]

WAYNE HUDSON: But the bill also states that the juvenile's parent, the juvenile, I think the attorney, have a right to be heard as well. If that is the case, then is that a hearing with the juvenile present? And again, if that is the case, will they or will they not have restraints on for that hearing? [LB212]

SENATOR KRIST: I guess we could go back and define all actions that would happen in your care and that would relieve you of the responsibility of taking a logical path in complying with the law, but that's all I have. [LB212]

SENATOR SEILER: Yes, Senator Chambers. [LB212]

SENATOR CHAMBERS: Captain Hudson, you said that you're speaking on behalf of the juvenile court judges, didn't you? [LB212]

WAYNE HUDSON: I did. [LB212]

SENATOR CHAMBERS: Okay. And would you read the way you said it in your statement so I won't state it differently from the way you said it. [LB212]

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WAYNE HUDSON: It's the line where it says, we as an agency, along with the management of the Douglas County Youth Center and the Douglas County Court judges, are opposed to LB212 in its current form. [LB212]

SENATOR CHAMBERS: Okay, the Douglas County Court judges are opposed to this bill. All of the judges of the Douglas...of the juvenile court? [LB212]

WAYNE HUDSON: No. I spoke to or received information and communication from four out of the five. [LB212]

SENATOR CHAMBERS: Did the judges ask you to speak for them when you came here today? [LB212]

WAYNE HUDSON: No, they did not. [LB212]

SENATOR CHAMBERS: Then that statement is misleading. If they didn't tell you to speak for them, what made you feel that you're entitled to lead this committee to believe that they wanted you to do that? If they wanted to express an opinion, could not they have had one of the judges come down here and state that opinion? [LB212]

WAYNE HUDSON: Yes. [LB212]

SENATOR CHAMBERS: So here's what I'm asking you: First of all, did you write that statement yourself? [LB212]

WAYNE HUDSON: Yes, I did. [LB212]

SENATOR CHAMBERS: And you knew what you were doing then when you wrote that the judges are opposed to this bill. Did you talk to Judge Vernon Daniels? [LB212]

WAYNE HUDSON: Yes. [LB212]

SENATOR CHAMBERS: And he said he's opposed to it? [LB212]

WAYNE HUDSON: Yes. [LB212]

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SENATOR CHAMBERS: And Judge Wadie Thomas said he's opposed to it? [LB212]

WAYNE HUDSON: Yes. [LB212]

SENATOR CHAMBERS: And each of the...who are the other two? Because you said four of them. [LB212]

WAYNE HUDSON: Judge Johnson and Judge Crnkovich. [LB212]

SENATOR CHAMBERS: And who is the fifth one? [LB212]

WAYNE HUDSON: Judge Kelly is the fifth one that we didn't get a chance to talk to. He's off this week. [LB212]

SENATOR CHAMBERS: But did any of them tell you to speak for them when you came here? [LB212]

WAYNE HUDSON: No. [LB212]

SENATOR CHAMBERS: Any one of them? [LB212]

WAYNE HUDSON: No. [LB212]

SENATOR CHAMBERS: Then I don't think you should have said that. I can't take your word for it, not that you're not telling the truth, but these people are in a position when there is a hearing to speak for themselves. So what you're really doing is speaking for the sheriff's department. Did the sheriff tell you to come down here and speak? [LB212]

WAYNE HUDSON: Yes. [LB212]

SENATOR CHAMBERS: Did he look at your statement before you...after you prepared it, did he look at it? [LB212]

WAYNE HUDSON: No, he did not. [LB212]

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SENATOR CHAMBERS: So he doesn't really know what you actually said. He just said, go down there and oppose the bill? [LB212]

WAYNE HUDSON: Correct. [LB212]

SENATOR CHAMBERS: You don't have a copy of the bill before you. [LB212]

WAYNE HUDSON: No. [LB212]

SENATOR CHAMBERS: But I'm going to just read something and I'm not going to interrogate you on it. "Restraints shall"...oh, they have one they can give you. [LB212]

WAYNE HUDSON: Thank you. [LB212]

SENATOR CHAMBERS: On page 2, starting in line 1, "Restraints shall not be used on a juvenile during a juvenile court proceeding and shall be removed prior to the juvenile's appearance before the juvenile court unless..." The "unless" is the circuit breaker. If these or any one of these circumstances exists, to be sure we're on the same page, you would agree that one of these, at least one of these, would have to exist to justify the restraints. Would you agree with that? [LB212]

WAYNE HUDSON: Yes. [LB212]

SENATOR CHAMBERS: Okay. If none of these exists, then the restraints are not justified. Would you agree with that based on what the bill says? [LB212]

WAYNE HUDSON: Based on what the bill says, yes. [LB212]

SENATOR CHAMBERS: Now when we get down to line 17, "The juvenile court shall provide the juvenile, the juvenile's attorney, or the juvenile's parent or guardian an opportunity to be heard before ordering the use of the restraints," is it the sheriff's practice, the procedure, or policy when the children who you say are always restrained, it's the policy that all of these...this category of children will always be in restraints, correct? [LB212]

WAYNE HUDSON: Correct. [LB212]

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SENATOR CHAMBERS: Okay. Now if the parents know that their child would fall within one of these groups or is going to have to wear the restraints, then the parent or the lawyer or the guardian could object to the restraints being used. Now the restraints are not evidence, are they? The restraints don't prove guilt or innocence, do they? [LB212]

WAYNE HUDSON: No, they do not. [LB212]

SENATOR CHAMBERS: The restraints do not establish the existence or nonexistence of any element of the charge against the child. Is that correct? [LB212]

WAYNE HUDSON: Correct. [LB212]

SENATOR CHAMBERS: So there's nothing that would go on in this hearing that would have anything to do with determining the outcome of the proceedings themselves, isn't that true? [LB212]

WAYNE HUDSON: That is true. [LB212]

SENATOR CHAMBERS: So what's all this talk about...I won't ask you what the representative of the county attorneys said. But let's say that the people that you mentioned would be present. Why would the child have to be in court when the law says who could be there? It could be the attorney, the parent, or the guardian. And if the parent had an objection, then the parent could make that known to the court and the child wouldn't have to be there for a hearing like that, would he or she? [LB212]

WAYNE HUDSON: I'm not an attorney. I cannot answer that question. I have to leave that to the county attorney's office. [LB212]

SENATOR CHAMBERS: Could the hearing occur in chambers? You're aware of what that means. Don't you? [LB212]

WAYNE HUDSON: I am. [LB212]

SENATOR CHAMBERS: Could the hearing occur there? Could it occur wherever the judge chose? [LB212]

WAYNE HUDSON: Yes. [LB212]

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SENATOR CHAMBERS: But you, forgetting everything the county attorney person said, eliminating the judges and your coming here to speak for them, your objection is that you think something bad will happen to the deputies if every one of these children is not shackled. What's the youngest child that you or a deputy has escorted to the juvenile court? [LB212]

WAYNE HUDSON: That I can remember would probably be ten years old. [LB212]

SENATOR CHAMBERS: How old? [LB212]

WAYNE HUDSON: Ten years old. [LB212]

SENATOR CHAMBERS: Ten years old? Ten years old? [LB212]

WAYNE HUDSON: Correct. [LB212]

SENATOR CHAMBERS: And that child would be a physical danger to your deputies? [LB212]

WAYNE HUDSON: It could be. [LB212]

SENATOR CHAMBERS: How? [LB212]

WAYNE HUDSON: It's not only a physical danger, but it's also the opportunity to try and escape and run and... [LB212]

SENATOR CHAMBERS: Well, this says if the...it says if there's a danger of flight. But you mean to tell me that a ten-year-old child could escape your deputies? What kind of training do they have? These are rhetorical questions. When you come here and I look at you, you're a man of substantial stature and you don't look like it's all middle-aged spread, and you're telling me to believe that a ten-year-old child could handle you? [LB212]

WAYNE HUDSON: It all depends on the size of the child. Now I have seen some juveniles come through, and one in particular in mind but I won't mention his name, who without a doubt it would probably take four of my deputies, if this person wasn't restrained, to take him down and put the restraints on him. [LB212]

