

Transcript Prepared by Clerk of the Legislature Transcribers Office  
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**LATHROP:** Laurie, we can go live. Do we have the, the sound turned up? Yeah, you know what, it was hard to hear when I was back there last night.

**BRANDT:** Turn it all the way up. We can always turn it down.

**LATHROP:** Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop and I represent Legislative District 12 in Omaha. I am also the Chair of the Judiciary Committee. On the table inside the doors, you will find yellow testifier sheets. If you're planning on testifying today, please fill one out and hand it to the page when you come up to testify. There is also white sheets on the table. If you do not wish to testify, but would like to record your position on a bill, you may fill out one of those sheets and we'll record your position. For future reference if you're not testifying in person and would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the last workday before the hearing. Keep in mind that you may submit a letter for the record or testify in person at the hearing, but not both. And only those actually testifying in person at the hearing will be listed on the committee's-- on the bill's committee statement. We will begin testimony with the introducer's opening statement followed by proponents of the bill then opponents. And finally, by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give, give one. This committee utilizes the on-deck chairs and they are immediately behind the testifier's table. Please keep the on-deck chairs filled with the next person to testify to keep the hearing moving along. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have any hands up-- handouts, bring up at least 12 copies and give them to the page. If you do not have enough copies, the page can make more. If you are submitting testimony on someone else's behalf, you may submit it for the record but will not be allowed to read it. We will be utilizing a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning and when the light turns red we ask that you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings. You may see senators use them to take notes or stay in contact with staff, and that I do permit. At this time, I'd ask everyone to look at their cell phone and make sure they're in the

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silent mode. Also, verbal outbursts and applause and things like that are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. You may notice committee members coming and going, or in some cases showing up a little bit late, that has nothing to do with how they regard the importance of your bill or the bill being heard, but senators have bills to introduce in other committees or have other meetings to attend to. We will begin-- or before we begin, I'll have the members introduce themselves, beginning with Senator Brandt.

**BRANDT:** Tom Brandt, Legislative District 32, that would be Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

**MORFELD:** Senator Adam Morfeld, District 46, and on time today.

**LATHROP:** Which we greatly appreciate. Assisting the committee today are Laurie Vollertsen, our committee clerk, and Josh Henningsen, one of our two legal counsel. Our committee pages are Ashton Krebs and Lorenzo Catalano, both students at UNL. And with that, we'll begin with Senator McCollister and LR281CA. Welcome Senator McCollister.

**McCOLLISTER:** Thank you, Chairman Lathrop and members of the committee. I am John, J-o-h-n, McCollister, spelled M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. Today, I'm introducing LR281CA. This proposal would submit to the Nebraska voters an amendment to Article II, Section 1 of our state constitution. The amendment would create a second exception to the separation of powers rule. The amendment proposed by LR281CA concerns the state's obligation to reconsider criminal sentences when circumstances show this should be what is done. Today, persons serving criminal sentences can ask the Board of Pardons to commute their sentences, their sentences. If given the authority, a trial court could in fact do the same thing. A trial judge could take a second look at a sentence that was imposed years earlier. Particularly after the debate we had this morning, we knew-- need to look at ways to reduce our prison population. And this would be a good way to do that. Ultimately, we need to take a census of the entire prison population and try to determine which people could take advantage of this particular benefit or some other way to reduce some of our prison population. LR281CA is a necessary first step to give the courts this authority. If the amendment is approved by the voters, the Legislature could then consider the terms by which the courts would act. Our laws already permit the courts to hear and decide applications for reconsideration made by persons convicted of crimes and sentenced to terms of

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punishment. For example, a post-conviction review of a criminal prosecution has been allowed since 1965. In these cases, the criminal defendant is allowed to bring the case back to the original court in order to seek relief. Our Supreme Court has said the primary objective of post-conviction relief under limited circumstances is to prevent the miscarriage of justice. In Section 29-2264, the Legislature has allowed criminal convictions to be set aside in certain circumstances. In 2018, the Legislature passed LB1132 to allow victims of sex trafficking to seek a set aside of criminal convictions. The Supreme Court has approved these set aside laws. A proposal now pending in the United States Senate would establish a procedure based on a series of strict conditions to allow federal sentencing court-- a federal sentencing court to review and consider a sentence of criminal punishment. Sentencing reform is a major focus of our efforts here in Nebraska and nationwide to improve the criminal justice system. If the voters approve LR281CA, would allow the Legislature to continue the progress we have made. I'd be happy to answer any, answer any questions if I could.

**LATHROP:** I do not see any questions.

**McCOLLISTER:** I will not be closing.

**LATHROP:** You will waive close.

**McCOLLISTER:** Yeah.

**LATHROP:** OK. Well, then we'll start with proponents.

**McCOLLISTER:** Good.

**LATHROP:** Thanks for being here.

**McCOLLISTER:** Thank you.

**LATHROP:** Oh, how many people intend to testify on this resolution? Three. OK-- or four. Welcome.

**TOM RILEY:** Mr. Chairman, members of the committee, my name is Tom Riley. I'm the Douglas County Public Defender and I'm here in support of this constitutional amendment representing the Nebraska Criminal Defense Attorneys Association. I've been in the office since 1975. And when I first started, the Legislature had a statute in place that allowed just what this constitutional amendment proposes. There was a statute that allowed a judge or the judge's successor to review

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sentences at any time with obviously the intent to lower the sentence in the appropriate case. As a result of a Supreme Court decision that determined that such a statute was a violation of the separation of powers, that statute was vacated. And as a result, we are where we are today, thus necessitating a constitutional amendment. Because if you passed such a bill, the Supreme Court would strike it down. To me, what's important is this-- we have to stop thinking about the criminal justice system as lock them up and throw away the key. That's what a lot of these sentences that folks are serving in prison are looking at. They may be eligible for parole when they're my age or older, but the Nebraska Supreme Court isn't going to do anything about excessive sentences. They have made it quite clear that as long as a sentence is imposed within the statutory guidelines, the statutory parameters, they're not gonna touch it unless there's an extreme abuse of discretion. And there haven't been very many cases in the 40-some odd years I've been here that have been deemed to be an abuse of discretion by the trial court. So I think that-- I, I echo Senator McCollister's thoughts on the, the, the overcrowding in the prisons. There are many, many prisoners who are ready to be released, but can't be because they aren't gonna be eligible for parole for another 20 years or 15 years. This bill gives the judiciary an opportunity with the appropriate evidence and presentation by the individual and his or her counsel to demonstrate to the judge that, yes, I have been rehabilitated. Yes, I am ready to rejoin society, but you won't let me unless you reduce the sentence. I, I had a couple of clients who actually were released from prison under the previous bill and had to go back to prison once the Supreme Court overturned the statute. That, that was-- I mean, if that doesn't define cruel and unusual, I don't know what does. I see my red light's on and I'll answer any questions if I can.

**LATHROP:** Let me ask this question. If this were in place-- or, or in your experience when it was in place, are judges more likely to give a harsher sentence at the front end because they have the opportunity to review it at the backside?

**TOM RILEY:** That had not been my experience when it was in effect. I, I don't, I don't think that really enters into the judges' equation by and large, when they're looking at-- they don't-- I don't think they look at a sentence when they're blowing it out and say, well, if I-- if it's too harsh, the Supreme Court will, will change it. I-- they, they realize that the, the likelihood is that their sentence is going to be maintained. And this, this to me, this, this constitutional

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amendment is something that it's not gonna, it's not gonna be used to any great extent. It's gonna be utilized by individuals who have probably been in prison for an extended period of time and have demonstrated through their conduct while incarcerated that, yes, in fact, I can follow the rules. I've demonstrated that even though I had little or no hope of getting out of here. I've still managed to follow the rules and do what I'm supposed to do and get educated. And the opportunity to present that to a judge for a second time, I think is, is good policy.

**LATHROP:** That's all we have. I don't have any other questions, Mr. Riley. Thanks for coming down today.

**TOM RILEY:** Thank you.

**LATHROP:** Any other proponents?

**SPIKE EICKHOLT:** Good afternoon, Chairman Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU Nebraska in support of LR281CA. I'm not going to repeat the points that Senator McCollister made or what Mr. Riley made, but we do support this proposal because this is a way to address the problem that we have, it's a little more acute than other states have with their aging, overcrowded prisons. As Mr. Riley explained, as the committee is likely aware, our court has interpreted our constitutional separation of powers, perhaps a little more strictly than other states have as written or as interpreted or basically, once the sentence is imposed it is final unless the Board of Pardons amends it by converting it to a term of years. Other states, for instance, Delaware has passed a bill last year, they can simply pass a legislative bill or a law that provides that certain people can either be automatically parole eligible depending on their offense and their length of sentence or a procedure like that was in place in our state before where the individual inmates can petition for that. And this proposal is good because at least it sort of resolves that dilemma that we have where we hope the Pardons Board will meet and do something with some of the people who are in prison to make them parole eligible. You do have a lot of people who are serving essentially de facto life sentences that they become unhealthy and become a burden for the prison system to sort of take care of. There's nothing that can be done because they're not yet parole eligible. And this is a way to do that. I would encourage the committee to-- I don't know if anyone's gonna be opposed, but this still requires the Legislature, if the voters approve it, to actually

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implement the legislation for that. So it can always be a debate if there's certain offenses that will be excluded or something like that. So this, this is a good proposal and we would just encourage the committee to seriously consider it. I don't have anything else.

**LATHROP:** Any questions? Just a quick one.

**SPIKE EICKHOLT:** Sure.

**LATHROP:** What's the criteria? So somebody has been sentenced to-- they got 20 more years, they've been a model prisoner, what's the process? Does it-- can somebody file one of these things pro se and I'm just wondering if we're gonna fill the district court up with applications to review a sentence and what's-- what-- how are the-- what are the mechanics like on something like this?

**SPIKE EICKHOLT:** What Delaware did is they actually passed a companion bill that reduced some sentences. Ironically, they, they amended habitual criminal sentences for a number of crimes. And then they had a tag on that says anyone who's in prison serving an earlier imposed sentence may petition to the sentencing court, and I think it was within one year of the bill passing. So that could be one way to look at it. You sort of index it based on if there's anything else done legislatively that might change what a judge will consider now than what he or she didn't consider 15 or 20 years from now. Another thing you could do is just by age of the prisoner or length of time that's served or something like that. And those are all things to talk about.

**LATHROP:** OK. I don't see any other questions. Thanks, Mr. Eickholt.

**FRAN KAYE:** Thank you. My name is Fran Kaye, F-r-a-n K-a-y-e. I'm primarily here today to testify for LB1117. I want to testify for this bill because it has the possibility of making things retroactive when we realize that prison sentences that were imposed were too long or inappropriate. We don't really have any way to do much about that now. If we had a mechanism that we could realize that we're sentencing a group of people for too long to be good for anybody, then this would give us a better way of justifying changing that. I think that if I'm here to testify for future sentences being shorter than it would make sense for prison sentences being shorter for people who have demonstrated that they have changed and turned away from whatever it was that got them in trouble in the first place. And that's all I have to say on this one.

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**LATHROP:** OK. I don't see any questions today. Thanks for coming down. Any other proponents? Anyone here in opposition?

**COREY O'BRIEN:** Good afternoon, Chairman Lathrop, members of Judiciary Committee. My name is Corey O'Brien, that's C-o-r-e-y O-'-B-r-i-e-n, and I'm with Nebraska Attorney General's Office here in opposition of LR281CA. Foremost, the concern that I raise about LR281CA is that even as drafted, we think that there is a constitutional infirmity because you still have kept Article IV, Section 13, which vests commutation powers in the executive and so that would create a conflict unless you change the duties of the executive or judiciary also with Article I-- I'm sorry, Section 1 of Article I, that being the separation of powers. From a practical standpoint, as Mr. Riley pointed out, our Supreme Court has said that commutation powers, the ability to modify and change sentences rests with the executive because judgments are final. And that is why we are of the opinion that we are-- that you would have to change the constitution beyond what's already here in order to accomplish what you're trying to accomplish. The second point that I have is that any system that if this passed that the Legislature put into place, we would have serious reservations about the potential for judge shopping, trying to find the most lenient judge in order to file your action in front of in order to get the sentence reduced, repetitive motions to try to get the sentence reduced. And then ultimately what the standards are, as Senator Lathrop asked, in terms of when somebody could get their sentence reduced and how that would be spelled out. Finally in response to something Mr. Riley said, and he mentioned cruel and unusual, and I understand that we have people's lives that we're playing with here and that we're tinkering with both on the defendant side as well as the victim side. When members of my profession sit at sentencing and we hold the victim, the victim's family's hands or the victim's hand and we look at them and we tell him this is where he's gonna be for the next 40 years, this is where he's gonna be for the next-- the rest of his life, they take a certain level of comfort. And when you deprive them of that, that's cruel and unusual to them as well. I'd certainly entertain any questions you might have.

**LATHROP:** This is not a self-executing provision of the constitution. If it were enacted, it would require Legislature to delineate a process and they could at that time exclude particular offenses.

**COREY O'BRIEN:** Absolutely.

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**LATHROP:** OK. Do you think this belongs in a different section or does something else need to be done? The first part of your testimony was this doesn't get it done.

**COREY O'BRIEN:** Well, I think the biggest problem is, is that you'd have to modify Article XIII related to the, the-- I'm sorry, Article IV, Section 13 of the constitution, because you really haven't modified who the commutation power resides with. Because according to the constitution now, it's solely, exclusively in the hands of the Legislature, so-- I'm sorry, in the hands of the Executive Branch that you've necessarily created a conflict. But then you also have to consider whether or not you've got a separation of powers problem because basically the branch that's overseeing the proportionality or the, the rightfulness of the original sentence is the same branch and does that create a separation of powers issue in and of itself.

**LATHROP:** It creates a separation of powers issue if we don't amend the constitution and if this were a statute. But if we decide what powers reside in which branches of government and put it in the constitution, we're good, right?

**COREY O'BRIEN:** That's what, that's, that's what I'm trying to get at is if you alter the duties assigned constitutionally to each of the three branches, then I think you can accomplish what you're trying to accomplish. But simply the way it's worded, I don't think that-- I, I worry that there's some inconsistencies that would be a problem.

**LATHROP:** Yeah, I noticed the first sentence of it says notwithstanding the very section you were concerned about, the Legislature may authorize the courts to reduce sentences. So I think it's probably covered. But I appreciate your testimony, as always. Any other questions for Mr. O'Brien?

**COREY O'BRIEN:** Thank you.

**LATHROP:** I don't see any. Thank you, Corey, for being here. Anyone else here in opposition today? Anyone here in a neutral capacity? Senator McCollister's waived closing. We do have two letters in opposition: Sara Kay, that's K-a-y, and not any relation to the testifier, Nebraska County Attorneys Association; and Todd Schmaderer, for the Omaha Police Department. That will close our hearing on LR281CA, and bring us to Senator Vargas and LB1209. Feels like you are just here.