SENATOR CHAMBERS: But we're talking about all these children. You said all of them who would be at that secure location... [LB212]

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WAYNE HUDSON: Correct. [LB212]

SENATOR CHAMBERS: ...would be shackled. [LB212]

WAYNE HUDSON: Correct. [LB212]

SENATOR CHAMBERS: A ten... [LB212]

WAYNE HUDSON: Minimum, leg shackles. [LB212]

SENATOR CHAMBERS: A ten-year-old child, how would that child be shackled? [LB212]

WAYNE HUDSON: At a minimum, leg shackles. Once they go to the courtroom, then we take the handcuffs off the juvenile, but the leg restraints stay on the entire time that we get them from the youth center to the time we bring them back. [LB212]

SENATOR CHAMBERS: So if we're only talking about leg restraints, then all this other stuff doesn't mean anything. [LB212]

WAYNE HUDSON: Correct, unless they're in for a violent crime. Then they're in full restraints. And of course... [LB212]

SENATOR CHAMBERS: If the child is alleged to have shot his father,... [LB212]

WAYNE HUDSON: Correct. [LB212]

SENATOR CHAMBERS: ...that child, ten years old, would be in full...all these? [LB212]

WAYNE HUDSON: In full restraints. [LB212]

SENATOR CHAMBERS: And that makes sense to you? [LB212]

WAYNE HUDSON: It does. [LB212]

SENATOR CHAMBERS: I don't have anything...the sheriff told you to come and testify?
[LB212]

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WAYNE HUDSON: Yes. [LB212]

SENATOR CHAMBERS: And Dunning is the one? [LB212]

WAYNE HUDSON: Correct. [LB212]

SENATOR CHAMBERS: I can show you where he said, when I was coming downtown for a demonstration, that he was hiding to watch the police to see if they would arrest me because he wanted to watch it and see it. That's the kind of person you have as a sheriff. And it was so abhorrent that a senator spoke about it on the floor of the Legislature and even let the sheriff know how inappropriate that was. He thought he was being funny, he thought he was smart, but he was smart-alecky and it resulted in a very bad taste in people's mouth. Are you aware that your sheriff is the one who said that David Kofoed had never done anything wrong and he backed him all the way, even after some evidence had been presented against him? Are you aware that, even after that, Sheriff Dunning backed Kofoed all the way? I know that he did. I read it in the paper. But you're not here to defend your sheriff. I want to let you know that... [LB212]

WAYNE HUDSON: No, no, and I think we're getting way off point. We're going to things that the sheriff has said maybe against you in other cases. We're off point when it comes to this juvenile issue. [LB212]

SENATOR CHAMBERS: That's why I wish the sheriff would have come, because your testimony doesn't make sense. First of all, you should not have said you represent...you're speaking for the judges. You're not. Your statement is misleading and I think it's inappropriate and I'm going to talk to those judges myself and mention that you came down here to speak on their behalf. And some of them talk to me and I'll ask why they didn't talk to me, since it's my bill. But that's what happened when the sheriff sent you down here to say the kind of things you said. And a lot of it, being frank, doesn't make sense to me. And I'd like to have a conversation with you when you and I can just talk, man to man, and explain to you why I'm saying to you on the record what I'm saying to you. I think Sheriff Dunning picks certain people for certain reasons, to put them out there. And that's my view and you're entitled to respond. [LB212]

WAYNE HUDSON: Well, and it is my responsibility to come down here and speak on this because I am the one that's in charge of court security. I am the one who reviews all the policies every year or periodically and make changes, adopt policies as we see fit. But again, what I have to do is look at our policies and determine what is in the best interest for the overall security of the Douglas County Courthouse. And what I have determined on this one...and we have reviewed this policy on leg shackles on everyone. And, Senator Krist, I think you had mentioned

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earlier about adults that come through. Adults, as well, have leg shackles on. You've got to remember the Douglas County Courthouse is an extremely old courthouse so we're not like some of the other courthouses where we have secure hallways where we can get our inmates from our holding facility to the courtroom. We have to pass by the public. We have to go through the rotunda area. We have to go by judges, attorneys, family members, things of that nature. So we have to have extra security measures in place to make sure we can get our juveniles and adults to the courtroom and then back safely. [LB212]

SENATOR CHAMBERS: If that is the case, the judge is the one who makes the determination about the need for the shackles. You would have the opportunity to present to the judge what you're talking about. If this law were passed, you would have to comply with it. [LB212]

WAYNE HUDSON: Correct. [LB212]

SENATOR CHAMBERS: And a part of that compliance includes establishing for the judge why restraints are needed. That wouldn't be too hard for you to do, would it? [LB212]

WAYNE HUDSON: It wouldn't. But I guess my question is, if there's no need for restraints, if there's no need for leg shackles, handcuffs, things of that nature, then maybe they...we ought to look at the whole process of when they're getting into the system and maybe they need to be on the staff-secure side and not on the secure side. [LB212]

SENATOR CHAMBERS: No, here's what we're saying, here's what the law is saying: There will be no restraints unless it can be established that one or more of these conditions does exist. You've been explaining it to me and it would be up to a judge to determine whether those reasons that you offer are valid and, if so, there would be the allowance of restraints but maybe the judge would say not to the extent that you would want to use them, even if the person is charged with a certain level of crime, because a judge might say, I don't think that that's necessary, because you're not dealing with people who have been convicted of a crime. [LB212]

WAYNE HUDSON: Correct. [LB212]

SENATOR CHAMBERS: So you haven't established under the law that this person is a murderer, is a person who committed homicide, who committed any violent act. So I haven't heard from you anything that would justify not enacting this bill. Now if we just made the blanket statement--under no circumstances should somebody who is a juvenile and going to be a part of these proceedings ever be allowed to be restrained--that would be something that, first of all, I wouldn't offer something like that. But if that's what this bill said, I could understand your

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being here. But with all of these escape hatches, I really don't understand it and that's why I'm saying the things that I'm saying. You have given reasons for the restraints. That's what you would do. It doesn't say that the hearing has to go three hours, four hours, or anything like that. And if the judge listens to you and has had experience in handling cases, then the restraints would be allowed but maybe not to the extent that the sheriff's department or you would want. The presumption would be that the child does not need to be restrained. That presumption can be overcome by presenting any one of these items that you mentioned. If there is a reason to think the child might run, then a restraint that would prevent the running, but not a shock jacket because you want to make the child behave because he or she might say something that somebody doesn't like, just to give an example. [LB212]

WAYNE HUDSON: And just to clarify on the stun belt, that's not done. I want to make sure... [LB212]

SENATOR CHAMBERS: Say it again? [LB292]

WAYNE HUDSON: Stun belts, stun belts aren't used to shock an individual just because they said something that the sheriff's office or the attorney may not like. [LB292]

SENATOR CHAMBERS: Well, here's what you need to say, I think, not to interrupt you: It's not supposed to be used for that kind of situation, just like Omaha Police are not supposed to shoot somebody with his hands up saying, I'm unarmed, and they're not supposed, if they're trained, four of them, to shoot a woman who is on stairs and she has a knife and they all have guns. So saying what they are not supposed to do is different from saying what they do. And I'm not asking you to justify any or all of that. I'm showing you how simple it is for you to establish the need for the restraints. And rather than hold you here and have you repeat what you've already said, I don't have any more questions. Thank you, Mr. Chairman. [LB212]

SENATOR SEILER: Okay. I don't know if it...yes, Senator. [LB212]

SENATOR PANSING BROOKS: I just wanted to check what kinds of crimes are the people, are the kids that are in secure and semisecure...I mean you describe two different restraint uses. One is full restraint and one is partial restraint. So what are those crimes that initiate that restraint? Are they all violent crimes? [LB212]

WAYNE HUDSON: Well, no, the...for the...on the secure side, not talking about... [LB212]

SENATOR PANSING BROOKS: I should let you stop at no, but, okay, go ahead. [LB212]

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WAYNE HUDSON: Okay. (Laugh) Not talking about staff secure, on the secure side, if they are in and they're in for murder I, murder II, manslaughter, or child abuse leading to death, then they come over in full restraints. Any other juvenile that comes to us from the secure side have, at a minimum, leg restraints on, doesn't matter the crime. If they come to us from the youth center on the secure side--that's all that we transport and that's all that we guard--they have, at a minimum, leg restraints. [LB212]

SENATOR PANSING BROOKS: So can you tell me the types of crimes that they...for which they could be...I mean, is it all types of crimes? [LB212]

WAYNE HUDSON: All types of crimes. [LB212]

SENATOR PANSING BROOKS: So nonviolent crimes are coming in leg restraints? [LB212]

WAYNE HUDSON: Yes. [LB212]

SENATOR PANSING BROOKS: Oh, my gosh. Okay, well, I just...thank you for your testimony. I am highly disappointed that you would speak on behalf of the judges. I've enjoyed your testimony before and I have...I feel that you have a genuine ability to speak clearly and to testify on different matters. But to come and suggest that four people of stature have told you to come and speak on their behalf is shocking to me. And it may be because I'm a new senator, but I'm very disappointed and now I will have to look at every testifier differently and question them all, including you, to make sure that they were...that people really do have the authority to speak on behalf of somebody, because you as a captain comes to me as a person of authority and I would expect to trust your statement. I'm very surprised about that, and disappointed. Thank you. [LB212]

SENATOR SEILER: Seeing no further questions, you can step down. Thank you. [LB212]

WAYNE HUDSON: Thank you. [LB212]

SENATOR SEILER: Any further opponent? Anybody in the neutral? Senator Chambers, you may close. [LB212]

SENATOR CHAMBERS: It's not my bill. [LB212]

SENATOR SEILER: Oh, isn't it? Yeah, it is. [LB212]

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SENATOR WILLIAMS: Yes, it is. [LB212]

SENATOR PANSING BROOKS: Yeah. [LB212]

SENATOR SEILER: Yeah. [LB212]

SENATOR CHAMBERS: Oh, well, I don't want to close. I'll waive closing. [LB212]

SENATOR SEILER: Okay. [LB212]

SENATOR CHAMBERS: I just want to speak to my brother here because he... [LB212]

SENATOR SEILER: (Exhibits 8-10) Okay, the records will reflect the written materials that have been included for the transcript. We will now open...Senator Coash or his representative can open, LB292. [LB212]

DAVID SLATTERY: Senator, if you want to wait a couple minutes, Senator Coash is on his way. [LB292]

SENATOR SEILER: Coash is on his way? [LB292]

DAVID SLATTERY: Yeah, but he's about three minutes... [LB292]

SENATOR SEILER: That's fine. [LB292]

DAVID SLATTERY: Do that? [LB292]

SENATOR SEILER: Yep. Yep. [LB292]

SENATOR WILLIAMS: Corner office. [LB292]

SENATOR SEILER: We'll take a short break. [LB292]

BREAK

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SENATOR SEILER: Okay. Let's go on. Senator Coash, introduce LB292.

SENATOR CHAMBERS: Oh, there's another bill? [LB292]

SENATOR SEILER: One more bill. You may proceed. [LB292]

SENATOR PANSING BROOKS: Colby, welcome to the Judiciary. [LB292]

SENATOR COASH: Thank you. Hi. [LB292]

SENATOR SEILER: You may proceed. [LB292]

SENATOR COASH: (Exhibit 1) Thank you, Chairman Seiler. My name is Colby Coash, C-o-l-b-y C-o-a-s-h, and I represent the 27th District. This is LB292. This is a bill to change provisions relating to the Department of Health and Human Services central registry of child protection cases. This bill deals with a youth placement on the registry and also additional due process and notification procedures for when placement does occur. So this is a little bit where this bill came from. This past summer I placed an inquiry to Department of Health and Human Services regarding the ages of offenders who were on the central registry of abuse and neglect, and I provided you all with a copy--here you go--of their response. So I got this very shocking response to my inquiry. And the response was 4 children under the age of one were listed as perpetrators; 87 kids eleven and below were listed on the registry. And it was unbelievable that even a child just a few months old was listed as a perpetrator of abuse. Obviously, this was a mistake and DHHS is really working diligently to expunge these records. But this bill would help ensure that children under the age of 11 do not end up on the registry, whether or not such inclusion was a mistake. This bill also enables a due process for expungement of any minor placed on the registry once they reach the age of an adult. Currently, there's no annual review of who's listed on the registry. If it were not for my inquiry last summer, these youth most likely would still be listed on the registry. And LB292 states that in no case may a youth under the age of 11...may be placed on the central registry regardless of the nature of their crime. Youth age 12 and older may only be listed as agency-substantiated or court-substantiated as defined under current law. This bill also requires HHS to report annually on the number, ages, and classification of the youth placed on the registry. And the report shall be distributed both to the Governor and Chairs of the HHS and Judiciary Committees in the Legislature by September 15. Currently, HHS follows a guideline policy for placing youth on the central registry, not a statute or regulation. In some instances, HHS fails to follow its own guidance on placing youth offenders on the registry. And by failing to do so, it is possible that Nebraska is subjecting itself to litigation. Nebraska can be protected from future lawsuits by placing more oversight on the central registry. LB292 also requires a mandatory expungement hearing for a juvenile which will

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take place when the department classifies a youth as court-substantiated or agency-substantiated if the youth does not return a signed and notarized waiver of a mandatory expungement hearing or within 60 days of his or her 19th birthday. The mandatory expungement may take place in person or over the phone. Branding a youth as a child abuser on the basis of his or her juvenile adjudication is at odds with the spirit of Nebraska's juvenile code. So I ask that you support my bill and help give greater oversight and due process for kids placed on the registry. I'd be happy to answer any questions. [LB292]

SENATOR SEILER: Questions? [LB292]

SENATOR COASH: So just to kind of give you the...oh, I'm sorry. [LB292]

SENATOR WILLIAMS: Senator Coash, I do have...how is this registry used? [LB292]

SENATOR COASH: This registry is not public record, okay? So I'm not able to go out and look at...and I should mention that there are two registries, right? There's registries for a person who is an abuser, and this is where it gets...you got to be clear on the language. This is not a registry for victims. This is a registry for perpetrators of abuse. Okay? And so HHS manages this registry. And what we found was there were children who may have done something that were listed as abusers of children. But there were also, because of their ages, we knew there was no way a one-year-old became an abuser. There were also children listed as abusers. And so what this does...my biggest concern was we have children who are listed on the child abuse registry. And I want to make sure that there are some protections in place for those children so that they know. And what's...this was the most telling thing. Some of these children are children, are wards of the state. So their guardian for all purposes is the state of Nebraska. And then once they get...maybe they...this is unfortunately not terribly uncommon where a child may reenact abuse that happened to him or her maybe on a foster...another foster child. And then once that works its way through the system through an investigatory process, that child may be placed on the child abuse registry. But there's nobody looking after the child's best interest because the person who runs the registry is also the person's guardian. Does that make sense? So there's no protections for the kid. And I want to make sure that a kid who's gone through the system, becomes an adult, has the opportunity to get their record expunged or at least know that they're on the registry. Because under the current law, a child who's placed on the registry, they have to send that notice to the guardian. Well, if the guardian is the state of Nebraska, who's going to be looking out for the best interests of that child? So I wanted to put some protections in place so that we wouldn't come to the point where I found this summer where we had a bunch of children on the registry. And kids are kids. They're not going to know. They may know they did something, but they're not going to know that they're on this registry. And this is lifetime. And it may not pop up in their life until they're well into their adulthood and they go look for a job, they apply for a job in

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like a day care or to be a teacher or volunteer in a church or something like that and somebody says to that now adult, you're on the registry. And that now adult is going to say, jeez, something happened, you know, when I was 12, 13 in a foster home, I may have done...I mean they may have done something. I'm not excusing what they did, but they're children; and somebody has to look after their due process rights. And I didn't see that happening. So I wanted to codify what we know can be done in the law. I know HHS has some representatives here that can answer questions about how the registry works. But that's my intent here. [LB292]

SENATOR SEILER: Yes. [LB292]

SENATOR PANSING BROOKS: Sorry. I'm just...I had no idea this was existing so I guess I just...so is this like the thing where somebody can look up on-line or something? I hear that you can look up on-line and there's something that says you live three blocks from...? [LB292]