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**VARGAS:** And it's because I was. OK. It was a long night last night. Members of the Judiciary Committee, and good afternoon, Chair Lathrop. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I have the pleasure of representing District 7 in the communities of downtown in south Omaha here in the Nebraska Legislature. LB1209 is a fairly straightforward bill that I want to have a conversation about that allows counties and cities to establish a caregiver diversion program that would allow nonviolent offenders to rehabilitate themselves while still supporting their children and families. This bill is very similar to a recent initiative in California. In fact, it is what I used to then help draft this bill which passed just this last fall. I consider this to be commonsense reform, especially as you consider the overcrowding issues we're having in our county jails and state prisons and in light of what we know about the effectiveness of diversion programs and their effects on recidivism. When incarceration separates a child from their parent, the outcomes for the child are rarely good. Kids often end up in foster care, and the absence of strong family ties impacts children's physical, emotional, and psychological health. A child separation from a parent can inflict long-lasting negative impacts on both parents and children. Parents separated from their children can suffer similar physical, emotional, and psychological problems and often have difficulty reestablishing that parental bond. The effects of parental incarceration have also been disproportionately egregious to communities of color. Seventy percent of children with incarcerated parents are black or brown, victimized both by their parents' choices and society's commitment to meting out the harshest possible punishments. Now additionally, plenty of research has shown that an arrest can lead to many negatives and consequences, including loss of employment, housing, familiar connection, and diminished job prospects. LB1209 has the potential to improve the lives of children and the outcomes of their families. Under LB1209, the pretrial diversion program is optional. It's enabling for counties and cities to establish and a person would only be eligible for diversion if they are a primary caregiver and if the offense they are charged with is nonviolent and nonserious as outlined in this bill. In addition, a person would not be eligible if the alleged crime was committed against a child. If the individual doesn't do well in a diversion program or doesn't complete whatever the requirements are for some reason, criminal proceedings can be reinstated. However, the program is completely completed-- if the program is completed successfully, the original charges can be dismissed. This serves as a powerful incentive for parents to actively and diligently participate and complete the program. This is not a mandate from the state to require

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counties or cities to create this type of diversion program. Rather, I see it as an opportunity, an opportunity to better serve families in our communities by focusing on accountability, rehab-- rehabilitation and healing. Now caregiver diversion recognizes wrongdoings and establishes a path for rehabilitation while minimizing the negative outcomes for families and children. I see this as an opportunity to recognize that justice and punishment are not always one and the same. LB1209 is an evidence-based approach to effective and compassionate justice in which families impacted by the criminal justice system are given a meaningful chance to not only survive, but thrive. One other thing I wanted to put on the record, we'll have a discussion here, but there is a representative from Mothers Against Drunk Driving, MADD, and they'll be testifying and we spoke, there's some concerns to ensure that we're not creating some unintended consequences or loopholes in this. We'll be meeting with them to try to address some of their, their concerns, to try to make this bill work for them. So just look forward to working with them, if, if we're gonna work on an amendment.

**LATHROP:** OK. Any questions for Senator Vargas? Senator DeBoer.

**DeBOER:** Senator Vargas, are there not-- would this be a different group of folks that are already eligible for diversion? In what way-- I mean, are these folks that you're trying to target in some way not eligible for diversion now?

**VARGAS:** So there are other diversion programs across the state. I think the, the real purpose here in this enabling legislation is I wanted to try to create a pathway. And the best example I could say is, you know, the way that we have problem solving courts that are for very specific-- you have specific criteria to then be eligible. We really wanted to try to create a pathway that is focused on reducing this sort of intergenerational poverty that we're seeing. There are some instances where obviously they'd be eligible in other courts, but because of the maybe the offense. Like, for example, like Sarpy County has a DUI diversion as one eligible offense, but focusing less on the offense and more on the profile of the individual is what, what I really wanted to then create this legislation focused on.

**DeBOER:** OK.

**LATHROP:** I see no other questions. Are you gonna stay to close?

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**VARGAS:** Yes, because my bill's up next as well.

**LATHROP:** Oh, all right. Well, then I don't need to find out how many people are testifying. Proponents, you may come forward. Good afternoon.

**REBECCA SMITH:** Good afternoon. My name is Rebecca Smith, R-e-b-e-c-c-a, Smith, S-m-i-t-h. Good afternoon, members of the Judiciary Committee, Committee and Senator Lathrop. I've been a private practice attorney for about 25 years. My practice includes criminal defense work. As part of my job, I go to jails and meet with clients who are awaiting trial. And when I talk with them, clients talk with me about their families and their children and how much they miss them. And I wanted to do something to help. So one of the reasons I'm here as a proponent of LB1209, is I want to give you a glimpse into the value of programs for the day-to-day lives of inmates, people who are on diversion, and their families. One day I read a magazine article about a woman in Arizona who had started a reading program at her local jail. The inmates got to read a bedtime story to their child. I thought that sounded like a good idea. So I contacted Douglas County Corrections and talked with the program's director. She was willing to allow this program on a trial basis. I collected books from the Goodwill, garage sales, bought a recorder, envelopes, postage. The inmates were recorded reading to their kids. The recording and the book were then mailed to the children and Read Me a Story, the program that I started in Nebraska, was born. This program helped with encouraging reading, building family ties, encouraging family time together, and giving hope to people who were hopeless. In the first 3 years, over 1,000 books and tapes were sent out to needy children. That was 20 years ago. The program is still going strong. I saw firsthand inmates who encouraged each other when a reader had trouble. I saw big, burly, tattooed men cry when they told their child they missed them and would try to be better. One particular inmate I remember couldn't read, so I encouraged him to just say a message to his son. He told me it was his son's eighth birthday. I suggested he might want to sing Happy Birthday to his son. At first he said yes, then he was embarrassed. So I asked him if he'd like to have all of us in the reading room join him, five male voices and mine sang Happy Birthday to a little boy who is just missing his dad. I've talked to parents and caregivers and found their needs to be intense. One mother of a daughter from-- was just back from Iraq, had suffered with PTSD, and the daughter used drugs and ended up in jail. The mother just really needed somebody to talk to. She loved her daughter and wanted

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to see her change and get better and to be back being a mom to her kids. I understand that this LB is for people in diversion programs. It offers parenting classes, counseling, job training, and lots of positive steps to help people turn their lives around. But don't doubt for even one minute that this LB won't matter, that it won't make a difference. I have seen the difference a little volunteer reading program has made. I've been there firsthand and this is a much needed law. Programs can change lives. I hope you enact this bill into law. Thank you.

**LATHROP:** OK. Thank you. I do not see any questions, but thanks for being there.

**REBECCA SMITH:** Thank you.

**LATHROP:** Next proponent? Welcome once again.

**PAUL FEILMANN:** Hi. My name is Paul Feilmann, P-a-u-l F-e-i-l-m-a-n-n. I'm testifying in support of LB1209, caregiver diversion. Two years ago when I began volunteering to support literacy skills in a poverty impacted elementary school, I became aware of the ways that young children can be impacted by incarceration of a family member. In discussions with the kindergarten teacher, she told me that several children in her class, kindergarten class had a family member that was incarcerated. She said that incarcerated mothers of her students typically completing short work-- typically completing short under six months sentences for minor offenses. The benefit of LB1209 would be that it is a tool to disrupt the early parts of the birth to prison pipeline. The risk of a family pattern of intergenerational incarceration increases with every occurrence of a parental incarceration. Parental incarceration also lays the foundation of poverty by disrupting and preventing productive employment. I've submitted a graph, and you can make--see it's the graph that I gave you here. It's a-- that shows the disturbing increase over the last 40 years of women's incarceration. The orange in the graph is, is jail time. I've also attached in-depth information about the California bill that Senator Vargas referred to earlier. I hope this bill, LB1209, can be combined with Senator Geist's mental health diversion bill and other diversion bills to increase availability of rehabilitative and restorative justice for mothers who commit low-level crimes. Thank you for consideration of this bill.

**LATHROP:** Thank you. I appreciate it. Thanks for being here.

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**PAUL FEILMANN:** Yeah.

**LATHROP:** I was gonna say thanks for just using up a portion of your three minutes, too. I think you borrowed some from last night. Next proponent? Good afternoon.

**MICHELLE GUILLIATT:** Good afternoon. My name is Michelle Guilliat, M-i-c-h-e-l-l-e, Guilliat, G-u-i-l-l-i-a-t-t. I'm here for LB1209, the caregiver diversion. I'm here representing myself, and not only myself, a group of mothers and grandmothers that we've kind of created a support circle when we have lost family members, daughters, sons to the prison system and we created a circle of support with one another. It's nothing official, but it's what we've had to do within our community. I also come to you as a person that is in the middle of five generations of being separated from my family, my grandmother, my mother, myself. My daughter will speak with you in a little bit and our grandchildren. I wanted to testify that it is a generational thing, I believe goes on if there isn't supports put in, there is nothing that we know any better of. To have this and have the opportunity for education, parenting classes, the chance to create and maintain support systems through getting education, we can create services that can make a better future for these children. The children are paying for a price that they have nothing idea-- they have no idea, they didn't commit the crime. And I'm hoping that this can go through so that we can stop the generational curse of the poverty and the criminal actions and be the intervention that can make a change for a better community. Thank you.

**LATHROP:** Well, thank you and thanks for coming down. Good afternoon.

**DANI RIVERA:** Hi. My name is Dani Rivera, D-a-n-i R-i-v-e-r-a. I am testifying on behalf of bill, LB1209, caregiver diversion. I am basically testifying my, my experience with separation. Even though I-- I've had my children taken from me before based on my own actions, the-- it's not the same circumstances, but I believe that the effects of the separation are identical to people who would lose them in any way. I can remember trauma from when I was about three. I remember being separated from my siblings and my mom and my dad, I've had my children taken, and those separations affect them extremely bad. To heal from trauma, you have to acknowledge it. You have to mentally relive it. You have to accept it so you can finally heal. And it's a lot of work. And if you don't deal with it, that's where the drugs and the jail and all of that comes into play. Been there, done all of that. I have two of my four children because of my decisions. And I've

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been seeing a therapist since I was a child. And every therapist I've seen has said that I suffer from PTSD caused by trauma at an early age. I had no control over that trauma. If I did, I, I would have obviously made it so I didn't have to experience that. The separation had the most effect on my daughter, who is now eight. I lost her to CPS twice and both in a range of time that she can remember. She-- it started to become noticeable when she was about five in kindergarten, she would have uncontrollable outbursts, horrible behaviors at school, hurting others, night terrors. Those are just a few of the things. It got to the point where she blamed herself for the separation. And those are things that we have to turn around and recorrect, because as a child, she doesn't understand. And, and those are things that have, have really just kind of affected all of us. So if we can prevent the separation in the long run, it really does, it saves money, it saves time because now, look, all me and my children have therapy and we have things that need to be paid for. And we have, you know, things that are, that are costly just to correct something that could have been prevented in the first place. And a lot of those children, I believe, also end up in jail or use drugs, and, and I think it can be prevented. So--

**LATHROP:** OK.

**DANI RIVERA:** --that's it.

**LATHROP:** I do not see any questions for you today, but thanks for coming down.

**DANI RIVERA:** OK. Thank you.

**SPIKE EICKHOLT:** Good afternoon, Chairman Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on both-- on behalf of both the ACLU Nebraska and the Criminal Defense Attorneys. I hope it's OK if I do that at the same time.

**LATHROP:** It's OK with us.

**SPIKE EICKHOLT:** I'll be brief because I think Senator Vargas and the earlier testifiers explained the purpose, or at least the hope that this bill has. We support this bill because it is an alternative to incarceration and traditional imprisonment that happens for some offenders. It's true that under the-- currently there are diversion programs that have developed sort of on the own initiative of the

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prosecutors and by local cities and counties. But this is an important bill to advance simply because it is an expression of the legislative desire that prosecutors and the court system divert people for some types of offenses if they can. Not only does imprisonment and incarceration hurt those people who are charged with a crime, but you've heard from testimony earlier it actually hurts the children of those people as well. To kind of follow up with a question that Senator DeBoer asked before, I suppose one thing that this is a little different than maybe traditional diversion programs is that many of the other diversion programs sort of have conditions of the program that are based on the level of the offense or the type of the crime that's committed. So for instance, in Lancaster County, if it's a minor city ordinance violation, there's usually a standard term of the diversion, maybe a standard requirement that you do a certain amount of community service or some similar thing. This is a different approach slightly, similar to a mental health program where the conditions of the diversion are focused more on-- not just on the level of the offense, but also on the particular needs and responsibilities of the offender. So that's maybe one difference and that's one reason for the Legislature to consider this. I just wanted to be on the record in support of this bill.

**LATHROP:** OK. Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Eickholt, for testifying today. Where's Nebra--Nebraska's spectrum of, of enacting this? I mean, are there a lot of states that do this already or we'd be cutting edge?

**SPIKE EICKHOLT:** Most states have a type of diversion program or some sort of court run-- alternative to a court run type of system. We're never really seen to be cutting edge in any of this stuff, right? But there have been some kind of innovative local programs that have developed. Lancaster County's got a pretty good diversion program overall. Sarpy County's got a diversion program that is one of the-- only state that provides for a type of diversion for DUI offenders. Out in western Nebraska, there's not a lot there. There's some opportunities for some of the smaller communities, smaller counties to have a diversion type program, but there's not the type of supervision and requirement and just the local-- generally, things are run by a county or a city, they don't have a local county staff to sort of do that. So I think we're getting better. I think that the court, the Supreme Court has been pretty good about developing alternatives to

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incarceration, problem-solving courts, diversion type programs, and I think we're getting better at it.

**BRANDT:** So if we're doing this already, why do we need a law?

**SPIKE EICKHOLT:** As I said earlier, I think it's important because that's the Legislature's opportunity to express an indication to local prosecutors and local officials to do these types of programs. That's a-- it indicates a-- an approval or an encouragement to do so. You'd have at least the opportunity for the law to have some sort of uniformity and consistency, if you will, across the state. That's one reason to do so.

**BRANDT:** All right. Thank you.

**LATHROP:** I do not see any other questions. Thanks for being here.

**FRAN KAYE:** My name is Fran Kaye, F-r-a-n K-a-y-e. I'm here to testify for LB1209. I am friends with some of the people who have spoken, but I want to talk a little bit about an experience that I had for the last 25 years I've been volunteering in the prisons. One of the things that I have done is teach creative writing classes or groups in the prison at York. And we have published some little chat books coming out of those creative writing classes. And one of the times we did a chat book about mothers and children. It was, as you can imagine, often extremely emotional. And much of what we talked about, we never wrote. But I remember the story of one young woman talking and just sobbing and she-- it wasn't something she wanted to share outside of our class. She had only been in for a short sentence of less than a year, but she had lost her children to foster care. She believed that she would never get them back. She believed that she had irreparably harmed her children in ways that she could never pay them back and in ways that the state had made worse for them. She was not crying for herself, she was crying for her children. I remember some of the other women talking about how important it had been for them when they had been in county jail in Douglas County and had taken parenting courses, and had realized for the first time that they didn't have to do the things that hurt their children. We talked a good deal about being a child-centered, child-friendly, child-loving community, but when it really comes around to children, we fail a lot of the time. And not taking children into consideration when we incarcerate their parents and take those children away from their parents is sheer cruelty. It is also useless cruelty because as other people have said, it leads to generational poverty, generational incompetence, generational pain,



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generational prison. It costs all of us, it costs society, it costs every individual, and particularly it costs children. If we are dysfunctional as adults, we can't take it out on our children. This is a tremendously useful bill. This is a bill where nobody loses, everybody gains where we don't have children going to prison in another generation. Eighty percent of women who are in prison, approximately, have minor children, 80 percent. One in ten of American children has a parent in jail. That is not good for our children. This is a way of looking things in the eye and taking the step forward of saying, yes, we can do a diversion court. Yes, we can do a special court. We can do it for parents. And most of all, we can do it for children. Please do it for children.

**LATHROP:** OK. I don't see any questions. Thank you, Miss Kaye. Anyone else here to testify on LB1209 as a proponent? Opposition testimony? Any opponents? Seeing none, neutral testimony? Good afternoon and welcome to the Judiciary Committee.

**AARON HANSON:** Good afternoon. Chairman Lathrop, members of the Judiciary Committee, we'd initially submitted a, a placeholder letter in opposition to LB1209. We did have some opportunities to speak with Senator Vargas, read the bill. I think that on behalf of the men and women of the Omaha Police Officers' Association, if we can make sure that the--

**LATHROP:** Your name.

**AARON HANSON:** Sergeant Aaron Hanson.

**LATHROP:** And spell your last name.

**AARON HANSON:** H-a-n-s-o-n.

**LATHROP:** OK.

**AARON HANSON:** My apologies.

**LATHROP:** You can pick up.

**AARON HANSON:** I think if we can-- we're gonna continue those conversations with Senator Vargas, make sure that, that there is no shalls where there shall be a may just to make sure the proper discretion is in place, and I, I can envision us being strong

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supporters of this bill eventually. This is right in line with our core values, building strong families in the community.

**LATHROP:** OK. Any questions for-- I see none, thank you. Good afternoon.

**ANDREA FRAZIER:** Hi. Andrea Frazier, A-n-d-r-e-a, Frazier is F-r-a-z-i-e-r, and I'm the program manager with Mothers Against Drunk Driving. Thank you, Mr. Chairman and members of the committee for allowing me to testify today regarding LB1209. MADD appreciates the intent of LB1209. But as, as currently worded, we are concerned with some of the legislation-- or some of the way that it's worded that would, would allow for a revolving door of diversion with no checks or balances to protect the public or to adequately rehabilitate a drunk driver. MADD did reach out to Senator Vargas, and I did touch base with him right before the hearing. And he has agreed that we will meet and talk about some of our concerns with this bill. Just to keep it very quick because these are some of the things that we would like to see included as it pertains to DUI, that it would only be eligible for DUI diversion if they're a first time offender with no bodily injury, a noninjury case. It would mandate the use of ignition interlock for at least six months, and it would ensure that a separate record of the DUI diversion is housed with the DMV, so that if a first time DUI diversion participant reoffends, a subsequent DUI would count as a repeat offense. And with that, I would answer any questions.

**LATHROP:** Do they have to be found guilty and then diverted? How is it-- I, I, I take your point, which is if somebody has a subsequent offense, you want this to count as a prior. So--

**ANDREA FRAZIER:** Yes, it should be enhanceable.

**LATHROP:** Is this--

**PANSING BROOKS:** That's not how diversion works.

**LATHROP:** I'm trying to look to see-- do they have to plead guilty or are they diverted before and then agree to accept?

**ANDREA FRAZIER:** And that's the language that we would want to--

**LATHROP:** I-- I'll ask Senator--

**ANDREA FRAZIER:** Yeah, we would want to clarify with Senator Vargas.

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**LATHROP:** Yeah, I'll ask Senator Vargas when he comes back up close. OK. I don't see any other questions though,--

**ANDREA FRAZIER:** OK. Great. Thank you.

**LATHROP:** --but thank you. Anyone else here to testify in a neutral capacity? Seeing none, Senator Vargas, you may come up to close. As he approaches, we do have two letters of support from Becca Brune, Nebraska Appleseed; and Lana Temple-Plotz, from Nebraska Children's Home Society; and we have a letter of opposition from Anthony Conner with the Omaha Police Officers' Association that apparently was a placeholder. Senator Vargas.

**VARGAS:** Thank you. I, I don't have too much to add other than I appreciate the conversation. You know, one of the reasons why I brought this, and it's kind of getting to Senator Brandt's question, which is a really good question. Yesterday, we were talking about some very clear mandates and reforms in a difference-- in a different system, as do Corrections, this is different. I think when we are enabling or allowing a program to exist, what is important, what we do is establishing guidelines and standards when we are providing an option. And so even though there may be some other diversion programs creating the guidelines and standards for caregiver diversion program and, and providing the ability for, for-- you know, different areas in our state to then take on this is a, is a good thing. And so my intention here is really trying to narrow it on a specific sort of type of person so that we can get past through this intergenerational poverty impact we see and then also that what we heard. Because we may not always fully agree on which offenses require more or less reform or sentencing reform potentially or any type of reform in the Correction system and we are picking and choosing things based on policy. But I hope we can agree that we should constantly be looking at different ways to be either innovative or try to get ahead of some, some good programming that allows us some options for our different, different counties to do things a little bit differently. So that's what this is. Again, I'm gonna be meeting with MADD and other entities that testified in neutral to follow up so that this is truly creating some enabling programming in the state.

**LATHROP:** Senator DeBoer.

**DeBOER:** So the way it's drafted now, I don't have enough information about how diversion works now, would this take all the sort of regular

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programming, regular constituent-- or rules for getting into diversion and then add on those additional pieces?

**VARGAS:** It's not changing the-- any other diversion programming statutes or language. It's creating a separate-- yeah, guidelines for, for a caregiver program.

**DeBOER:** I get that. But is it-- are you creating this caregiver program as basically all the, the fundamental pieces of any other diversionary program, but then has this additional piece with it? Or are you trying to say because it's a different focus, we're gonna take away some of these other pieces and put this other thing on?

**VARGAS:** Second one. But we're not-- you'll see there are-- and this is the difference between the shalls and may. There's a lot of may language in here and guidelines on what could be included. But the guidelines on the intent on what would qualify and which offenses wouldn't qualify, that's the piece that I think really matters in this.

**DeBOER:** OK.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Vargas. Looking at the one fiscal note you've got out of a packet of about eight zeros in here, Lancaster County submitted for one caseworker and a half-time, drug testing technician, and the total cost to that's \$108,000 a year and that's all fine and good but there's no offset to it. If these people-- if I understand correctly and these people are doing diversion, they are not locked up. Is that a correct statement?

**VARGAS:** If they complete the program in this instance, yeah.

**BRANDT:** OK. So shouldn't there be an offsetting cost of not spending these days in jail?

**VARGAS:** That's a great assumption. I'll confess, I was surprised by the fiscal note by Lancaster. They're not required to do the program. Costs would only be entailed if they decided to then create a program. And they did decide what the parameters, at least with some of the different-- you know, the components are as we allowed in this so I wasn't entirely sure why we would need all those staff members. But--

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**BRANDT:** It just seems typically when we talk about diversion programs, they cost one-half or one-third and they always compare it to a cost of a day in jail. If anything, this should be ginning money up for Lancaster County if indeed this all works like it's supposed to. Would that be a correct statement?

**VARGAS:** I think it's a correct statement, but probably an additional positive here-- I'm only saying this for the record, I think we all know that if, if you do look at the statement, there's gonna be a, a potential decrease in our prison population. So obviously, we know we save money there, that's gonna save money for our-- for the state. Maybe it may not-- we don't know how to quantify that for the state, and that might be the issue, we don't know how to quantify the cost savings that we expect for the Lancaster County.

**BRANDT:** All right. Thank you.

**LATHROP:** I see no other questions. That will close our hearing on LB1209 and bring us to LB959. Also, Senator Vargas.

**VARGAS:** Ready?

**LATHROP:** You may start.

**VARGAS:** Good afternoon, Chair Lathrop and members of the Judiciary Committee. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I have the pleasure of representing District 7, the communities of downtown and south Omaha here in the Nebraska Legislature. Unlike the other bill, this is a change we would be-- and I'll talk a little bit about what this change is, is dealing with. LB959 deals with habitual criminal law, which requires a 10-year mandatory minimum sentence when an offender is convicted of and sentenced for his or her third felony. If a defendant is charged as a habitual criminal, it means that the sentence they are facing is at least 10 years to 60 years imprisonment. The 10-year sentence is a mandatory minimum, meaning the person must serve 10 actual years in prison with no good time or the ability to be paroled on that 10-year sentence. The habitual criminal law is not a separate crime. Rather, it's a sentence enhancement. The habitual criminal penalty replaces or eclipses the penalty for the underlying felony charge. For instance, if the underlying crime is a Class IV felony, which carries zero to two years imprisonment and a-- zero to two years imprisonment, a zero to \$10,000 fine or both and the person is alleged to be a habitual criminal, then the potential penalty of zero to two years is replaced by a mandatory minimum of 10

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years and up to 60. Now the mandatory minimum sentence means that the judge has nearly no discretion related to the sentence, a judge cannot place the person on a probation, cannot impose a lesser sentence than the mandatory minimum. Under current law, any felony offense can be used to charge someone as a habitual criminal. LB959, I think is a commonsense approach to limiting the habitual criminal law to apply only to serious and violent felony crimes and would eliminate nonviolent felony offenses from its application. I've had some times to interact with some prosecutors and some defense attorneys about this law. It's what kind of informed me bringing this bill. I've heard anecdotally this law is, is being used as a tool to negotiate plea agreements. And I think that's one of the reason-- and so this is adding on top of also what we're seeing in our prison population. There's obviously a pathway that we need to, need to make sure that we are looking at every single component of the pathway that leads up to somebody being incarcerated. So I think what some people may argue it is not a penalty safe for criminals who are the worst of the worst. Instead, what this is actually doing is often used even in nonviolent cases to compel a defendant to waive his or her right to contest a case and plead to whatever charge or charges the state demands they plead to. LB959 strikes the right balance between keeping the habitual criminal enhancement for serious and violent felonies, but not for nonviolent felonies. It is important to keep in mind that even nonviolent felonies still carry significant consequences of jail or prison and all the collateral consequences of a felony conviction. This bill simply moderates the potential penalties for those who are, quote unquote, deserving purely because of the nature of the underlying crime and not based on the state's-- sorry, the status as a prior offender. The only thing I'll add is I'm not eliminating this enhancement, I'm simply modifying it so that we are, we are providing a different pathway, different choices, so we're not placing it on nonviolent offenders. There will be people testifying that can really speak to the intricacies of what happens when this is utilized and how it actually is utilized in practice. So I'll ask you to reserve that for some of the very knowledgeable lawyers behind me that, that are using and seeing the practice of this.

**LATHROP:** Any questions for Senator Vargas? Senator Pansing Brooks.

**PANSING BROOKS:** Thank you for bringing this bill, Senator Vargas. Clearly, as we're battling through all the issues regarding overcrowding, this is one more tool to be able to help our prisons and help our state so we don't have to keep building as we heard

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yesterday, 200 beds a year in, in prison. We are all responsible. We all have responsibility to help with this issue. And this is one good way to do it. So thank you very much for bringing it.

**VARGAS:** And the only thing I'll say is you'll see in the fiscal note, it does state that this, this could reduce the number of people in prison. Can't quantify the exact amount because we don't know yet how it will be used, but it will. Thank you.

**LATHROP:** OK. I don't see any other questions. Thank you for introducing LB959. We'll take the first proponent. By the way, for people in the room, I-- after I introduced a bill yesterday, I sat back where you guys are all sitting and I had difficulty hearing. So if you're back there and you're having trouble hearing, give me one of these and the sign and we'll see if we can-- if we turn it up too loud, then we get a buzz. But we'll try to find the, the place where everybody can hear the testimony of the testifiers. Mr. Riley.

**TOM RILEY:** Thank you, Senator Lathrop. Mr. Chairman, members of the committee, my name is Tom Riley. I'm the Douglas County Public Defender, and I'm here on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB959. Much of what's in it Senator Vargas has said, I would echo. This is not a-- let's, let's just cut to the chase-- I mean, he's 1,000 percent right that the habitual criminal statute is used as a hammer to get people to plead, to plead guilty or no contest or an Alford plea to avoid the possibility of having a two-year sentence or a five-year sentence enhanced to a hard ten. Across the country, they have a number of these things, they're called different things, three strikes and you're out, whatever. And I hear frequently people talking about these are the worst of the worst. Well, this bill, I think Senator Vargas bent over backwards to include anything that even remotely be considered as violent. Burglary is included as a violent offense here. Typically, they aren't. But I can understand his reluctance to go too far, because you'll be hearing from prosecutors saying, oh, you're gonna let all these bad guys out of jail. If someone's eligible for the habitual criminal, that means they've been to prison twice before. The likelihood is that they can get convicted even of low level or a nonviolent offense they're gonna go back to prison. What this bill does is says, OK, maybe you're gonna have to go back to prison, but you're not, not gonna have to go back for ten hard years without eligible-- being eligible for parole in all cases. There may be some where that is an appropriate sentence, but you can give-- if, if a

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judge wants to give someone on a nonviolent offense the 10 years, all they have to do is give them a 20-year sentence. This doesn't limit it to Class IVs or Class IIIAs, which I'm glad it doesn't. I mean, there are a number of people in prison as you all know, I, I, I was busy today, so I didn't get a chance to hear the debates, but I've heard a hell of a lot about it since I've been here this morning. And prison overcrowding need to be addressed. And this is a bill that does a part of that in I think a way that doesn't endanger public safety. People who are the target of habitual criminal that are nonviolent offenders are not, by and large, people who present a significant danger to society. So I, I would urge you to pass this bill out of committee.

**LATHROP:** OK. Seems pretty straightforward. Thank you for your testimony.

**TOM RILEY:** Thank you.

**LATHROP:** Next proponent? Good afternoon.

**JOE NIGRO:** Good afternoon. Chairperson Lathrop, members of the committee, I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender. I appear on behalf of my office and the Nebraska Criminal Defense Attorneys Association in support of LB959. I want to thank Senator Vargas for introducing this bill. I also want to thank Senator Pansing Brooks for her advocacy for these kinds of reforms. The allegation that someone is a habitual criminal is essentially Nebraska's version of the three-strikes law. If you've been sentenced to prison twice, on the next felony you can face the habitual criminal allegation, which changes the penalty to 10 to 60 years. The ten years are a mandatory minimum meaning you must serve ten years before you're eligible to earn good time or to be eligible for parole. This has had an impact on Nebraska's prison population, not because there are a lot of people convicted of being a habitual criminal in prison, but because prosecutors threaten to add the habitual criminal allegation to force people to plead all the time. If you represent someone charged with a Class IV felony, such as possession of a controlled substance, even if it's just residue, you're facing a maximum of two years imprisonment. If you get the maximum with good time, you're gonna be out in a year. If the prosecutor threatens to add the habitual criminal allegation, you're now looking at ten years. Even if your client has a good defense or a good issue which can be raised in a motion to suppress, how can you advise them to take the risk of serving at least ten years instead of one? Picture someone riding in the backseat of a car stopped by the police, a small amount of drugs



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are found on the seat, there's multiple people in the car, your client denies possession, can he risk a trial? This hammer wielded by prosecutors who want to get a conviction without going through the time, trouble, and risk of trial compels defendants to plead to many felonies and not just Class IV felonies. You could be facing a charge of burglary that carries a maximum of 20 years, most people probably aren't gonna get 20 years on a burglary, so let's say you're thinking you might get 2 to 4 years. Can you risk a trial if you're gonna lose and wind up doing at least ten years before you even earn good time? The risk of serving those ten years without earning good time is too great to risk exercising your right to a trial. This bill would limit the habitual criminal allegation to violent felonies and violent priors, it's a more appropriate use of such a weapon. I strongly urge the committee to advance LB959 and I'm happy to answer questions if anyone has any.

**LATHROP:** OK. I don't see any, Joe. Thanks for being here today.

**JOE NIGRO:** Thank you.

**SPIKE EICKHOLT:** Good afternoon, Chairman Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB959. We want to thank Senator Vargas for introducing the bill. I'm not gonna restate what you heard, but I want to make a couple of points. I think this committee is aware and I want to offer this point because I think it's important. When you talk about mandatory minimum reform, and I distributed some things earlier this week to talk about other states that have done this, and this is a mandatory minimum sentence. Ninety-four percent of criminal cases nationwide are resolved by pleas. I think Nebraska is probably similar to that statistic. That's done by negotiation. When you have something like this on the table on the prosecutor side, that means that they are gonna get you to plead to-- your client to plead to anything else. You're not-- even if you are risking maybe more on the bottom number than them hard ten years, you're gonna want to plead to that simply because your time in custody is gonna be so much worse serving a mandatory minimum sentence. That-- I want to make that point, because what that does is it sort of drags, if you will, the median plea years, or whatever metaphor I'm trying to say, is it drags everything up higher, one side, which I would submit, and this is anecdotally, admittedly, but I would submit as part of the reason why you have a longer length of sentence that seems to be growing in Nebraska. You don't have a lot of people serving habitual

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criminal sentences in prison, that's deliberate. No one's gonna plead to that. You plead to anything else. So that's sort of the hidden impact that this has. I think that Senator Vargas' bill strikes the right balance because there are some cases that I would submit are perhaps legitimate concerns for the state. If you've got a violent offense, you've got a child victim, someone who has to relive the experience of a trial it may serve a legitimate function, if you will, to have this opportunity to leverage this to dissuade somebody from going to trial. But for nonviolent, for drug offenses, that's not the case. So we'd encourage the committee to advance the bill.