SENATOR COASH: Okay. Let me be clear about that. What is public record is the sex offender registry, okay? [LB292]

SENATOR PANSING BROOKS: Okay. [LB292]

SENATOR COASH: If you are convicted of a sex offense, you're subject to being on the sex offender registry. This bill does not deal with the sex offender registry. This bill deals with a different registry which is a child abuse registry. So if you perpetrate on a child, and it doesn't have to be sexually so you might...people you might normally find on the child abuse registry might be a parent who actively neglected their child and got a ticket for child abuse, went through the court. [LB292]

SENATOR PANSING BROOKS: Yeah. [LB292]

SENATOR COASH: That adult might end up on the child abuse registry, which is a very different registry than the sex offender registry. [LB292]

SENATOR WILLIAMS: And it's not public? [LB292]

SENATOR PANSING BROOKS: Okay, so a child could... [LB292]

SENATOR WILLIAMS: It's not public? [LB292]

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SENATOR COASH: Correct, the child abuse registry is not public record. And that's... [LB292]

SENATOR WILLIAMS: Sorry to interrupt. [LB292]

SENATOR COASH: Frankly, that's... [LB292]

SENATOR WILLIAMS: I needed to get that clear. [LB292]

SENATOR COASH: And frankly, that's part of the problem is because, you know, an adult...somebody who wants to know if they're on the sex offender registry can look it up. Somebody who is on the child abuse registry has to go through some channels to make sure. Or they just find out when they're denied a job later in life that they're on the child abuse registry. [LB292]

SENATOR PANSING BROOKS: Okay, so we had a bill last week I think that talked about when to allow somebody to not talk about whether or not they've been convicted for something or...so I'm trying to figure out how this relates because I thought we talked about the fact that juveniles don't have to present that information. [LB292]

SENATOR COASH: Right. A kid has no--well, and adults, for that matter--has no say whether or not they're put on this registry. And there are three categories of being put on the registry. You can be put on the registry as court-substantiated, which means you've gone through, been convicted of a crime against the child. So you can end up with that classification. The next classification can be agency-substantiated, which means there was an investigation and by a preponderance of the evidence we think that person committed abuse or neglect on a child and ends up there. Or they're...third is un...no record found, so the absence of being on there. So every investigation of child abuse results in one of those three classifications: a court conviction; an agency substantiation; or nothing. [LB292]

SENATOR PANSING BROOKS: But the "nothing" is that there was some investigation, is that correct? [LB292]

SENATOR COASH: Well, there might be an investigation that turned out it didn't happen. [LB292]

SENATOR PANSING BROOKS: Right. [LB292]

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SENATOR COASH: So that person wouldn't end up on the registry. [LB292]

SENATOR PANSING BROOKS: So but the reason I'm asking that is because then, if something else happens, that shows up in the rap sheet or whatever that the police can use and go, oh, well, somebody has already been out investigating this person for some unsubstantiated claim, correct? [LB292]

SENATOR COASH: Law enforcement may have access to that, and HHS certainly tracks that. [LB292]

SENATOR PANSING BROOKS: Okay, thank you. [LB292]

SENATOR SEILER: Let me ask you a question. Senator Chambers and I are down on the corner. And we're close enough in the age it could happen. We decide that he doesn't like me and I don't like him. We go after each other. One of us goes to the hospital. They make an agency report. Are we in this system? [LB292]

SENATOR COASH: Well, neither one of you are considered vulnerable adults, so... [LB292]

SENATOR SEILER: Oh, you have to be an adult? One side has to be an adult. [LB292]

SENATOR COASH: Well, there's two registries. There's the adult protective registry which protects vulnerable people. Now you might be old enough to be considered vulnerable. (Laughter) The elder...I mean elderly is really a protected class. Okay. But you might be convicted of crime. But just because Senator Chambers is an old man doesn't mean you're going to end up on the adult protective registry. [LB292]

SENATOR CHAMBERS: And a vulnerable adult. (Laughter) [LB292]

SENATOR COASH: That's right. [LB292]

SENATOR SEILER: I'm trying...I'm just... [LB292]

SENATOR COASH: But if he were in a nursing home and you went in and stole his mattress and his clothes, you might be considered perpetrating abuse on a vulnerable adult. [LB292]

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SENATOR PANSING BROOKS: So but along those lines, then what about if they were both younger together and fought like that? [LB292]

SENATOR COASH: They're both children? [LB292]

SENATOR PANSING BROOKS: Yes. [LB292]

SENATOR COASH: Well, HHS has a call to make, right? I will tell you that when two children injure each other that are in the state's care, there's often an investigation by CPS. [LB292]

SENATOR SEILER: Right. Do you end up on that? [LB292]

SENATOR PANSING BROOKS: That's what...yeah. [LB292]

SENATOR COASH: You could. [LB292]

SENATOR SEILER: That was my question. [LB292]

SENATOR COASH: The answer is you could. If you pass my bill and you're under 11, you wouldn't be. [LB292]

SENATOR SEILER: Wow. [LB292]

SENATOR COASH: I'll let HHS answer those questions. [LB292]

SENATOR PANSING BROOKS: What about some of the bullying that is going on and the taping of it and... [LB292]

SENATOR COASH: Could result in a finding of child abuse, even if the bully was also a child. [LB292]

SENATOR PANSING BROOKS: Thank you. [LB292]

SENATOR SEILER: Seeing nothing further, thank you. [LB292]

SENATOR COASH: Thank you. [LB292]

SENATOR SEILER: Proponent. [LB292]

MARGENE TIMM: It's been a long day, Senators. I'm Margene Timm, M-a-r-g-e-n-e, last name Timm, T-i-m-m. I'm a deputy public defender in Lancaster County. I'm presently the supervising attorney of the juvenile unit. I'm here to support LB292 as a positive step in the right direction in recognizing the problem we have with putting juveniles on the central registry and then taking steps to address that problem. I, like Senator Pansing Brooks here, was quite surprised to find out that we are putting juveniles on the central registry. I've been a public defender for 26 years doing criminal work and juvenile work and had no idea that juveniles were being put on the central registry. This first came to light for me when I got a call from a parent about four years ago when she was trying to put her 19-year-old son into a developmental disability facility. He had previously been a client of ours. And when she went through the process of trying to place him in this DD facility so that he would have an appropriate placement and supervision as he went into adulthood, she was denied. And the reason she was denied is because this child had been placed on the central registry at age 16. That was my awakening and finding out that these kids were being put on the central registry. I said, that must be a mistake. I wrote the Department of Health and Human Services a letter because if you look at the statute as to who gets placed on the central registry, there's nothing that leaps out and tells you juveniles are being put on it. So I thought it was a mistake. I wrote them a letter. I sent them documentation that this was a juvenile court adjudication for a sex offense, he had successfully completed his plan of rehabilitation, he had successfully completed treatment, it must be a mistake that he was on the central registry. And I got a prompt but very curt answer saying, we can and do put these kids on the central registry. I can't represent anybody in an expungement hearing, so I simply had to give that family the information about how to go do that. Shortly after that, I represented a 12-year-old boy who was charged with a status offense. Now we've all learned about status offenses in a lot of detail today. He was 12 years old. He was charged with deporting himself because he had, had sexual contact with a younger child. His mother actually recognized the letter, that it came from Health and Human Services' central registry. She brought it to me and said, what does this mean? So a 12-year-old adjudicated on a status offense was placed on the central registry. If I might just briefly go on, what I see as sort of two issues that dovetail from this is, one, there's been comments that a lot of juveniles don't understand that they're on the central registry. Their parents don't understand it either. They get that letter at the same time that they're getting their juvenile court documents and a lot of them think it's just part of their juvenile court case and don't realize that there's this whole separate process going on, being put on the central registry. The second issue is your concern with HHS being the guardian, the parent, so to speak, as well as the manager of the central registry. Well, I've seen gaps with the kids moving from HHS over to probation with LB561 a couple years ago. For example, what do I mean by that? Because HHS manages the central registry, when I represent... [LB292]

SENATOR SEILER: Your red light is on, but go ahead. [LB292]