**LATHROP:** OK. I do not see any questions. I think we wore them out last night. Any other proponents? Anyone here in opposition to-- pardon me, LB959?

**COREY O'BRIEN:** Good afternoon again, Chairman Lathrop and members of the Judiciary Committee. My name is Corey, C-o-r-e-y, O'Brien, O-'-B-r-i-e-n, and I'm here on behalf of Nebraska Attorney General's Office in opposition to-- sorry, lost the bill number, LB959. This is probably the third or fourth time I've testified in opposition to a bill similar to this over the past 15, 20 years. A couple things I wanted to point out. First of all, this is a list of the 211 men and women that are currently serving habitual criminal sentences in the State Penitentiary that represents about three and a half percent of the entire population. Most of them fit within the categories that Senator Vargas' bill designates as a violent felony. However, there is about 21 percent of the 211 that wouldn't qualify. But I want to tell you a couple stories about some of those that wouldn't qualify. We all know from the past that there was a notorious gangster in the 20s by the name of Al Capone that liked to kill people. But for whatever reason, he kept skating on all those murder charges. And what eventually stopped him from killing people was that he was convicted of income tax evasion. There's two members on this list that were similar to Al Capone in my personal profession as a prosecutor, one was sexually assaulting elderly women up in the Saunders County area, and I convicted him of tampering with a witness and habitual criminal. Something that would not be possible. He had done this, he had eight prior felony convictions where he went to the Penitentiary and he had done this four different times, including his own mother-in-law. The second one was another case where I charged a guy up in northeast Nebraska that was shooting at houses on a routine basis. He had a substantial violent history, had been in the Penitentiary twice for robbery and assault with a deadly weapon. He intimidated his victims

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to the point where they wouldn't testify, and again, I had to charge him with tampering with a witness and felony possession of a firearm, both of which would not qualify as felony offenses. So there are legitimate reasons why you wouldn't choose a violent felony. We cannot take the risk of trying to reduce our prison population through people that have shown that they cannot be rehabilitated and that are demonstrated threats to the public. So we'd ask you not to advance LB959 through committee. I'd answer any questions you might have. Oh, I'm sorry, never mind.

**LATHROP:** Do you have something else you wanted to add?

**COREY O'BRIEN:** I just have one thing to add about Mr. Eickholt's comments about habitual criminals being used to coax pleas. I can tell you from the lawyers that work in the criminal prosecution division in the Attorney General's Office, we do not do that. It's a prohibited practice by myself. You are not allowed to threaten the use of habitual criminal in order to coax a plea similar to the death penalty.

**LATHROP:** OK. Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Well, I just had to quickly say that it's-- thank you for coming, Mr. O'Brien, and I think-- and it's ironic because I just used the Capone example in Revenue for a bill that I brought on tax exemptions for trafficking purposes. So I wish you had gone in there and told the same story with me and that the AG's Office were supportive of that tax exemption on, on escort and aka human trafficking. But can you repeat again what, what you're saying about if somebody is caught for something that's not a violent crime, why is it that we have to put this ten years on them? Because, of course, you know about our overcrowding crisis that we have. So I, I just-- I'm trying to figure out how this is any help to that whole system by grabbing somebody who has a third crime that's not violent and not serious enough that we are trying to protect our communities, why is it valuable to put them away for ten years?

**COREY O'BRIEN:** I'm, I'm-- guess I'm not really following your question. If I think I understand it correctly, why do we need somebody that's nonviolent away for ten years? Well, simply for-- the, the simple fact is, is that they have demonstrated an incapacity to become rehabilitated. And so it becomes the court's responsibility, it becomes the prosecutor's responsibility to stop them from preying upon

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the people that they've been preying on repeatedly. And the only way that we can do that is through restraint.

**PANSING BROOKS:** So have you made three mistakes in your life? Because I certainly have, and I just-- I mean--

**COREY O'BRIEN:** Not the same mistakes, no.

**PANSING BROOKS:** Well, but they aren't all the same mistakes, are they? They--

**COREY O'BRIEN:** Committing criminal behavior is three consistent mistakes, yes.

**PANSING BROOKS:** OK.

**COREY O'BRIEN:** But most of them have committed much more than that. I mean, of this 211, I think there's a lot more than three mistakes on most of their [INAUDIBLE].

**PANSING BROOKS:** OK, so forgery or things like that we need to put them away for ten years because they're such a danger to our communities that we need to. I'm just-- I'm interested in trying to talk with you about this because--

**COREY O'BRIEN:** Sure.

**PANSING BROOKS:** --these seem like things that I don't want to spend my tax dollars on. And we've got a whole push to cut property taxes no matter what. And we just heard yesterday from Director Frakes that we're supposed to build 200-bed prisons per year to keep up with the prosecution and the, the need to continue to protect our society from forgers and things like that. I'm just interested-- and, and again, I think the Judiciary or the, the Legislature has responsibility. I think the prosecutors have responsibility. I think the judges have responsibility, the Governor, every single person that has any kind of power has a responsibility to handle this more efficiently and including sentencing reform.

**COREY O'BRIEN:** And I have a responsibility to the people that are victimized by the forger, by the person that gets a gun stuck in their face.

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**PANSING BROOKS:** I have that responsibility as well. That's why we create laws, and we've done a pretty good job. Thank you, Mr. O'Brien.

**COREY O'BRIEN:** Thank you.

**LATHROP:** I just have a, a fairly straightforward question. Is your opposition don't change anything, I would find any change unacceptable or is there some variation in sort of the menu of things that are in and out that you would find something that you could talk about?

**COREY O'BRIEN:** You know, I think that one possibility would be if the offense that they're being convicted of was somehow tied to a violent incident that we couldn't prosecute for because they either tampered with a witness or whatnot. Or, you know, there's instances that I know that the police department's gonna talk about where, you know, we know that there's guys that are shooting up homes or cars or shooting at people, and the only way we can take them off the streets so they stop doing that is through a, a drug possession case. Well, you may not have enough to prosecute them, but again, that should be something that gets considered. You know, I think that those are, are possibilities. You know, sort of the Al Capone analogy. I'm not saying that that's not out of the discussion, but I think the other thing that, you know, my understanding of reading the bill is that we're not allowed to consider whether or not any of the prior convictions were for violent crimes. So let's say, for instance, their current crime is a forgery. Well, if, you know, the past four crimes that they committed before this were bank robbery, sexual assault, attempted murder, is that something that we should be able to take into consideration on whether or not they should be eligible for the habitual criminal? So that would be something that we would be interested in as well.

**LATHROP:** OK. I appreciate your answer to the question. Senator Morfeld.

**MORFELD:** Mr. O'Brien, so along the lines of Senator Pansing Brooks, I'm just trying to wrap my head so I get the Al Capone example and where you're coming from there. But what about, for instance, a, a drug addict, you know, somebody who's clearly addicted to drugs, not related to any other violent crime or any other criminal enterprise, but just a drug addict that falls under this. Should they really be spending ten years for a nonviolent drug offense? Do you think that's justice?

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**COREY O'BRIEN:** I guess, I don't know. I mean, are you saying that all they got convicted of was possession of a small amount of drugs?

**MORFELD:** Yeah, and that would fall under this statute, as, as I understand it.

**COREY O'BRIEN:** It could, but also, you know, I think that it's important to take into consideration what they've done before.

**MORFELD:** They've just done drugs before and they got caught a few too many times.

**COREY O'BRIEN:** I can tell you on this list, one of those people doesn't exist. Do you know from the Department of Corrections own data that the average person that goes to the Penitentiary, the average person that goes to the Penitentiary for possession of cocaine, methamphetamine, or heroin has 14 prior convictions before their first time that they go to the Penitentiary. That means that they've gone to probation, they've gone to drug court, they've gone to diversionary programs. And simply put, the judges have reached a point in time, the prosecutors have reached a point in time in some cases, according to what they've told me, they don't know what else to do with them. And I'm not saying that I would put somebody in jail for being an addict repeatedly-- I mean, especially for ten years. And I don't know that any of these guys are so theoretically under your hypothetical, yes, that's possible. But that's, again, where the smart prosecutor makes his choices on, you know, do I really want to put this guy in jail for ten years? And based upon what I'm seeing here, that's not happening. But yes, it's possible.

**MORFELD:** So, so first, can you send me that data?

**COREY O'BRIEN:** I cannot. It's-- I cannot give you the names of individuals that are incarcerated by law.

**MORFELD:** No, can you send me the data saying that 14--

**COREY O'BRIEN:** Yes.

**MORFELD:** --crimes have been committed.

**COREY O'BRIEN:** It's, it's available on the Department of Corrections website through their portal.

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**MORFELD:** OK. Can you help me with that--

**COREY O'BRIEN:** Yes.

**MORFELD:** --because I'm not [INAUDIBLE] with that? OK. Yeah, I guess, I guess my other concern is, is these-- so you say in you're-- and I trust you, that, you know, the people within your purview aren't using this to get sentences or have people plead down using it as a tool or, or what--

**COREY O'BRIEN:** I didn't say that.

**MORFELD:** Oh, you didn't say that?

**COREY O'BRIEN:** I, I said my office's practice.

**MORFELD:** Your office's practice?

**COREY O'BRIEN:** My office practice.

**MORFELD:** So people underneath you. Yeah, so the people underneath you don't use this as,--

**COREY O'BRIEN:** A plea bargain tool.

**MORFELD:** --as a plea bargain tool. My, my concern is, is that I can easily see other people using it as a plea bargain tool. And if I'm sitting there and I've got a drug addiction problem and you say that people that just purely have a drug addiction problem they aren't on that list, those aren't the types of people, but man-- I mean, if I'm sitting there and I'm being threatened with ten years, I'm probably gonna plead out. I mean, I--

**COREY O'BRIEN:** You know, I guess, I guess my only retort to that would be is that prosecutors are always gonna have the ability, whether it be the habitual criminal or the ability to threaten additional actions. I mean, I don't know that there's any possibility the Legislature can ever take that away because, you know, nine times out of ten, you know, and I've, I've heard Mr. Eickholt talk over and over again about prosecutors stacking charges in order to secure pleas. I've heard, you know, us threatening the additional pleas, you know-- let's say that a guy's got 72 images of child pornography and whether or not we charge 72 images. You know, if you don't plead to this I'm gonna charge all 72. You know, frankly, that doesn't happen in, in reality. But again, they're always gonna have that ability, even if

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you deter them on habitual criminal, they're gonna have something else that they're gonna have to-- have available to them. So-- I mean, I don't know how that really changes that dynamic by taking away the ability of, of habitual criminal be used only in violent crimes.

**MORFELD:** OK. Thanks for the conversation. I appreciate it.

**COREY O'BRIEN:** Sure.

**LATHROP:** Senator DeBoer.

**DeBOER:** So thanks for coming to testify. You may have just answered this here, but I'll throw it out here anyway just as part of the conversation. I haven't thought enough about this to even think if there would be a way that would make this possible, but can-- could we come up with a way that would prohibit folks from using the habitual criminal as one of the sort of plea bargaining things? You don't do it in your office. Can you think with me, maybe not now, but can we think of a way to make this a policy so that it doesn't ever get used that way? And how would you feel about coming up with a policy like that? If-- let's say I can wave a wand and that happens, and that's no longer something that people are using to get plea agreements. Would you be OK with that?

**COREY O'BRIEN:** You know, I'm not gonna say no. I haven't really thought about it much either myself. I don't really consider myself to be the police of all decision makers decisions made by county attorneys and how they strategically handle cases. You know, one of my goals has always been to improve the perception that county attorneys and prosecutors, the way that they're seen, not only by this Legislature, but by the people in general, you know. And personally, we've made that decision to not use it as a plea bargain fodder, because, again, we don't want it to be used as something to say that we're trying to hammer people into pleas. Other county attorneys, you know, it depends how it's said, too. I mean, you know, and, and the way that it's used. I don't, I don't know, you know, what we're talking about in terms of how they're using it to coax pleas. You know, sometimes in my experience, the defense attorney is looking for a way to, you know, get his client to convince him to plea then you know, sometimes they'll say, OK, well, the county attorney says he's not gonna send this to the federal government for prosecution or he's not gonna send it to-- he's not gonna file the habitual criminal on



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it. And that's the way, you know, they can get their clients to get pleas, too. So again, I guess it's hard to--

**DeBOER:** I get that. So--

**COREY O'BRIEN:** --legislate discretion.

**DeBOER:** Yeah, I get that, and maybe it's something just to think about long term.

**COREY O'BRIEN:** Sure.

**DeBOER:** So I really appreciate that we get some, some bad folks off the street. I do. And Wendy, the citizen, is like, we've got this bad person off the street, they're a bona fide bad person, Al Capone, we got him on a tax evasion. That as a citizen, I'm like, great. But as an elected official, here's where I kind of get stuck. When what we're doing is trying to heighten a sentence or put someone in jail on one crime, when what we're really mad at them for is a different crime. I start to wonder who's acting as the judge and jury in that case. And it seems like in that case, what we have done is we've moved to the discretion of the prosecutor or whoever is making that call into the role of the jury. And as a public official, that's something that concerns me. Can you understand why that something like that would concern me to say we're really, we're really trying to ultimately get them to stop doing-- in your case, I think you mentioned somebody who was assaulting elderly women, so we're gonna get them on this other thing and then we're gonna enhance it with these sorts of things. So that's my concern. And can you understand that concern? Do you have any comments to make about how to get around that concern?

**COREY O'BRIEN:** No. I mean, I just, you know, I again, I think part of our responsibility as public prosecutors is, yes, to hold them accountable for the acts that they've done, but also to try to deter them from continuing the practices that they're engaging in and victimizing future people.

**DeBOER:** I think, in fact, one of the, the most important things our criminal justice system does is deter people from doing other bad things to society. But I also think that we've set ourselves up as a system of government where people are innocent until proven guilty. And it seems to me like if we are convicting them for tax evasion, but what we really want to get them on is murder, you know, and the evidence we have is tax evasion, we can't prove that they did this

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murder. That's precisely the point, is that we can't prove it or we would just be bringing the murder charges against them. Then it feels like what we have done is we have failed in our need to prosecute. So I'm-- I guess I should be asking questions, I'm sorry, I'm not asking questions, but I'm trying to figure out how to work-- help me out here. Can you, can you give me anything that'll help me through this problem? Because I'd, I'd love to get the bad guys off the street, but I feel like I have to protect the constitution.

**COREY O'BRIEN:** Well, I guess the, the one thing that I would say is, you know, this isn't the guy that made one mistake in, in the past. I mean, he's made repeated mistakes over and over and over again. They're usually people that have gone through programming, they've gone through probation, and they just don't get it.

**DeBOER:** It's a bad dude or, or woman.

**COREY O'BRIEN:** Well, that's, that's right, that's right.

**DeBOER:** But, but even so, our, our idea is that we can only commit someone to prison for crimes that we can prove that they have beyond a reasonable doubt done.

**COREY O'BRIEN:** And I proved they tampered with the witness in those, in those cases.

**DeBOER:** Sure. So--

**COREY O'BRIEN:** And they prevented the old lady from testifying.

**DeBOER:** So then shouldn't we be putting them in jail just based on what witness tampering is because we can't prove the other things?

**COREY O'BRIEN:** No, because he's demonstrated that he cannot conform to the law.

**DeBOER:** OK.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Attorney General O'Brien for appearing today. We're "but for," that's what we say on our incentive plan. If we didn't have the incentive plan, 75 percent of these businesses would locate in Nebraska anyway. It sort of applies to what we're talking about today. Does your office keep any

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data on-- you called it coaxing pleas, so if-- I guess you sort of see where I'm going with this question, this guy committed murder, we're gonna get him for tax evasion. Do you keep track of-- does, does anybody in the criminal justice system keep track of any data like that?

**COREY O'BRIEN:** Not that I'm aware of.

**BRANDT:** OK.

**COREY O'BRIEN:** And I, I know that we're too busy to sit down and keep track of that. The only-- those were the only two stories that came to mind of, of cases where I've used that practice.

**BRANDT:** Right. And, and I would assume it's like a lot of professions, you use your professional experience to determine how you're gonna go after the accused. Would that--

**COREY O'BRIEN:** Sure. I mean, you know, a lot of this is relying upon your experience, relying upon, you know, what the information to telling you, relying upon, you know, what you know about the suspect. You know, what was his motivation for the crime? How old is he? You use a lot of those factors to determine, you know, especially their criminal history and past reports of, of things that they've done wrong to make determinations on whether or not you're gonna to seek habitual criminal or not.

**BRANDT:** So in the tool kit, the size of this tool that they're trying to take away from you, is that a really big tool or a really small tool?

**COREY O'BRIEN:** I don't think it's either. I think it's an important tool. I, I think that's the way that I would call it, is because when we need it, it makes a difference in terms of making sure that the guys go to prison for a substantial period of time and can't hurt or harm anybody else.

**BRANDT:** OK. Thank you.

**COREY O'BRIEN:** Thank you.

**LATHROP:** Oh, Senator Chambers.

**CHAMBERS:** Mr. O'Brien,--

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**COREY O'BRIEN:** Yes, sir.

**CHAMBERS:** --there are 93 counties in Nebraska. Each one is allowed to elect a county attorney. Isn't that true?

**COREY O'BRIEN:** Yes, sir.

**CHAMBERS:** But some do not have their own county attorney, they will have maybe a county attorney in a neighboring county handle. So we won't, we won't necessarily have 93 county attorneys, but we have probably above 85 county attorneys. They do not all view the law and specific cases the same way do they?

**COREY O'BRIEN:** No.

**CHAMBERS:** So theoretically speaking, we could have 85-- let me-- let that be the-- well, 90, we have 90 different laws in the state of Nebraska because each county attorney has total-- what's the word they use? It starts with a D.

**LATHROP:** Discretion.

**CHAMBERS:** Discretion. Now you may not use the threat of a habitual criminal charge to extort a plea, but there are others who do. Can you concede that that might be so?

**COREY O'BRIEN:** Yes, sir.

**CHAMBERS:** Now are you aware that there have been false pleas entered to very serious offenses, as serious as murder?

**COREY O'BRIEN:** In the state's history or in--

**CHAMBERS:** In Nebraska.

**COREY O'BRIEN:** In, in Nebraska. I know a couple of cases, yes.

**CHAMBERS:** And in Beatrice there were six of them.

**COREY O'BRIEN:** Correct.

**CHAMBERS:** And it was the work of the-- all of the law enforcement people.

**COREY O'BRIEN:** Well, five.

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**CHAMBERS:** Five?

**COREY O'BRIEN:** Five pleas.

**CHAMBERS:** Say it again.

**COREY O'BRIEN:** There were five pleas.

**CHAMBERS:** Well, they call them the Beatrice Six.

**COREY O'BRIEN:** Well, I know, one went to trial, that's why.

**CHAMBERS:** OK. But there were-- all of these were obtained through the work of those who have sworn to uphold the law. So the mere fact that a man or woman has taken that oath means nothing to me. They will enter false pleas. There are county attorneys that have withheld evidence. And it happens on the national level because just the other day I read where-- or saw in the news where a man, and these are generally black men, that served 25 years and the police and the county attorney had a letter that for murder where they knew two other suspects. And as soon as the judge saw that, he cut the man free. These are what county attorneys had done. Here's what I want to ask you, have you ever been involved in a plea bargain where a person who had committed a homicide would be told, if you will plead, we will not seek the death penalty. Has that ever-- let me put it this way, has the Attorney General's Office in Nebraska, whether during the one you're working for now, are you aware of any who have said they would not seek the death penalty if the person would plea, would plea?

**COREY O'BRIEN:** I don't recall myself knowing anything about that, no.

**CHAMBERS:** Well, there's a county attorney, he handled out there where Grand Island is to two adjoining counties, this guy used to come down here and speak for the death penalty for the county attorneys. There was a man who had murdered his wife, he was involved with a divorce. He used a high powered rifle and he killed her and he copped a plea and they gave him life. He went into this guy's county, who was the county attorney then who came down here to speak for the death penalty, and he lay in wait outside the lawyer's building and he shot this lawyer with a high powered rifle. And they say that when you shoot two or more people, that's considered a serial murder. When county attorneys charge somebody with first degree murder and seek the death penalty, they will argue that this person is a threat to society, would be a danger in prison, and all the rest of it. If that

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is true, then they should not accept a plea. Because let's say this dangerous person entered a plea, does that make him less dangerous? Now he's circulating in the population in prison, is he less dangerous because he copped a plea? I'll, I'll carry it on. If he is less dangerous and therefore they let him cop a plea, then they were going to overcharge by seeking the death penalty. He was not really eligible because he would not have been a threat. So they use that to extort the plea. In the Beatrice case, law enforcement worked together and they got false pleas from those people. So these things happen. The job of county attorneys as I view and the way it seems to me they view it is to put people in jail. That's what they do. And I do not trust any man who has the power that county attorneys have to do the right thing. I don't believe that there should be a habitual charge even available. You are then-- when I say you, not you personally, are charging somebody, not for something that they did that merits this, but for other things. If these other things had not been done, this charge would not even be available. So I, first of all, see a fragmented justice system in Nebraska. There's not uniformity in the way crimes are handled. And the same prosecutor will not handle the same kind of crimes the same way, especially if one of the accused is black. There were several young black men who pleaded guilty to having killed a white woman in Central Park, and Donald Trump said they should get the death penalty and so did other people. And it turns out they hadn't done anything. And people would ask, well, why would they plead guilty if they didn't do it? The ones who know that false pleas are given are those in law enforcement, because some of them have extorted these pleas. There was a federal judge who wrote a long article in The New Yorker pointing out how he saw lawyers who have said they knew their client had not done the crime. But if it went to a trial, there's no way he would have-- then he would have avoided being convicted. So even though the lawyer knew he hadn't done the crime, he told him to plead guilty. This judge witnessed those things himself. Now I think you're given too much power over people to county attorneys who are mere fallible people and they are all politicians. You can't be a county attorney unless you were elected. Now do you think your main job is to put people in jail? You?

**COREY O'BRIEN:** No.

**CHAMBERS:** What is your main job?

**COREY O'BRIEN:** To seek justice.

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**CHAMBERS:** Is what?

**COREY O'BRIEN:** To seek justice.

**CHAMBERS:** Let me ask you a question. Does the law say that you should charge if you believe you can get a conviction?

**COREY O'BRIEN:** No.

**CHAMBERS:** If you don't believe you can get a conviction, should you charge or would you charge? If you're convinced the person did it--

**COREY O'BRIEN:** Ethically, you cannot.

**CHAMBERS:** If this bill passed, would it give you heartburn if you had a heart?

**COREY O'BRIEN:** Come on, you know me better than that.

**CHAMBERS:** Well, I don't have one, and you're at least as good as I am.

**COREY O'BRIEN:** You know, I don't lose sleep at night over the job that I do. I sleep very soundly because I work hard. So it's not gonna give me heartburn. We will learn to deal with it.

**CHAMBERS:** Would you agree that setting state policy is the job of the Legislature and not the county attorney or even judges?

**COREY O'BRIEN:** Yes, sir. I'm not here to set policy. I'm here to just give you my practical experiences doing my job on a day in, day out basis.

**CHAMBERS:** If we believe that a certain punishment or penalty does not serve a legitimate penological function, does not redound to the benefit of the law being fair and decide to do away with it. That's a decision for us to make and not the county attorneys. Isn't that true?

**COREY O'BRIEN:** Yes, sir.

**CHAMBERS:** But the county attorneys would do all they could as you, and if there are any others in the room would come, because I've been here 46 years, and they always come and always oppose, and some of them will not come to the hearings, but they'll pull people out of the Chamber to talk and put pressure on them then. So I don't have the highest regard for county attorneys. And when I was a much younger man, I was threatened by Douglas County attorneys on a number of

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occasions, what they could do to me. And I said, no, you can't. But if you think you can, try it, but I'm gonna say what I say, I'm gonna do what I do. And then they knew that they couldn't plant drugs on me because my community knew me. No drugs. They can't pour alcohol on me and say that I was driving under the influence. I don't drink. They couldn't say I cussed somebody out because I don't use profanity. So the things they usually charge a black man with because of the white people's stereotype of a black man couldn't be used against me. I have a record of arrests that would probably be longer than John Dillinger's. But if I've been convicted, I couldn't even be in the Legislature. So it means I was falsely arrested. Sometimes it wouldn't even go to trial, be dismissed. And I've had judges throw charges out. I was called before a federal grand jury and I refused to answer any questions even when they asked me my name. We were in the federal court in Omaha, the judge was sitting up at that desk, up at his bench. There are two guys by the back door in suits like the FBI wears. That's why we know it's an FBI guy, because they wear suits, they had those skin up haircuts and they say, they may as well put a sign, I'm with the FBI, and they move their coats so you could see that they were, as they say now, packing. And I was a young man, I was supposed to be intimidated. So when they asked me, I gave the standard, I respect-- respectfully, refuse or decline to answer that question on the grounds it might tend to incriminate me. It would tend to incriminate you if you gave your name? I respectfully decline to answer that question on the grounds that it might tend to incriminate me. And finally, the judge left, and then other people left. Then the two guys with the guns they left. And then that verse that was said about Jesus was applied to me, and when they opened their eyes, there was no man, save Jesus only. Nobody in the courtroom but me, so I left. Now here was the vaunted U.S. Government trying to intimidate a young black man by calling him before a grand jury when the young black man knew he hadn't done anything so he didn't fear them. They knew I hadn't done anything. I've had experience with these white cops. I've had all these arrests, no convictions. One shows me being put in the paddy wagon for having a concealed weapon, and I was wearing a skin tight T-shirt, and in those days, dress pants, no bulging pockets, no place, but I was charged with carrying a concealed weapon. And a guy named William Gallup was working for the prosecutor's office and he wanted to convict and give me two years in prison at minimum. You know what happened, the judge threw out the charges. Why do you all work so hard to undermine what the Legislature attempts to do. Because you believe in what you're doing, is that why?



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**COREY O'BRIEN:** Well, I don't believe that all prosecutors or law enforcement are bad or evil intended. Frankly, I think most of them are, if not all, are well-intended and they take their jobs very seriously and they feel like it is their obligation to keep their community safe. And so that's why we do appear here, not to make our jobs easier, it's because I am passionate about making sure that little children don't get hurt and I'm passionate about people that are victimized continually. And so, yeah, that's why I appear here and continue to fight. I fight for them.

**CHAMBERS:** If we did away with the criminal-- the habitual criminal statute altogether, you can still charge the person with the crime for which he or she was arrested. Can't you?

**COREY O'BRIEN:** Absolutely.

**CHAMBERS:** But you want them to get that long time, don't you, that extra measure? But if it was you under the gun, you wouldn't want it that way, would you, and no other prosecutors? See they're not used to somebody like-- talking to them like I do. I challenge them. Come after me and do what you think you're big enough to do, but you better make sure you can actually do it. You can not make an ugly face at me and raise your voice and think you going to intimidate me. You infuriate me. You incite me and I'm 82 years old and I throw that out to any county attorney in this state. Come after me like you come after some of these even young white guys. You go after them, you intimidate. You frighten them and say, if you don't plead, then this is what we're gonna do to you. You turn them into snitches. And I saw the police set people up so that they would do something that the cops could catch them with. And then if you don't get us some busts over here, then we're gonna charge you with this offense. And more than that, when you go in, we're gonna say you're a snitch. So here's what they did in Omaha, the guys who work narcotics would arrest people who were perhaps involved with gun activity. And so he tells them, I work in narcotics, there are others who have to worry about these guns, but I got you, and I can bring the charge. But I'll tell you what, you get me two busts with heroin and I won't do anything about the gun. Then the guy who works the guns will catch him with the heroin and say, if you help me get somebody with these guns, I won't push the drug charges. That's what they did to people in my community, young guys, and they had him in a whipsaw. And always they were white prosecutors, they were white cops. And the victims were always black. And also had to intervene where the cops would come and they had so many complaints

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about drug activity in a house and these are people in that neighborhood and they wanted the house shut down. You know what the cops would do? They knew the house, too, they knew the neighborhood. So they'd go next door and they'd make all kind of noise. And then the ones in the house where the activity was going on were tipped off and anything they had was disposed of and nobody was home. That's the way they enforced the law in my community. When I say the cops are our ISIS, I know what I'm talking about. I've always lived in the black community. I live there now. I've seen what prosecutors do to black people, black youngsters, intimidate them. And I saw them arrest-- I didn't see it with my own eyes, I was aware of what they did and I intervened. They arrested a 9-year-old child and charged him with theft because they said he stole a piece of candy in a grocery store. So he was arrested. They don't do that to white people, don't arrest little white children. There was a white guy who shot at deputies and hit two of them and he was given probation. That was not too long ago. So if I can see this in the same way you prosecutors have a jaundiced eye toward the Legislature, there's something-- at least one man in the Legislature has a jaundiced eye toward you all. Unfortunately, from my standpoint, this is my last go round. The prosecutors can cheer and they can have their wicked, corrupt way. I don't have respect for them. I don't see it as a class. I don't see them as protecting society. I see them as hustlers. I see them as liars. I see them as cheats. I see them as hiding evidence. I see them as fabricators of evidence. I see them as those who will extort false pleas. And if there was not one man among those Beatrice people who would not hold out, and he refused to plea, what happened for the rest might not have happened. But what the judge said when the prosecutor sought death for him because he would not go for the [INAUDIBLE], he said there's no way you're gonna let all these others plead and then he get death, so he didn't get the death penalty. But as fate would have it, the man who held out knew he was innocent and stood a better man than all the cops and the prosecutors put together did not get the benefits of that exoneration because when he went back home, he died shortly thereafter. That's what I see in terms of what you all do. So we see the world through the eyes that we develop based on our experiences, our background, our education. And that's the way I see it. And you see it the way you see it. So we could sit and talk very civilly to each other, but I would never see you as anything other than a prosecutor. And that is not a complimentary term in my lexicon, but I would never mistreat you because you're a prosecutor. Because despite being a prosecutor, you're a human being. And at the first-- in the first instance, I would treat you the way I'd want you to treat

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me. No matter what you heard, deal with me the way I deal with you. So that's what I'll do with these prosecutors. But see I have to serve notice to them that if they come after me, they're coming after a man. And they better know that, I'm not a child. In fact, I've probably lived three lifetimes to most of them. Oh, they're tough. I don't carry guns, I don't carry knives, and I go out on the street, and I've been where white people are tough. When I said the flag was a rag, I was in a store called Wes's or something like that in Lincoln, and when I was there, he made some kind of snide remark. And I said, what did you say? You got something you want to say to me? And then he turned around and walked. He was about a foot and a half taller than me, maybe 30 years younger or more. So he thought I was a coward like he was. And because I'm a small slip of a man and old enough to be his father, he thought I'd be frightened because he's big. They don't know what I learned when I was growing up. Mr. O'Brien, help us kill this habitual criminal statute. Will you do that?