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MARGENE TIMM: Okay. When I represent juveniles who are on the central registry and the HHS was managing their case, a lot of times, they would be able to tell me whether or not this youth is on the central registry. Probation does not have the ability to look at the central registry to see if the kids that they are now supervising are actually on the central registry. So that's a gap. The second issue then is I had caseworkers who would be very proactive in the best interest of the kid. And if the juvenile had successfully completed their treatment, successfully completed their plan of rehabilitation, they would send the information over to the central registry and on their own, with being proactive, would get that juvenile's name expunged or removed from the central registry. Probation doesn't understand this issue. They don't have access to the central registry. They don't watch out for these kids. They don't provide the documents. They don't help them through an expungement process, and so that's been a gap that we've seen since the kids have been moved from HHS over to probation. Being placed on the central registry continues to negatively impact juveniles, even those who have successfully completed treatment, even those who have successfully completed their plan of rehabilitation in juvenile court. And I would be happy to work with Senator Coash or other members of this committee in terms of anything I could do by way of providing information or answering questions. Thank you. [LB292]

SENATOR SEILER: Thank you. Senator Pansing Brooks. [LB292]

SENATOR PANSING BROOKS: Thank you. Thank you, Chairman Seiler. I was just wondering, Ms. Timm, I don't know if you heard my question to Senator Coash, but I'm interested, I thought some records for juveniles were basically...they don't need to bring them up. They're expunged once they're...if they committed a crime as a juvenile, that it does not follow them necessarily. So what am I confused on? [LB292]

MARGENE TIMM: There's a sealing-of-records provision in the juvenile code. So if you are adjudicated in the juvenile court and you have rehabilitated, you're past 17, I think it is then that the juvenile court is actually required to start an automatic sealing provision. So if your juvenile record is sealed, then, yes, you can answer that question that you've not been involved in the process. It is sealed to members of the public. They couldn't check JUSTICE and see your juvenile record. It's always open to law enforcement. Central registry is different. I actually looked on the HHS Web site, and I would encourage the members of the Senate...of this committee to do so, as well, and they...there's a procedure to get access to the information on the central registry, but it says it's used to conduct preemployment background checks, licenses for child care, approve placements for children in foster care and adoption to collect statistical data, but...and then it lists what you have to do to be able to get access to the information on the central registry, the process to do that. [LB292]

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SENATOR PANSING BROOKS: Okay, so I have another question then. So Senator Coash mentioned three ways that these records...he said court substantiated. So supposedly, if everything had been complied with, it wouldn't show up on the record then but it's the other... [LB292]

MARGENE TIMM: No, court-substantiated, my...no. Court-substantiated, my understanding of that means that you have either been convicted in a criminal court of child abuse or sexual abuse on a child or you have been found responsible in a juvenile court action. So if it's a filing against a parent for abuse/neglect, you're going to be on the central registry. If it's a filing against a juvenile under a delinquency, or a status offense in my case, and the underlying conduct is abuse of a juvenile, you're going to be on the central registry. In fact, there's been occasions where somebody has never even been charged in adult or juvenile court and it's been agency-substantiated and they've ended up on the central registry. [LB292]

SENATOR PANSING BROOKS: So do you have an opinion on limiting it at 12 years? [LB292]

MARGENE TIMM: I'm a public defender. (Laugh) I would, of course, like to see it much broader than that. I know that there's concern about the, sort of, the expungement hearing. I think there...I think it is very good, very promising to require some sort of automatic expungement hearing at the time and the ability that, if it's not granted at that time, for the juvenile to go back and basically get another chance to do that. I would...what I would like to see is something more proactive from either probation or the courts, similar to what we do with sealing of juvenile records, that when a juvenile has demonstrated successful completion of their treatment program, successful completion of their juvenile court plan of rehabilitation, that that would trigger some sort of notice to HHS to relook at whether that's the time to do the expungement. [LB292]

SENATOR PANSING BROOKS: I would agree with you on that. [LB292]

SENATOR SEILER: Any further questions? Senator Ebke. [LB292]

SENATOR EBKE: Okay, for my benefit, your 12-year-old, you have a status offense and in this particular case you would have two sets of records? [LB292]

MARGENE TIMM: Yes, that's absolutely correct. [LB292]

SENATOR EBKE: You'd have a Health and Human Services record and you would have a court record of some sort, a juvenile court record. [LB292]

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MARGENE TIMM: Correct. [LB292]

SENATOR EBKE: And the juvenile court record becomes sealed, correct? [LB292]

MARGENE TIMM: Correct. [LB292]

SENATOR EBKE: But the Health and Human Services one does not, and so... [LB292]

MARGENE TIMM: Unless steps are taken to expunge it. [LB292]

SENATOR EBKE: Unless positive steps are taken, and so what happens is this 12-year-old who has had one particular incident, perhaps inappropriate but an incident nonetheless, you know, 20 years later decides to be his kid's...he says, oh, I'm going to...I want to be my kid's Cub Scout leader and goes through the process and gets kicked out and is trying to figure out why. [LB292]

MARGENE TIMM: And that's exactly the issue. That's how it first came to my attention, when this mother could not get her DD 19-year-old son into a facility because he had been listed on the central registry despite satisfactory completing his treatment and his juvenile court record. [LB292]

SENATOR EBKE: I was involved with the Girl Scout Council here in this area for quite some time and we had a number of cases where people would volunteer to be leaders and things would pop up on the central registry that they had no clue where they came from, you know, like 25-, 30-year-old people that, you know, sometimes 35, who had no idea why they were on the central registry. So somewhere along the line, something fell through. So thank you. [LB292]

MARGENE TIMM: Thank you. [LB292]

SENATOR SEILER: Thank you very much. Next proponent. [LB292]

ROBERT McEWEN: (Exhibit 2) Thank you, Chairman Seiler and members of the Judiciary Committee. My name is Robert McEwen, R-o-b-e-r-t M-c-E-w-e-n, and I'm a staff attorney in the child welfare program at Nebraska Appleseed. Nebraska Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans, and we've long advocated under the United States Constitution that due process protections need to be put in place in Nebraska central register process that don't currently exist. This includes notice in a predeprivation, opportunity to be heard on allegations that that could land somebody on the child

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abuse registry. And we've worked with Senator Coash on this issue in the past. LB973 in 2010 was a bill also on the central register. And we greatly appreciate his continued efforts to make the register work better for children and for families. And that's what LB292 does. It takes important steps to make additional due process protections for especially vulnerable populations: children and those that may be non...or those that may be no-fault cases in the juvenile court system. And as the previous testifiers and Senator Coash noted in pretty good detail, the process is set up to protect children specifically under the age of 12 and then provide additional...by not allowing them to be on the register, and then also by adding additional due process protections for those that are put on the register between ages 12 and 19 and then requiring the mandatory expungement hearing, which we think would be a good idea because a lot of people are confused when they get these letters about the central register and what the process is and how to get their names off if they don't believe that they should be on. And so the process essentially works in the non-court-substantiated or the agency-substantiated cases. You, as the senators have noted, may never know why you're on there until many, many years later and that's really problematic. So requiring the mandatory expungement hearing for those youth that are put on between the ages of 12 and 19 and having them waive themselves out of that requirement ensures that they're going to have an opportunity to defend their rights at some point. As I said, we are also very in support of the provision that allows no-fault cases or requires no-fault cases to be taken explicitly off the central register. It's inappropriate in almost every case that I've been involved in. When somebody is in a no-fault case, many times, those cases in juvenile court are where parents are trying to access behavioral health services for their child and then they are in a child welfare case. And by reason of being in a child welfare case, their name is automatically put on the register. They may lose employment opportunities and their constitutional rights can be drastically impacted. So in conclusion, we'd like to thank Senator Coash and this committee for their work on this issue and we respectfully request that you vote to advance LB292. And I'd like to answer any questions if the senators would have any. [LB292]

SENATOR SEILER: Senator Williams. [LB292]

SENATOR WILLIAMS: Thank you, Senator Seiler. Thank you for being here and testifying, appreciate that. So if I understand this correctly, LB292, anything that someone under 12 does, no matter what conduct/activity, they would not be on the registry. [LB292]

ROBERT McEWEN: That is my understanding as well. [LB292]