**COREY O'BRIEN:** Respectfully, no, Senator.

**CHAMBERS:** I couldn't hear you.

**COREY O'BRIEN:** Respectfully, I cannot do that, Senator.

**CHAMBERS:** You said you can't do that?

**COREY O'BRIEN:** No, sir.

**CHAMBERS:** That's all that I have.

**COREY O'BRIEN:** Thank you.

**CHAMBERS:** Thank you.

**LATHROP:** I do not see any other questions. Thank you, Mr. O'Brien.

**COREY O'BRIEN:** Thank you.

**LATHROP:** Good afternoon.

**AARON HANSON:** Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Aaron Hanson, H-a-n-s-o-n. I'm representing the men and women of the Omaha Police Officers' Association. First of all, obviously listening to some of the past discussion here on this topic, we're always here to give input. That's our role. That's why we're here. We want to share our industry

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perspective with the policymakers. That's why we're here testifying. Couple of things to keep in mind that I was thinking of listening to the testimony is, number one, when we're talking the habitual criminal statute, the enhancement, each of those felonies has to have been sentenced to a year or more. So it's not just a simple felony conviction. It has to each been a sentence of a year or more. Listening to a question that Senator Morfeld had posed earlier to Mr. O'Brien, and that is about the, the drug addict. Well, I can tell you that morally, ethically, professionally, in the scenario of simply a drug addict with three previous convictions for user possession of controlled substance, I, I think you'd be hard pressed to find any professional law enforcement officer that would be in support of the habitual criminal being used in that, in that type of scenario. And if, and if that was the bill in front of us, we might be testifying in a, in a little different position today. But on the other end of the spectrum, as professionals that deal often with victims, in the case of, of a repeat felon who has victimized people, who has a violent past, if that individual on his third felony, qualifying felony were to be arrested for drug possession or a stolen car or seemingly a minor felony in and of itself, morally, ethically, I, I wouldn't be opposed to utilizing the habitual criminal statute for an individual, especially with a past of, of victimizing people or being dangerous. The reason why we're here testifying is not just to testify on behalf of law enforcement, of the men and women, men and women of the Omaha Police Officers' Association, but in a sense, also on behalf of the victims. I think the victim voice is one that we, we don't hear much. I can tell you, I've sat in living rooms with victims that have not even wanted their names being put on a crime report for fear of being labeled a snitch. I have investigated cases in which a criminal habitual eligible individual ran a woman over with his car. The charges were dropped because we couldn't find her eventually. I was involved in, in the subsequent investigation where we arrested him for distribution of crack cocaine and they did pursue the habitual criminal on that individual. But he had a very dangerous record of violent felonies. So we're always here to help with the discussion. We're happy to discuss anything in the future to try to make things better. I'll answer any questions you may have.

**LATHROP:** Senator Chambers.

**CHAMBERS:** Did you say you're an Omaha police officer?

**AARON HANSON:** I am, Senator, yes.

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**CHAMBERS:** OK. Do the black police officers have an organization of their own, Omaha black police officers?

**AARON HANSON:** They do. I'm a member of that organization as well.

**CHAMBERS:** Say it again.

**AARON HANSON:** They, they do, it's the Black Police Officers' Association. I'm a member of that organization as well. But I'm not here on behalf of them today.

**CHAMBERS:** Why do you think they saw the need to have an organization of their own? Because if you say you're a member, then they must have talked to you about that. Why did they say they organized?

**AARON HANSON:** They have their own, they have their own set of, of goals that are important to them. Many of those goals I agreed with, and that's why I decided to join that organization as well and pay dues.

**CHAMBERS:** Did they talk about discrimination they encountered as police officers in the Omaha Police Division?

**AARON HANSON:** I'm sure that is something that is at the core of, of that organization.

**CHAMBERS:** Now the Omaha police union-- are you a member of the police union?

**AARON HANSON:** Yes, sir.

**CHAMBERS:** They objected to the building of that downtown youth jail is what I call it, and their objection was not the location, but they said it would be too small to hold the number of people who might should be arrested. Is that the position they took, that it was too small?

**AARON HANSON:** It was too small. That was, that was the position that was discussed, yes.

**CHAMBERS:** Are you aware that more than-- although black youngsters don't make up-- black people don't make up anywhere near 50 percent of the population, more than 50 percent of the youngsters locked up are black. Are you aware of that?

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**AARON HANSON:** I'll have to take your word on the statistics, Senator. I don't have those.

**CHAMBERS:** But you're not aware of that?

**AARON HANSON:** It's my understanding that the numbers are disproportionate to when compared to the population.

**CHAMBERS:** So if the police want a bigger facility so that there could be more arrests, I can extrapolate and know that they intend to arrest more black youngsters and they want more space to do it. So that kind of gives me a jaundiced view of the white police union. But I've dealt with some white officers who, I won't tell you who they are, gave me information, because there are things going on in the police division that they didn't think were appropriate and that they were damaging to the police operation. That's why in days past I had information that I could only get from police officers. And that's why sometimes I was able to get some changes in the way things were done. This bill has to do with the kind of criminal charges that would be brought against individuals who have been arrested. You're aware that that's the kind of bill it is. Are you?

**AARON HANSON:** I'm aware of the content of the bill, yes.

**CHAMBERS:** Say it again, please.

**AARON HANSON:** I'm aware of the content of the bill. Yes, Senator.

**CHAMBERS:** OK. Well, it's, it's not for the police to level any charges, is it? Isn't that a function of the county attorney if we're talking about felonies or the city attorney if we're talking about misdemeanors?

**AARON HANSON:** The police may arrest, we may book, or we may pursue a warrant, but it is up to the county attorney to decide whether or not the charges will proceed.

**CHAMBERS:** And after you've made an arrest as an officer, that ends your job, your, your responsibility with reference to that case. Isn't that true?

**AARON HANSON:** Well, no, obviously, we're involved in the cases as they progress--

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**CHAMBERS:** I don't mean where you might have to testify--

**AARON HANSON:** --for testimony.

**CHAMBERS:** --but as far as taking that person into custody. Once that person is taken into custody, it becomes a judicial matter because the judge will either set bond or not. Then it will be up to the county attorney to determine what charge will be brought, and no cop is going to do that. Isn't that right?

**AARON HANSON:** That's correct with regard to the case, we're not involved other than testimony. But when it comes to the reality of what happens on the streets, sometimes companion to that case, we are very involved in those realities.

**CHAMBERS:** So why did you say you're testifying on this bill which has nothing to do with police authority or police conduct?

**AARON HANSON:** Because we see the, the current statute, or at least large parts of the current statute as an effective tool in maintaining public safety and keeping victims safe and making sure that justice is done.

**CHAMBERS:** Well, whether there's a habitual statute or not that has nothing to do with whether you can arrest somebody. You have probable cause to believe that a crime was committed and that this person committed it, and you make an arrest or you observe a violation of the law and you make an arrest. That's what police officers do.

**AARON HANSON:** That's correct. But above and beyond that is the impact that certain dangerous offenders have on, not only our safety and our working conditions as police professionals, but also the public that we serve. So beyond the courtroom, that's why we're, we're concerned beyond just the courtroom, we're, we're, we're wanting to be focused on ensuring that, that people are safe in the public, kept safe from violent offenders in as many ethical and legal ways as we can.

**CHAMBERS:** If I may be so impertinent, who requested or suggested that you testify on this bill?

**AARON HANSON:** We, we decided that as an organization ourselves.

**CHAMBERS:** I didn't understand you.

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**AARON HANSON:** As an organization ourselves, we have historically opposed diminishing the prohibiting--

**CHAMBERS:** So the police union--

**AARON HANSON:** The police association, yes.

**CHAMBERS:** --agreed that this should be done.

**AARON HANSON:** Yes, Senator.

**CHAMBERS:** That's all that I would have. Thank you.

**LATHROP:** OK. I don't see any other questions. Thanks for being here.

**AARON HANSON:** Thank you.

**LATHROP:** Next opponent? Welcome.

**JEFF LUX:** Good afternoon, Mr. Chairman, members of the committee. My name is Jeff Lux. First name Jeff, J-e-f-f, last name Lux, L-u-x. I'm a deputy Douglas County attorney representing the Douglas County Attorney's Office and the Nebraska County Attorneys Association in opposition to LB959. Hearing a lot of the, the questions that have come up, I guess I can just, maybe just jump to some of those. With Senator Morfeld, I know that you talked about the, you know, the, the addict, the user, maybe the person that's in possession of, of controlled substances. You know, should they be getting a habitual just in and of themselves? I would, I would say, no, they shouldn't. Even somebody up to the point of a, a dealer or distributor who's dealing because they're an addict, they're dealing so they can get enough drugs to pay for them. You know, they're dealing to drugs to get a, a little slice for themselves because they're an addict. That person should be going to drug court and that person would be going to drug court in Douglas County. And I think that's why it's so important that those types of options are available across the entire state so that you can send people who fit a certain-- that person needs treatment, that person is an addict, that person, if they don't get off the addiction, probably gonna be using more, committing more thefts, more other crimes. Those types of options need to be available statewide. Those types of problem-solving courts need to be available statewide. And I know that we've met with Senator Lathrop on this. So-- and, you know, in those types of situations I believe that there needs to be those options and those are things that we've worked with Senator Lathrop on trying to expand those opportunities. We've learned



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in Douglas County, we've had problem-solving courts for a while, we know they work. It's a lot of work to get them to work to work with folks. But it's, it's worth it. So you know, in those types of scenarios, I think there are, are definitely other options. With regard to the procedure of the bill, it, I guess, prohibits even the past convictions from being used if they're, quote unquote, nonviolent. But you know, changing the criteria now in the future, the people, the county attorney that pled that case five years ago, ten years ago, not knowing that, hey, the, the rules are gonna be changed in the future, I would have had this person plead to the violent crime as opposed to I had him plead to the nonviolent crime. I looked through the list of all the people that are habitual criminal, that are serving, and I looked at, OK, which ones of these would not fall into-- under the criteria of the nonviolent. And you know, I, I, I saw one that where somebody got habitual criminal sentence for nonsupport, child support. And I said, well, there's got to be an interesting story behind that.

**LATHROP:** OK. Senator Morfeld.

**MORFELD:** Well, thank you for bringing this up. I-- you know, your approach that you're describing, I think, would be a, a breath of fresh air in a lot of different counties because that's not what I'm hearing is going on in other counties. I, I agree with you the drug court and the problem-solving courts are really important. I think we need to have more of those. I've, I've supported legislation in the past that helps make that a reality. My concern though is, is that my understanding, and let me know if I'm wrong, and maybe you have a different practice in your county, but my concern is, is that people have to plea to basically all of the different charges. And then, for instance, if they fail in drug court, which I think is about, about a 50 percent failure rate, because most of these people are dealing with addiction and things like that, then they're stuck with basically maxed out on all those charges and they're, they're going to prison. And so I, I agree that drug court is, is good. I want to see more problem-solving courts. But I also think that sometimes prosecutors put some of these folks that are trying to avail themselves of a problem-solving court in a position where they can either avail themselves of the problem-solving court or they cannot, and then go, go to prison for whatever crime you're getting pros-- get convicted, or they avail themselves of the problem-solving court. And then despite their best efforts, because they have an addiction, they then have to go to jail for the full sentence because they've had to plead

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to that as a part of the drug court deal. And so I just, you know, there's got to be a point when we, we start getting a little bit smarter on some of this stuff. And, and I, I, I understand that there are extenuating circumstances and some things that we don't always know behind the scenes in terms of the Al Capone, you know, example that we keep bringing up. But from what I'm hearing from public defenders and other folks outside of this room is that it's not always the case that some people are being threatened with habitual offenses or habitual-- with this law to plea down to certain things and I get that everybody coming here and testifying is, you know, the perfect prosecutor and that never happens in our office. But I just-- I don't--

**JEFF LUX:** Well,

**MORFELD:** --you know, there's a disconnect. And if this isn't that big of a deal and it never happens, then, I guess, my question, my question for you and I'm not making-- I'm, I'm, I'm violating my own rule of not asking a question. I sometimes give my own colleagues, you know, grief for is-- I, I guess, you know, you bring up drug courts, but then what I'm finding is, is that when people avail themselves to the drug court and they clearly have a problem, you know, they end up going to jail or prison for just as long as if they didn't. And so I don't--

**JEFF LUX:** Let me, let me touch on a couple of those. So-- I mean, first off, for the problem-solving courts are set up for the high risk, high need. We want to take the people that are kind of the most messed up and put them in there and see if we can make a turnaround. If, if you're not quite there yet, I don't want to put people in a problem-solving court and play gotcha. And you know, then roll you out right into prison because then we're not gonna get anybody coming to the problem-solving courts. And we're gonna have all these providers that we got and we worked at who want to help these people and we're not gonna have anybody to help because there's gonna be a reputation that that program is there to play gotcha and roll you right into prison. And that's gonna destroy that program. If they're not as bad as that, then I mean, we have other options. We do a lot of, hey, if you'd like to waive six, get an eval, do treatment, and then you've proven to the judge, hey, I shouldn't be in prison because look what I'm doing.

**MORFELD:** Um-hum.

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**JEFF LUX:** We do that a lot. And it's a good thing because we're in Douglas County, at least we know there's a prison overcrowding problem. We want to save the spots for the most violent people in our community. We want room down there for those folks. So we're trying to work with different programming, the nonviolent offenses, folks that have drug addictions, because we know that can spiral out to all sorts of other crimes. So you know, we, you know, we're, we're trying, we're working with folks on different ideas. And you know, the, the habitual criminal, it is, it is a tool in our toolbox. Our office, we don't file the habitual right out the gate. You know, obviously, we tell the defense and the defense attorney what the record of their client is. And if we're gonna end up going to trial, then we need to make a decision. Does this person deserve that 10 years? If it's someone, you know, a Class IV felony, do they want their day in court? I'm saying no, I'm not doing that.

**MORFELD:** OK.

**JEFF LUX:** I don't think they deserve it. If it's a lot higher crime, they've got multiple felonies, then if it makes sense because of their record, what the record is, the facts of those cases it might be more appropriate.

**MORFELD:** OK. Thank you. I appreciate it.

**LATHROP:** Senator Chambers.

**CHAMBERS:** When I look at my Chairman, it makes me think of a biblical verse, "he groaned in the spirit."

**LATHROP:** Well, I, I, I will tell you that we have a fella here from Omaha, Mr. Shakur [SIC], who wants to testify on--

**CHAMBERS:** OK.

**LATHROP:** --the next bill, and he has to leave at 4:00. Am I right? And he has some firsthand experience that I think he wants to share. So if you think you can forego, I don't want to shut you off though.

**CHAMBERS:** No, no.

**LATHROP:** OK.

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**JEFF LUX:** But as always, I mean, we're open to troubleshoot, talk through stuff. Obviously, we might not always agree, but talking is good.

**LATHROP:** OK.

**JEFF LUX:** Thank you very much.

**PANSING BROOKS:** Senator DeBoer had a question.

**LATHROP:** Thanks, Mr. Lux.

**JEFF LUX:** Oh, yes.

**DeBOER:** Just-- can we-- I just want to ask can we talk about this later because I have some questions for you that we can talk about.

**JEFF LUX:** Absolutely.

**LATHROP:** OK. I appreciate that. Do you have a brief close for us, Senator Vargas? Or is there anybody else that's here to testify? I'm sorry. No, no. You can appreciate I'm trying to balance a couple of things here.

**VARGAS:** All right. Go ahead, do your thing. All right. So I don't have much to add other than just a reminder it's not the first time we've taken up a bill like this. Senator Chambers is being a little humble here, he has worked on habitual criminal reform and has brought several bills in the past. Some successful, some not successful. I think this is in line with some of the many things that he's worked on. All I'm really trying to do is ensure that we are in the end game reducing our prison population. There is-- there's enough statistics that show that habitual criminal laws [INAUDIBLE] three-strike laws, now it's varied on how those are and what they look like in states, there's enough data that does show it's not conclusively deterring crime. There is some data that shows that it is-- it's not doing a good job of deterring crime. So the question is, if it's not deterring crime, what is it being used for? We call them enhancements because they're add-ons. So if they're enhancements and they're add-ons and Senator DeBoer was making some, some valid questions. Same questions I had, it's why I brought the bill. If the individual occurrences, felony charges, if, if, if this is more about enhancements and less about being able to have a consequence for those individual crimes, what are we really gaining from this? At the end of the day, removing and changing this language doesn't, doesn't eliminate the habitual

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criminal law. It's just narrowing its focus. And reminder here, judges still have the discretion to make judgments. I appreciate everybody having this conversation. I hope we can pass forward and move this, move this forward. I think it's-- again, I think it's common sense. I think it's pragmatic. If I was really anti and didn't think this is a good law in its entirety, I would have just eliminated the entire law. Didn't do that, it was for a reason. You'll also see in the fiscal note, again, there's references to the cost savings that is anticipated with a bill like this passing and that it could reduce the number of the prison population. And that is ultimately why I brought this. And so I want to thank everybody and happy to answer any more questions.

**LATHROP:** I see none. But thanks, Senator Vargas, for introducing the bill and being here today.

**VARGAS:** Thank you very much.

**LATHROP:** We are going to jump the order a little bit and take up LB1117. Senator Pansing Brooks.

**PANSING BROOKS:** Thank you, Chair Lathrop, and fellow members of the Judiciary Committee. Thank you for also understanding that we're trying to get Shakur out of here. So I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here today to introduce LB1117, which changes sentencing provisions for crimes committed by a person under 21 years of age at the time of the commission of the crime. These changes would ensure a juvenile does not receive a sentence of life imprisonment without parole. LB1117 also provides that certain juveniles accused of a crime go to juvenile court. Such juveniles may still be transferred from juvenile court to county court as provided in current statute. In 2012, *Miller v. Alabama*, the U.S. Supreme Court, the U.S. Supreme Court struck down life without parole sentences for most juvenile offense-- homicide offenses and rule-- and ruled that courts must, quote, take into account how juveniles and children are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison, end quote. The court followed up in 2016 in *Montgomery v. Louisiana* that, quote, even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity, unquote. This immaturity is documented in numerous studies which show that the juvenile's brain isn't fully developed until ages 25 to 26.

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Because of this brain science and the demonstrated potential for all children to rehabilitate the campaign for fair sentencing of youth has concluded that it is impossible for courts at the time of sentencing to accurately predict which children are, quote, irreparably corrupt, unquote. The United States currently stands alone, alone as the only nation that sentences people to life without parole for crimes committed before turning 18. However, 23 states have taken the lead in prohibiting life without parole as a sentencing option for children, including most of our neighbors: Wyoming, South Dakota, Colorado, Iowa, and Kansas. Other states that prohibit life without parole for juveniles also include: Arkansas, Texas, West Virginia, Kentucky, Alaska, Utah, and North Dakota, among others. When we sentence youth under 18 to life in prison without parole, we are sentencing them to die in prison. We're taking away all hope. Under LB1117, these children may still receive harsh sentences, but they will also know that they have an option of paying their debt, coming to terms with their mistakes and someday returning to society and becoming productive citizens. In addition to the human price, Nebraska also incurs a financial price. It costs \$31,271 a year to incarcerate an individual in Nebraska. Meanwhile, Nebraska has one of the lowest, lowest unemployment rates in the nation at 3.1 percent. We have every incentive to rehabilitate those who can be rehabilitated and move them back in society at some point and into our work force. LB1117 makes changes to the court jurisdiction for various offenses by providing that the juvenile courts shall have exclusive original jurisdiction. These cases may still be transferred to county court or district court as provided in current statute. This is an important change as we seek to keep more children out of the adult courts who end up there automatically and sometimes unnecessarily. And with that, I ask you to advance LB1117 to General File. And I'm happy to answer any questions on closing, but I would love to get Shakur up here.

**LATHROP:** OK.

**PANSING BROOKS:** Mr. Abdullah. Sorry.

**LATHROP:** We will do that. He may testify as our first proponent. Good afternoon.

**SHAKUR ABDULLAH:** Good afternoon.

**LATHROP:** Hopefully, hopefully we got you in and out of here in time.

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**SHAKUR ABDULLAH:** Well, we, we will see if I'm in trouble or not when I get back to Omaha.

**LATHROP:** OK.

**SHAKUR ABDULLAH:** Good afternoon. My name is Shakur Abdullah, S-h-a-k-u-r A-b-d-u-l-l-a-h. I come before the committee today as a recipient of many of those United States Supreme Court decisions that Senator Pansing Brooks mentioned. I want to thank her for bringing this bill and various other bills during the time she has been in the Legislature relevant to juvenile issues. I went to,--

**LATHROP:** Sir, can you move a little bit closer to the mike and speak up just a little bit? We have a little trouble with the sound in here.

**SHAKUR ABDULLAH:** I went to prison at 17 years old with a death sentence, that death sentence was overturned in 1977. Nebraska actually led the nation in overturning sentences like that, mainly due to the efforts of Senator Chambers in the 80s, a decision that the United States Supreme Court did not reach until 2005. I want to just reiterate the point that the, the Supreme Court has continuously since 2005 with that juvenile death penalty case out of Missouri, reiterated the point that children are different for sentencing purposes. This bill would address that issue. I do not sit before you as unique or any different from any of the other children that have been sentenced to various prisons throughout America. They are much like me. They have gone to prison. They have made serious mistake in their life. None of us are the worst mistake that we have ever made in our life. All of us have made mistakes. Some of those have been more severe than others. Prison operates as an opportunity for those mistakes to be reevaluated. Many of the contemporaries, my contemporaries that I left behind after discharging my sentence, being able to go back to court under various United States Supreme Court decisions, I was resentenced to 65 to 82 years. That sentence actually ended a 41-year stay in the state of Nebraska. I left prison a, a man, not a child. Time in which I had a lot of times to think about things, reevaluate my morality, ethics, all of those things. I came out a different person. I was discharged, have been responsible, paying taxes, doing all of the things that I am expected to do as a citizen. It is important, I think, for people to keep in mind that if we are talking about children, there are all of these demarcations that say that children are too young for various things in this society, whether it be voting, drinking, possession of a weapon, smoking, the age has just been raised to 21. So it is important, I think, for society to

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understand that these are serious offenses, but they are serious offenses committed by children and those punishments should approximate that age. Just in closing, I want to say that I, I think it's important to keep in mind that children deserve an opportunity to be treated as children and not adults in terms of sentencing.

**LATHROP:** OK. Appreciate your testimony. We'll see if there's any questions? I don't see any questions. I appreciate you making it down here today and sharing your experience.

**SHAKUR ABDULLAH:** Thank you.

**LATHROP:** Next proponent? Good afternoon again.

**TOM RILEY:** Mr. Chairman, members of the committee, I'm still Tom Riley, T-o-m R-i-l-e-y, Douglas County Public Defender. And I'm here on behalf of Nebraska Criminal Defense Attorneys Association in support of this bill. Obviously, the bill has several components to it and I'm going to address that portion which changes the sentences. Senator Pansing Brooks's bill finally lets us catch up to the science of what is out there. For so long, legislatures and the judiciary system has ignored the science that speaks to exactly what Shakur just told you that-- and, and Senator Pansing Brooks told you that children are different. The, the bill, as it is presented, recognizes that children go up to the age of 21. The science says that the brain development is not complete, especially with regards to the executive function until mid 20s. And Senator Pansing Brooks is-- set, set the number at 21. I, I just want to say one thing. I had the responsibility of representing Shakur at the resentencing and he doesn't blow his own horn, he spent all that time in prison. He had one write-up in 40-plus years. Shows you that every person that goes down there, even if they have been convicted of a serious, serious offense, can change. And what this bill does is recognize that we can't, as I said earlier, lock people up and throw away the key. The bill changes the sentencing on first and second degree murder for those under 21. And it says you can't get life if you're under, under the age of 21. And as Senator Pansing-- she took some of my thunder here, she named the states that have addressed this in a way that I think Nebraska should. And she's gone even further, indicating that there should be certain maximums and minimums even on first and second degree murder, which give an individual hope. When Shakur went down to prison, and we have, we have four people who were resentenced that I represented that had life and are now out and have not reoffended. And it just shows that maybe not everyone, but a significant number of



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those individuals can and do change and should have that hope. He didn't even have hope and he followed the rules. This bill gives people hope. And it says, even though I've done something really bad and really wrong, if I can change my ways, if I can, if I can reflect on myself and demonstrate that I can be a productive member of society, that I will have the chance. And all this, all this bill does is recognize the science that is right in front of us and right in front of our eyes. And I've had a number of these hearings and I'll end by saying not one time have I had any prosecutor present any contradictory evidence to the scientific evidence that we presented through the testimony of adolescent psychiatrist, psychologist, and neuropsychologists.

**LATHROP:** OK. I don't see any questions. But thanks for being here once again.

**TOM RILEY:** Thank you.

**LATHROP:** Sure.

**JULIET SUMMERS:** Good afternoon, Chairman Lathrop, members of the committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here on behalf of Voices for Children in Nebraska to support LB1117. All children deserve society's protection to grow into healthy, productive adults. Even children who commit serious crimes are still children. And we should respond to youth crime in a thoughtful and effective way that preserves community safety, contributes to Nebraska's future prosperity, and gives both children and communities the protection they need. We support this bill because it distinguishes youth crime from other crime, acknowledging that developmental factors simply make youth defendants different. Eliminating life without parole as a sentencing option for individuals up to age 21 and providing for original juvenile court jurisdiction for individuals up to age 18 will ensure that youth will receive access to age-appropriate, evidence-based juvenile justice measures. You've heard plenty from Mr. Riley and Mr. Abdullah about the sentencing part of the bill, so I'm gonna focus my testimony on the juvenile court as the original point of jurisdiction piece of this bill. So in 2014, the Legislature passed LB464 into law, requiring that nearly all cases in which minors age 17 and younger and then eventually under-- yes, 17 and younger be charged, begin in juvenile rather than adult criminal court. The bill was based on years of research showing that charging minors as adults does not reduce violence or other antisocial behavior, but is in fact more likely to

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encourage it. Exposing minors to criminal charges and incarceration leads to increased recidivism, increased risk of prison rape, suicide and other dangers, and infringes on parental rights and responsibilities to hold youth accountable and support their development into law-abiding citizens. The data show that LB464 has been hugely successful in Nebraska. The number of minors charged in criminal court has dropped from nearly 2,000 in 2013 to just 220 in 2018, of which about a quarter were traffic offenses. Over the same period, the number of juvenile arrests in our state has continued to fall from over 10,000 in 2013 to just under 9,000 in 2018. So we believe that LB1117 is an appropriate next step from LB464 extending juvenile court jurisdiction as the original point of origin for all juvenile cases. But it still allows county attorneys the opportunity to move to transfer cases in which there is currently concurrent original jurisdiction. I've got the yellow light, so I'll just add that I, I, in fact, know a young woman who is in juvenile court on one of the gravest of possible charges she was initially charged with. She started her case in criminal court. She spent a year and a half in Douglas County Youth Center waiting to have it transferred to juvenile. She got lucky in that it was. And she's doing really well. She's doing really well at Boys Town. And so even for those, those really-- the offenses that look really awful when we're talking about a young person hope is not lost and the juvenile court can really do great things. So thank you to Senator Pansing Brooks and the committee. I'd be happy to take any questions.

**LATHROP:** OK. I do not see any questions. But thanks. Next proponent?

**SCOUT RICHTERS:** Hello.

**LATHROP:** Hello.

**SCOUT RICHTERS:** Hi, my name is Scout Richters, S-c-o-u-t R-i-c-h-t-e-r-s. I'm here on behalf of the ACLU of Nebraska in support of LB1117. I would like to thank Senator Pansing Brooks for bringing this legislation and I'll try not to repeat what's already been stated. As, as was mentioned, this line of Supreme Court cases over the last 15 years has recognized that children aren't simply miniature adults. And we know that young people in Nebraska under current law are given these lengthy term-of-year sentences where the low number is 80 or 90 years, which is a de facto life sentence. I also want to mention that this bill makes financial sense. A 50-year sentence for a 16-year-old will ultimately end up costing about \$2.25 million. I also wanted to mention that this bill broadens those cases that can be

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brought in juvenile court, which allows more young people to benefit from the rehabilitative goals of the juvenile justice system and then avoid those serious lifelong, collateral consequences that come with a criminal conviction. So we offer our full support of this bill, and I would be happy to answer any questions.

**LATHROP:** I don't see any today.

**SCOUT RICHTERS:** All right. Thank you.

**LATHROP:** Thanks. I appreciate it. Good afternoon.

**CHRISTINE HENNINGSSEN:** Good afternoon. My name is Christine Henningsen, H-e-n-n-i-n-g-s-e-n. I direct a project at UNL Center on Children, Families and the Law called Nebraska Youth Advocates, which focuses on training for juvenile defense attorneys and advocacy in public policy issues. I'm testifying in my personal capacity today, and specifically I'm gonna read a letter to you that was written by two young women who I've had the honor of working with as, as youth advocates. So I'll just without further ado, start reading it. As members of Operation Youth Success-Juvenile Justice Council, we offer this letter in support of LB1117. The Juvenile Justice Council is a group of young adults between the ages of 19 and 26 who have experienced our juvenile justice system and are dedicated to be a voice of change in order to promote better experiences and outcomes for youth who are involved in both the criminal and juvenile justice system. We'd first like to say that we believe people should be accountable for their actions regardless of their age. However, we believe accountability looks different for each age. We offer the below reasons for support of this bill. Research shows that the brain is not completely developed until age 25. Current practices treat youth like adults despite the fact that their cognitive control system and their risk reward system is still developing. Requiring that stated considerations laid out in the bill are heard at the sentencing hearing for anyone under the age of 21 who is convicted of a felony is the right thing to do. We are all different. We grow and understand at different times. Furthermore, we believe this piece will greatly influence the sentence in an appropriate manner as you're looking at the whole person as opposed to the behavior solely. It will also result in a decrease in recidivism and improve community safety as purely punitive responses are actually counterproductive to the goal of rehabilitation. Further. Currently, adult charges follow a person throughout their life. Youth deserve to have a clean slate. By having all misdemeanor and felony cases start off in juvenile court, you're taking steps to ensure that youth have

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an increased opportunity to move forward. They wanted to also provide some following feedback. They'd encourage that the age listed in the bill be extended to age 25 to reflect current adolescent development. And then they also would like to see the-- eliminating the sentence of life without the possibility of parole to be extended to the age of 25. They also, also support the minimums and maximums, however, would like to see these numbers be reduced. People change, society changes. We don't have adequate resources set up to assist people who've spent their entire life in prison and we could do a better job. Thank you for bringing this bill, Senator Pansing Brooks. We appreciate the opportunity to share our voice. Members, Jasmine Jones and Denise Daugherty. And I'd be happy to answer any questions and pass on any information to the young women as well.