SENATOR WILLIAMS: And then between, you know, the upper ages, they go through a process that would determine a hearing, in essence. [LB292]

ROBERT McEWEN: Right. I believe it is within 60 days, 60 days after they're put on. [LB292]

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SENATOR WILLIAMS: Right. [LB292]

ROBERT McEWEN: Then they'll get a notice. And then actually, 60 days after they reach the age of majority, I think they have another chance, as well, unless they specifically waive off. [LB292]

SENATOR WILLIAMS: I guess my concern that I would like to have addressed either by you or Senator Coash when he comes back up is, are there circumstances that someone 11 years old could be involved with that would be so egregious that they should be on the registry for some reason? [LB292]

ROBERT McEWEN: So it is my understanding that that probably would not be the case because of the limited folks who can access the central register. Essentially the...it's my understanding that the central register is set up to prohibit adults, most of the time, from getting employment and working with children. Since the children under the age of 12 wouldn't necessarily be working with those children, I think the risk is, even in egregious circumstances, that I guess the evil that the registry is meant to conquer is not exactly...it doesn't exactly fit with the young, young children. But Senator Coash may correct me. [LB292]

SENATOR WILLIAMS: Except that that person that's 11 when this occurs will someday be 25, applying for a job to work with kids. [LB292]

ROBERT McEWEN: That's correct. [LB292]

SENATOR WILLIAMS: I don't have any other questions. Thank you. [LB292]

ROBERT McEWEN: Thank you. [LB292]

SENATOR SEILER: Yes, Senator Brooks. [LB292]

SENATOR PANSING BROOKS: I guess I'm interested...so for the same offense that a court seals a record but HHS has decided it's just available all the time, is that correct or am I... [LB292]

ROBERT McEWEN: Available to limited people... [LB292]

SENATOR PANSING BROOKS: Yes, but still... [LB292]

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ROBERT McEWEN: ...but still available nonetheless, yes. [LB292]

SENATOR PANSING BROOKS: But the court has decided this is no longer available. [LB292]

ROBERT McEWEN: Yes, and in, actually, many cases, individuals that are on the central registry, a court case is not associated with it. So if little Timmy punches somebody in school, he can be put on there even if there's not a court case filed. So little Timmy can find out 15 years later that he can't be a Cub Scout leader. [LB292]

SENATOR PANSING BROOKS: Okay. And doesn't the court seal those records up till age 18? [LB292]

ROBERT McEWEN: I believe so if there is a juvenile court case, but... [LB292]

SENATOR PANSING BROOKS: Yeah. I'm saying, if they decide to seal a record, they will do it up until 18, isn't that correct? [LB292]

ROBERT McEWEN: Yes, that's my... [LB292]

SENATOR PANSING BROOKS: Will they do it beyond 18 or do they just do it to 18? [LB292]

ROBERT McEWEN: I believe to 18, is my understanding, but that...I'm not exactly sure. [LB292]

SENATOR PANSING BROOKS: Okay, so...okay, I had another question. I'm just...I'm trying to think what...I think that's what I have right now. Thank you. [LB292]

SENATOR SEILER: Seeing nothing further, thank you very much for your testimony. [LB292]

ROBERT McEWEN: Thank you very much. [LB292]

SENATOR SEILER: Next proponent. Seeing nobody, opponent. [LB292]

SHAKIL MALIK: No, I'm going neutral this time. [LB292]

SENATOR PANSING BROOKS: Oh, my gosh. [LB292]

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SENATOR SEILER: You haven't heard about our ejection seat, have you? (Laugh) Anybody opponent? Neutral? [LB292]

SHAKIL MALIK: Well, let it not be said that county employees leave early. (Laugh) Shakil Malik, S-h-a-k-i-l, last name Malik, M-a-l-i-k, speaking neutral for Nebraska County Attorneys Association on LB292. And in honor of Senator Coash, he missed this, he wasn't here, but I wanted to testify neutral with a couple critiques but mainly support for this bill. First of all, for the portion that talks about getting no-fault off the registry, we do support that. That's been a concern of ours. I myself have had conversations with DHHS. I even in a couple cases called for parents who got on there by accident to Grand Island--no issue with that. The kids under 12, we're fine with that. That, you know, is a logical, sensible thing. Our one, and there are some gratuitous annotations with some strikeouts, issue is this concept of the mandatory expungement hearing for the 12- to 18-year-olds, and a couple points on that, if I may. The...you know, obviously, when you have a kid who is younger, we've talked about, like, a 12-, 13-year-old, yes, the implications aren't as great. But I give you the other example. If I have somebody who is 17 or 18 and commits some abuse of a child, you know, and is found in juvenile court either in an abuse/neglect case, or for the 18-year-olds, if they're in district court or county court on an adult case, because you know juvenile courts jurisdiction will stop at 18, is that something we really want to have as soon as they turn 19, get a mandatory expungement hearing? And what does that really mean? Because the terms and the things that you look at for expungement are not clearly defined in the expungement statutes and it's a statute that's next to these that talks about what expungement means and what the standards are. They're not really in there. Most of that's in these DHHS regulations. And I have a very love-hate relationship with DHHS because sometimes how these decisions are carried out. And the concern is, you know, from a public safety standpoint, from an implication of somebody's behavior, if you're engaged in behavior against a child, you know, if you're 17 or 18 yourself and you do something to a child, is that really the appropriate case where we want to have them getting a, quote unquote, mandatory expungement hearing as soon as they turn 19? And obviously, even if this is...they didn't get the mandatory, they can at any time apply. And I think it does make sense to certainly provide them notice and these explanations of what their rights are and all that goes with that. But especially if, you know, there hasn't been any showing made, any application like, hey, I've rehabilitated myself, here's my application form, they're just being given this mandatory expungement hearing which carries an implication that they will get an expungement, that's where our concerns lie with this bill. But otherwise, for the most part, we're in full support of it. [LB292]

SENATOR SEILER: Okay. Yes, Senator. [LB292]

SENATOR PANSING BROOKS: Thank you for coming, again, Mr. Malik. I guess what I'm interested in is, as a nation, we have set the age of 18 to be...it's just an arbitrary age, but it is the age that we have set that below 18 you're considered a child and a juvenile and above that you're

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considered either a young adult we're talking about today or an adult. So we have set that time frame. So if somebody who is 18 or 17 has sexual relations with another 17-year-old, they theoretically can be charged with one of these crimes because it's on a minor. [LB292]

SHAKIL MALIK: In...did you say 18 with a 17 or 18 with a 16 or...? [LB292]

SENATOR PANSING BROOKS: I'm just talking... [LB292]

SHAKIL MALIK: Yeah, yeah. There are always the exceptions, and that's why one of the issues is the...you know, the registry was never intended for cases like that. The problem is a lot of the governance for the registry is in administrative regulations, it's not in statutes, and there's, like the previous witness talked about, there's that disconnect between the court crimes. You know, even technically, you know, if I charge a juvenile in juvenile court with a crime even against another child, that shouldn't end up on the registry as a court case because, if you read the registry, it doesn't apply to those cases. But sometimes you've heard they do. So I think that's something maybe the committee needs to look at is does more of this need to be regulated then by statute to make sure those cases don't happen, to specify what specifically will put you on and not put you on. But my concern is, do we say that a 17- or 18-year-old who does, you know, who is a babysitter, who a lot of times those professions are subject to screening on the registry, you know, abuses a kid, gets charged or it gets agency-substantiated, should they be entitled to this mandatory expungement in a year, you know, without any showing of rehabilitation or improvement? [LB292]

SENATOR PANSING BROOKS: But it's not my understanding that they're entitled to a mandatory expungement. They're entitled to a mandatory expungement hearing. And it seems to me that with a mandatory expungement hearing that we are giving the benefit of the doubt to a juvenile. And we all know about the studies about juveniles that most brains do not fully develop till age 26. So as a society, I can see the value of giving the benefit of the doubt to that juvenile, that there will be a mandatory hearing to look and determine whether or not that expungement is a valid expungement and whether we need to go forward because of that person being a juvenile. The other thing I wanted to add is that there was discussion earlier about a 12-year-old with a 12-year-old and the...or a 10-year-old abusing somebody younger. And I just want to remind us all that it's not like the difference of an adult to a child. The fact that someone is 12 years old and sexually attracted or whatever to another child around that age is not as strange to any of us as it would be were a 36-year-old going to be attracted to a 10-year-old. So I think that we're getting a little confused here because, of course, any time you have a victim, it's hideous. But there's a difference, too, of the age of the perpetrator being a child that doesn't get it at all. That doesn't excuse it, but it is different. [LB292]

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SHAKIL MALIK: If I may briefly respond, I think part of the concerns from the county attorneys' perspective is, you know, we mainly deal with those court-substantiated cases either by a criminal case or a child welfare case. And in a court case, you do have the opportunity to go into those nuances, because will have that, where a case comes in one way. You know, we've had that 12-year-old, 11-year-old, 10-year-old get charged with sexual assault and we'll flip that around and say, ah, this might be more of a (3)(b) case because it's more just the nature of their behavior is not for, say, criminal culpability, things like that. In an administrative process, which is frankly kind of opaque with HHS, you don't get those nuances. And our concern is really with the term "mandatory" being put in there because in the juvenile sealed-records bills, that term is not used. It just says you'll get a hearing. It doesn't say anything about mandatory expungement hearing. That can...we talked about before how different courts and different bodies interpret things different ways. When you have that term "mandatory expungement hearing," it almost gives the implication that you would get the expungement at that point. [LB292]

SENATOR PANSING BROOKS: Can you please explain to me the sealing of court records and how that happens? Oh, he's going to do that? Okay. All right. I just... [LB292]

SHAKIL MALIK: Juvenile court records or...? [LB292]

SENATOR PANSING BROOKS: Yes. [LB292]

SHAKIL MALIK: I...either one would... [LB292]

SENATOR PANSING BROOKS: Juvenile court records. [LB292]

SHAKIL MALIK: Okay. So juvenile court--I actually testified on this bill for Senator Seiler last year--if a juvenile...jurisdictions do it different ways on what time frames they'll do it. But if a case is filed by prosecutor and dismissed, automatic, you get a seal right away. If it's never filed by the prosecutor, you get an administrative seal right away. If it's filed and found not true, you get a seal right away. If it's filed, found true, and we're talking about these...the juvenile sealed records only applies to delinquency status, not to child welfare cases, those...not the parent cases, but if it's a crime,... [LB292]

SENATOR PANSING BROOKS: Okay, yes. [LB292]

SHAKIL MALIK: ...then you're on probation and whatnot. If you successfully complete, in at least my jurisdiction, the judge will seal the record right away. If you unsuccessfully complete, then the record is not sealed and they'll look at it again, depending on the crime, at 17 and look at

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a seal then. Or you can always apply to a seal. So the ultimate goal is, unless you unsuccessfully complete a juvenile court case, you'll end up in a seal. And all roads should lead to a seal unless you basically fail out or unsuccessfully complete or terminate it unsuccessfully from probation or the court. [LB292]

SENATOR PANSING BROOKS: So do you have any problem with mirroring that seal... [LB292]

SHAKIL MALIK: I would have... [LB292]

SENATOR PANSING BROOKS: ...process for sealing records,... [LB292]

SHAKIL MALIK: It could... [LB292]

SENATOR PANSING BROOKS: ...because we're talking about records and why HHS has total control over records and the courts have decided no one else does. [LB292]

SHAKIL MALIK: There are ways, even if you don't like what HHS does, you can go to district court and get the records dealt with that way. There is administrative appeal procedure. There are ways to mirror at least the principles in the juvenile sealed records, but the way it would look like would be different, and especially because you have this big chunk of agency-only ones. Those are ones that, you know, the average...even the courts never even see those because that's all done administratively. In fact, you know, in Douglas County, we had the bills that led us to our LB1184 teams amended so we could even touch, like, those noncourt cases and kind of keep track of which ones are coming in, put our input on them. So you kind of have that whole "ones that would never even touch the court unless a bill was created to have them have to come to court" or something of that nature. [LB292]

SENATOR PANSING BROOKS: Does that seem like good policy, to require people to affirmatively act to seal those HHS records, when the court records are automatically done except when you haven't complied? That doesn't make sense to me. [LB292]

SHAKIL MALIK: A juvenile who is in juvenile court and gets a juvenile sealed record, the HHS piece shouldn't be applicable because they should never end up on the registry from that to begin with because a juvenile, like a delinquency case, like sexual assault, if you got charged with that, that by law right now should not be able to put you on the registry. Now if they separately do an agency-substantiated, there is a provision in the sealed records statute that says that any government agency that does records on this event should seal. The only issue is the logistics. I

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don't know if they always get notice of that. Now it says if the kid, you know, who might be an adult, finds out, they can give them the copy of that order and they should seal it then. But it's this thing we've been kind of struggling with, with all the sealed records stuff in juvenile records, because we are, you know, going back, we're one of those states that does have an open juvenile court, whereas, like where I moved from in Minnesota, it was all...everything was closed, like you don't...public is not in there, records aren't public. It's just...you know, it's kind of that balancing act. [LB292]

SENATOR PANSING BROOKS: Hmm. That sounds like a good idea. Thank you. [LB292]

SHAKIL MALIK: I didn't propose that. I don't want to get in trouble here. (Laughter) [LB292]

SENATOR PANSING BROOKS: I like that one a lot. [LB292]

SENATOR SEILER: That's the way it used to be. [LB292]

SENATOR PANSING BROOKS: Pardon me? [LB292]

SENATOR SEILER: It used to be a hundred years ago. [LB292]

SHAKIL MALIK: Um-hum, yep. [LB292]

SENATOR PANSING BROOKS: Thank you. [LB292]

SENATOR SEILER: Okay, thank you. [LB292]

SHAKIL MALIK: Thank you. [LB292]

SENATOR SEILER: Next neutral. [LB292]

TONY GREEN: (Exhibit 5) Good afternoon, Senator Seiler, members of the Judiciary Committee. My name is Tony Green, T-o-n-y G-r-e-e-n. I am the acting director of the Children and Family Services Division within HHS. I would like to thank Senator Coash for introducing LB292 and initiating the conversation with us regarding the central registry. Although I agree with the intent and the purpose of LB292, we are taking no policy position on this bill. But we would like to offer a few thoughts for further consideration. As you've heard, LB292 does require two mandatory expungement hearings for minors who are placed on the registry. The

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first would be for those youth age 12-19 when the case is classified as a court-substantiated or agency-substantiated. This expungement hearing may be waived if the minor returns a signed and notarized waiver. However, it's been our experience that many notaries may not be willing to attest to the signature of a minor. Additionally, we believe consideration should be given to the role of the parent or the guardian in relation to that waiver, which just isn't clear as written. Finally, there is a potential of conflict of interest that exists when the minor is in the custody of the department who is the one that conducts the investigation, the expungement hearings, and then also may be called upon to have a role in the minor's waiver determination. The second mandatory expungement hearing is to occur after the child's 19th birthday; however, LB292 is silent regarding their ability to waive that hearing. It's mentioned on the first hearing but not the subsequent one after 19. Lastly, LB292 calls for immediate expungement on dismissal by the court or a redesignation of no fault on the part of the parent, guardian, or custodian; however, it's not clear whether the department can or should enter a finding of agency-substantiated in such instances. I appreciate the opportunity to testify before you today, again, look forward to future conversations with Senator Coash and this committee regarding the central registry as we do develop efficiencies and improve quality to keep all Nebraskans safe. I'd be happy to answer any questions. [LB292]

SENATOR SEILER: Any questions? Yes. [LB292]

SENATOR PANSING BROOKS: I'm just...I'm confused. Thank you for coming and speaking, Mr. Green. [LB292]

TONY GREEN: Sure. [LB292]

SENATOR PANSING BROOKS: I'm confused about the second-to-last paragraph where you say, however, it's not clear whether it can or should enter a finding of agency-substantiated if the court had calls for a no fault. Is that correct or...I'm trying to understand what you're talking about there. [LB292]

TONY GREEN: So basically, as written, I think, as you've heard, if the...how those cases that are currently before the court, before a disposition is made, they're actually entered on the registry as court pending, and so...because we don't have an outcome of the filing of that, whether it's juvenile court or in criminal court. What this is talking about is either when that is pled down, sometimes to a no fault, or the filing is changed, that if it had gone on as agency-substantiated, we would change that. If it's court pending, we would remove it completely and we would remove it completely under this other...if it was entered in as agency-substantiated prior to that, as well. The issue is that currently the department operates under...when we complete the investigation to determine whether abuse or neglect has occurred to a child or to a vulnerable

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adult, it's based on a preponderance of evidence. And so agency-substantiated is currently what we utilize when we believe that we have enough evidence in our investigation to determine that the actual act of abuse or neglect did occur. [LB292]

SENATOR PANSING BROOKS: Wow, that's a lot. So there's no due process? There's no hearing? A court can come...I can understand a court determining that there has been abuse. But for an agency, that is very surprising to me that an agency has the power and the ability, there would not be any kind of due process, there would not be any kind of ability for the child to call witnesses or to have a lawyer even present. Is that correct? [LB292]

TONY GREEN: To be placed on the registry? [LB292]

SENATOR PANSING BROOKS: To be agency-substantiated abuse or conduct. I mean you're going to label this child and it's going to be agency-substantiated, and that child hasn't even had its due process rights. And that's going to follow him the rest of his life. That's just beyond belief to me. [LB292]

TONY GREEN: There would be that potential if the courts chose not to file those charges or...yes. [LB292]

SENATOR PANSING BROOKS: But I thought you said that sometimes the court substantiates it and sometimes you all determine there's enough evidence to...you guys are determiners of evidence and due process and the rights of a child? Wow. [LB292]

TONY GREEN: I think, as you've heard in other testimony, there are many cases that do not make it to the court process that we investigate. And so the answer would be, yes, there are cases that do go on the registry who do not see a court. [LB292]

SENATOR PANSING BROOKS: Oh, I had no idea. And so I thought maybe that you would think that there is substantial evidence and then forward it to a court, not that you would make the determination and then make a proclamation that follows that child for the rest of his life or her life. [LB292]

TONY GREEN: And let me clarify. They are all forwarded to court. [LB292]

SENATOR PANSING BROOKS: Okay. [LB292]

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TONY GREEN: Whether the court or the...excuse me, to the county attorney. [LB292]

SENATOR PANSING BROOKS: But if they drop it and decide not to, you still have this agency-substantiated label on this child, right? [LB292]

TONY GREEN: Correct. [LB292]

SENATOR PANSING BROOKS: What do you think about that idea? [LB292]

TONY GREEN: Again, I think we're supportive of making these changes and I think, you know, how I envision this is really kind of that next step as we've been transforming this whole juvenile justice issues. I think this is just another piece that we have to move into that we just haven't tackled yet. And I think we're ready to certainly tackle that with you. [LB292]

SENATOR PANSING BROOKS: Well, I really appreciate your coming forward and talking on this... [LB292]

TONY GREEN: You're welcome. [LB292]

SENATOR PANSING BROOKS: ...because it's clear something has to be done. Thank you. [LB292]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB292]

TONY GREEN: You're welcome. [LB292]

SENATOR SEILER: (Exhibits 3 and 4) Any further neutral? We will put all the written materials into the record and you may close. [LB292]

SENATOR COASH: Thank you, Chairman Seiler. This should only take about 45 minutes, (laughter) this close. So I appreciate... [LB292]

SENATOR SEILER: Good. You'll be sitting in the dark, talking to yourself. [LB292]

SENATOR WILLIAMS: Enjoy yourself. [LB292]

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SENATOR COASH: I'm just kidding. Hey, I know it's been a long day for the committee and I want to just...I just want to get a couple things on the record. First of all, Jenn Piatt, who used to work for this committee, was instrumental in helping me craft this legislation, helping me investigate what's going on here, and she deserves a lot of credit. So I want to get that on the record. The first testifier in support was a defense attorney who works juveniles and she testified that she didn't even know that juveniles were being put on the registry. Now if she didn't know, how would we expect that child to know? And that's the point of this bill. Let me explain just quickly what happens when you're put on the registry. You get a letter. You get a letter that says, you're now on the registry. And sometimes it says because the court says you did something; sometimes you get the letter and it says, because we found that you did something, we as in HHS. Now that's a whole different discussion, Senator Pansing Brooks. But it starts with a letter. What if the...and it has to go to your guardian. What if the guardian is also the state of Nebraska? You've got the letter coming from the state of Nebraska to your guardian, who is also the state of Nebraska. How crazy...I mean that just is crazy to me. Senator Pansing Brooks, I think you got it, but I just want to make sure you understand there's two things going down the track here. There might be a court case going down the track. And if you're found to have committed a crime and convicted of a crime, that record gets sealed. Now if you're found to have committed a crime, or maybe not, that follows you and doesn't get sealed. All I'm asking for through this bill is that, once you become an adult, you get the chance to say, hold on a second. The county attorneys came up and said they're not a big fan of that mandatory expungement. I want to make sure the record is clear. It doesn't mean you're going to get expunged; it means you're going to get the chance. [LB292]

SENATOR SEILER: A hearing. [LB292]

SENATOR COASH: And at least, if you have that hearing that night and it's denied, you know, and that could be...that could happen. I could honestly see a situation where the perpetrator was 18 when he did his crime, let's say, and let's say it didn't go through the courts but he ended up with that. And so then it's, you know, it's only a year later and he gets this. And I could see the expungement going, now hold on a second, this was just...this is pretty fresh abuse, you know, this is just a year in your past here, we're not going to expunge it until you meet some conditions. So having the hearing doesn't mean you're going to be expunged, but at least that now-adult knows through that process, hey, I've got this hanging over my head and I better take...pay attention to it as I become an adult because I may want to do something this could impact in the future. So that's the point. The point is make sure that they know. If the defense attorneys didn't know, how is that child going to know? To HHS's points, I think all of those things can be worked out. I think they bring up some important technical things and just harmonizing things and I'll be glad to work with HHS on that. I'm done. [LB292]

SENATOR SEILER: He's done. [LB292]

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SENATOR PANSING BROOKS: I'm sorry, (laughter) why did you put 12 on there? Why didn't we just talk about juveniles rather than saying at 12,... [LB292]

SENATOR COASH: Well,... [LB292]

SENATOR PANSING BROOKS: ...because if the courts will seal beyond 12,... [LB292]

SENATOR COASH: Yeah. [LB292]

SENATOR PANSING BROOKS: ...why wouldn't we say HHS also needs to... [LB292]

SENATOR COASH: To have an expungement hearing at 12? [LB292]

SENATOR PANSING BROOKS: Yes. [LB292]

SENATOR COASH: There's a couple things. We did look at what other states did and this isn't uncommon. And I think that, you know, to Senator Williams' point, and this is where I land, committee members may land elsewhere, an 11-year-old could do something pretty egregious, there's no doubt about that. But I think when you're that young, it's your environment that is the driving factor in what you've done and not what you've done. And I think when you get past 12, into your teenage years, you're more...it's just a game changer. I get what you're saying. I just...we looked at what other states did and this was a pretty common thing where they said, look, nobody under the age of 12 should be...ever have this follow them, just leave them out of it, 12-18, at least take a look at it. And I thought that made sense. [LB292]

SENATOR PANSING BROOKS: Okay, well, so are you wanting to roll back the sealing of court records to age 12 then too? I'm just interested in... [LB292]

SENATOR COASH: I'm open to it. It wasn't the point of my bill, but... [LB292]

SENATOR PANSING BROOKS: If we've had people using this from 18 and below 18 for all these years, why all of a sudden something different? [LB292]

SENATOR COASH: That's something for the committee to consider. [LB292]

SENATOR PANSING BROOKS: Okay. Thank you. [LB292]

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SENATOR SEILER: Sure you don't have some more questions? [LB292]

SENATOR PANSING BROOKS: I might, but (laughter)... [LB292]

SENATOR SEILER: Williams? [LB292]

SENATOR WILLIAMS: No. (Laugh) [LB292]

SENATOR SEILER: That closes the record. Thank you. [LB292]