**LATHROP:** I don't think you drew any questions with that. But thanks for being here.

**CHRISTINE HENNINGSSEN:** Thank you.

**LATHROP:** Next proponent?

**JOE NIGRO:** Good afternoon, Chairperson Lathrop, members of the committee. I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender. I appear on behalf of my office and the Nebraska Criminal Defense Attorneys Association in support of LB1117. I want to thank Senator Pansing Brooks for introducing this legislation. I want to focus on the part of this bill that requires filings against juveniles to be initially filed in juvenile court. Prior to 2014, Nebraska was unique among states in that prosecutors could file charges in adult court against juveniles and the juvenile had to request that the case be transferred to juvenile court. The other states, with only a few exceptions, required that the filing must originate in juvenile court and the prosecutor, the prosecutor could request a transfer to adult court. In 2014, our Legislature changed the law to require that Class III felonies, anything below that level must be initially filed in juvenile court. Misdemeanors must remain in juvenile court. Class III, Class IIIA and Class IV felonies can be transferred to adult court if the juvenile is 14 or older. Now that the system has been in place for a few years, it's time to do what other states do and require the law violations be initially filed in juvenile court. Prosecutors can still move to transfer felonies to adult court. The reasons why cases should be initially filed in juvenile court are: one, the, the judges are familiar with what services and programs are available. District judges are not familiar

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with these programs. Juvenile court's a specialized, very specialized court. District judges, as I said, are not familiar with a lot of the programming that's available. Secondly, if the juvenile's been in court before, the judge is going to know which services and programs have been tried with that individual. And and lastly, filing in juvenile court allows the opportunity to get the juvenile into services much more quickly. It can take months to get a case from county court to district court, have a transfer hearing, and then get the case into juvenile court. And that would-- during that entire time, the juvenile would not be receiving services. Juvenile court judges should make these decisions. I urge you to advance LB1117. And I'm happy to take any questions.

**LATHROP:** OK. I don't see any questions, though, Joe. Thanks.

**JOE NIGRO:** Thank you.

**LATHROP:** Any other proponents?

**FRAN KAYE:** Thank you again. My name is Fran Kaye, F-r-a-n K-a-y-e, and I'm here to support LB1117 and to thank Senator Pansing Brooks for introducing it. I represent myself and also testify as a member of Nebraskans for Peace. And I was also asked to come and testify on this bill by some of the guys I work with in NSP. I have volunteered with various clubs and classes in Nebraska prisons for more than 25 years. Many of the people I've worked with committed their crimes when they were under 21 years old. As everyone has said, human brains, the accelerator matures before the brakes. Humans evolved to value young men who were willing to act violently without thinking. We no longer value that behavior. We know that young people commit terrible crimes, but we also know that they often lack the brain development that would help them control their impulsivity and find ways other than violence to pursue their ends. We also know that young offenders' brains are malleable and that young people are capable of great moral growth. I have certainly seen it. I know men who committed murders when they were 19 or 20 who have acknowledged the harm that they did, and even within prison have turned their lives around and are now devoted to keeping the peace and teaching other young men the moral reasoning and de-escalation skills they will need to succeed in free society. We don't often talk of the opportunity costs of keeping people in prison. We talk, rightly, about the need to move people to parole for people who are no longer a danger, and we talk about the costs of overcrowding and overreliance on prisons. But I watch men and women, former offenders, who make a real difference in the lives of prisons,

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and I am incredibly grateful to them for what they do, both formally and informally, in making prisons safer and helping other men and women achieve their maturity. But what if they were not in prison? What if they were on the street, leading by example, working in organizations that reach young people to direct their energies in pro-social ways before they got themselves and others in trouble? Moving away from death in prison sentences for teens who have committed Class I felonies has been successful. Now it is time to look at the next age cohort of offenders, as this bill does. Moving away from purely punitive sentencing toward more rehabilitative sentencing for those most likely to be rehabilitated will alleviate future prison crowding, allow for meaningful redemption, and most important, recognize ex-offenders who have had the courage to face their own crimes, to acknowledge the irreparable harm that they have done, and to live for the purpose of truly repaying society for what they could never do for their victims. Although we tend to talk as if victims can only fittingly be honored by impossibly long sentences for offenders, we know from the experience of other western democracies that do not pursue interminable sentences that such reasoning is self-defeating. If ever I or someone I loved were to be murdered by a young person acting stupidly and cruelly, I would want my loss not to be revenged, but to be paid forward by an offender who, exactly because his experience in taking a life but still managing to move forward as a decent human being, had a power to do good that I do not possess. Thank you.

**LATHROP:** OK. Thank you for your testimony. Any other proponents? Good afternoon.

**JASON WITMER:** Afternoon. Jason Witmer, W-i-t-m-e-r. I speak on my own behalf and am not speaking for my employer or nor any other organization I may be affiliated with. I support LB117-- 1117, although it doesn't go far enough. As we've spoken, the age of maturity, at least on the record is 25, even car insurance will tax you if you're not 25 because they recognize the research. However, 21 at a minimum is more reasonable than 18. I have a friend, I have a friend, Gabriel Hansen, currently serving a life sentence without possibility of parole. We grew up together inside the prison walls, starting as teenagers in the mid-90s. Gabe's path started changing when we were in our late 20s. I was in my 30s before my distorted perceptions and reality could find common ground with mature thinking. I think about what Gabe had once told me, and it goes something along the lines of, it is hard to balance the desire to have a second chance

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at life with the guilt of realizing that I had taken someone else's. It is hard to, it is hard to balance the desire to have a chance at a second life with the guilt of realizing that I had taken someone else's. That's paraphrasing from my memory. Still, the message and the impact is, is the same for me. As a child, as a child, I witnessed my mother's murder. And in all the good I do today, or at least try to do, I still have anger, I still have bitterness, and I still hurt over this. And I seem to lack forgiveness. Yet, what Gabe expressed to me was the spiritual consciousness as it battles the natural desire to regain one's own life, which only comes with a deep sense of maturity many in free society will never, never truly experience. I support this bill because I believe no one is disposable. I may not have enough maturity in my own life to forgive the man for killing my mother, but my conscience tells me that if he has truly changed, then I would not oppose his chance at a second life, to be renewed in his life. So I ask that you do the same for our state's youth. Thank you.

**LATHROP:** Jason, thanks. Thanks for all the advocacy you do for people inside the wall. It's helpful for us to have you here.

**JASON WITMER:** Thank you.

**LATHROP:** Good afternoon.

**VICKIE TAYLOR:** Hello. Good afternoon. My name is Vickie Taylor, V-i-c-k-i-e T-a-y-l-o-r, and I am here in support of LB117 [SIC]. First I'm just asking that the committee acknowledges all the research that was the basis for the earlier rulings on the juvenile life without parole sentencing. I think it is understandable that maturity can no longer be viewed at 18 and likely not complete until the age 25. I also ask that the committee review things that other states are already doing to address appropriate age sentencing. California has extended a parole eligibility to individuals committed-- that committed their offenses before age 25. Illinois has enacted a statute in 2019 providing parole review after serving 20 years for crimes of first degree murder and aggravated criminal sexual assault. The Prisoner Review Board is directed to consider the diminished culpability of youthful offenders, the hallmark features of youth, and any subsequent growth and maturity of the youthful offender during their incarceration. Connecticut federal courts have extended Miller to an 18-year-old offender, finding that the imposition of mandatory life without parole in a crime committed at age 18 warranted habeas relief. Judge Hall wrote in her March 2018 decision that previous courts that drew the line at age 18 did not have before them the

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record of scientific evidence about the late adolescence that is now available. You've heard from Shakur Abdullah today, who was released under the juvenile sentencing, and he is a true testament for reform after serving over 40 years in prison. He is indeed remarkable, but he is not an anomaly. I have tremendous respect for him and admiration for him as well. But today, I'm here as a mother of a youthful offender serving a life sentence. My son committed his crime three weeks after his 18th birthday. This unjust line of adulthood should not be allowed to separate him from the same consideration you have given to others under the juvenile resentencing. He has lived the best life he can in his current conditions. His accomplishments have been many as he has gained the respect of staff and peers. He consistently mentors others and maintains a strong work ethic throughout the past 25 years of incarceration. He is married and will celebrate his 18th anniversary in May. He has recently become a father to their adopted son. And in spite of the challenges of circumstances, he is a present and involved dad full of love and eager to help nurture and guide his son. In reflecting back on who he was at 18, he openly admits he did not identify with the principles of daily life that he lives today. His character was not developed and he lacked the ability to formulate proper decisions. He will be 43 this June. I am sure a similar story could be told by many of the men and women who have been sentenced to juvenile life-- to sentenced with life without parole at 18. Inside or out, they will continue to mature and their actions will reflect that they are not irretrievably broken and should not be locked away for life without hope of a second chance. The recent law increasing the legal age to tobacco for-- to 21 points to that lawmakers do believe 21 is an age of adulthood. It cannot be ignored in sentencing youthful offenders. Nebraska needs to join other states in recognizing cruelty of sentencing someone to life without parole to anyone under age 21. I am asking you to advance LB1117 to eliminate life without parole for ages 18 to 21, making this ruling retroactive to include all current incarcerated citizens affected by this law. Thank you.

**LATHROP:** OK. I do not see any questions for you today, but thanks for being here. Anyone else here to testify as a proponent of LB1117? Opposition testimony? Good afternoon once again.

**AARON HANSON:** Good afternoon. Aaron Hanson, H-a-n-s-o-n, here on behalf of the men and women of the Omaha Police Officers' Association. Under its-- sorry, under its current-- the way it's currently written, the Omaha POA is opposed to LB1117. A lot of good testimony has come up here from the, the proponents. I can tell you that Mr. Abdullah, he



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is a, he is a great story. I've, I've worked directly with him with young men trying to give them a better life. He's a, he's a good example of, of how people can turn it around. And I would like to think, not just as a police professional, but as a citizen of this state, that hopefully we have a Board of Pardons that would take a fact pattern such as his into account for commutations. I don't have, I don't have expertise on that area, but I think that that's obviously something that would be worthy of, of looking at in consideration. But I think we have to move forward very carefully, because as I was sitting in the room thinking about the last police officers that I can think of that have been murdered, shot or shot at, the majority of those were at the hands of, of young people. And clearly, I'm not disputing the data about the formative brain and the teen brain in the early 20s brain, but the fact remains that this is typically the age that we see the bulk of the spontaneous violence. And we have to keep that in mind. Oftentimes, these issues are interconnected. So for example, there is the opinion of some in law enforcement that the reason why we're seeing a spike in problems at Kearney is because we are seeing more of the high-risk juveniles going to Kearney. Maybe it wasn't made to deal with them. The same reason why we're seeing many of the high-risk juveniles today running away from the group homes. If we are going to talk about putting more kids into juvenile probation that are high risk for higher level crimes, that we need to have a discussion on the back end about whether or not it's a good public policy to end that juvenile court jurisdiction at age 19. There's a lot of other issues at play. We're here to simply offer subject matter expertise in our area of expertise. And we're always happy to problem solve with, with anyone in the Legislature to try to find a workable solution. But please move forward with caution. Public safety is a priority here, but also the well-being of these juvenile offenders themselves. I'll take any questions that the, the committee may have.

**LATHROP:** This bill does a number of things, including starting every criminal case involving a juvenile out in juvenile court. Do you have-- does your organization have a problem with that piece of it or that aspect of it?

**AARON HANSON:** That has been, that has been problematic for, for police professionals on the streets. And again, I, I think you look at what's coming to a head in Kearney. There are, there are many juvenile offenders that maybe the juvenile system is not appropriate for, you know, under its current design. Could the juvenile system be revamped to not have so much of a one size fits all or maybe more intensive

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approach for the higher risk kids? Maybe. But, but, but that's not contained within this bill. And I think if we're gonna try to get to that goal, I think we need to, need to have a more universal effect.

**LATHROP:** Do you see a practical effect? So in 2014, we essentially said if it is a lower level, a felony, or a misdemeanor, it'll start out in juvenile court and maybe transfer to district court. And that was in contrast to the old model where it'd start out in district court and you'd have to convince the district court or a county court judge to transfer it up to juvenile. If I understand the, the provision in the bill, everything would start out in juvenile court, but the county attorney would be permitted to petition to take a serious or somebody not suitable for juvenile court over to the district court. As a, as a concept, is that problematic? Just the recognizing the county attorney can still move to transfer it to adult court.

**AARON HANSON:** I can tell you that in practice, that what I've seen just from my perspective and talking with other police professionals, it's, it's very unlikely that absent the juvenile themselves agreeing to be transferred out of juvenile court, it's highly unlikely that, that you're gonna see a transfer out of juvenile court. We've even seen juveniles involved in drive-by shootings as an accessory that fell under the, the 3-- the Class III provision and they were maintained in juvenile court, which again, that's the judge's decision. But an example was brought up earlier today, the young lady that committed murder, and that was before the juvenile-- well, that wouldn't apply because she was in a classification of felony higher--

**LATHROP:** Right.

**AARON HANSON:** --than the Class III. And in that case, I think the county attorney used good discretion, like I think they typically do in allowing that case to go juvenile. But again, it's also concerning that that jurisdiction will only last until age 19.

**LATHROP:** Which is a consideration, of course, on whether you keep them or send them over to the district court. Right?

**AARON HANSON:** It, it should be a consideration, I wish it wasn't. Because if you take, for example, the affluenza teen in Texas, he was under court jurisdiction. A juvenile court judge ordered him 10 years

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of supervision until he's 25 years old. We wouldn't even have that option in the juvenile court today.

**LATHROP:** I get that. I get that. One of the other aspects is that if, if this were an adult, the offense, so it'd be some kind of a homicide presumably, they catch a, a life without parole, does, does your organization have a problem with the idea that if a juvenile offender commits one of these very, very serious crimes, a homicide or something like that, that they have an opportunity at some point, however far into a, a term or decades of incarceration, that they'd have an opportunity to, to be able to parole out or to jam out or be ultimately released?

**AARON HANSON:** I think that's a concept that, that could be fleshed out to see if there'd be a commonsense middle ground, especially in the case of, of an individual like Mr. Abdullah.

**LATHROP:** OK. It does seem like these kids, and, and I know you run into them every day at work that are the 18 or 19 year olds that are, that are involved in this stuff. Part of it is like if they were adults, 35-year-old people, they probably wouldn't get talked into doing some of the, some of the things they're doing.

**AARON HANSON:** There is a lot of influence from the older gang members. They put a lot of pressure on the juveniles. A lot of pressure on the younger gang members of the younger criminals sometimes not even involved in a gang just as criminal elements that are nongang related. They put a lot of pressure on the juveniles to do their dirty work on their behalf [INAUDIBLE].

**LATHROP:** OK. I wasn't trying to put you on the spot. I, I appreciate you answering my questions. Does anybody else have any questions for Mr. Hanson? I see none. Thanks for being here. Anyone else here to testify in opposition?

**JIM MAGUIRE:** Afternoon, Senator Lathrop, Senators. My name is Jim Maguire, it's J-i-m M-a-g-u-i-r-e. I'm the state president of the Nebraska Fraternal Order of Police. And as an organization, we're opposed to this, this legislative bill. Organization does not believe in jailing folks and throwing away the key. That's not what we're here for. However, I'm unconvinced that somebody who is 18, 19 or 20 years old doesn't know the difference that they can't kill somebody. That's the portion of the bill that we have the most problem with. Whether or not you want to start making changes to 21 as the-- as it-- as the

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adult age when it comes to sentencing, that's a, that's a bridge too far for us, especially when it comes to sentencing folks that are-- that have committed murder or serious violent felonies. We're just-- we're not there yet. I will be brief. Just-- I just want to point out a couple things. I'm gonna bring up three names that, that are Nebraskans that I just want to tell you what, what they did. You might recognize some of these names: John Joubert, he was 20 years old, killed a bunch kids; Charles Starkweather, he was 19. He happened to kill 10. And a-- an individual that I was there and he ended up taking his own life, but this person was 19 years old. His name was Robert Hawkins, and he went into Von Maur and killed a bunch of our citizens. And I just want the, the committee to be aware that, yes, 21, 25, whatever the science says that, that they-- their brain is still developing, you cannot tell me that they don't know that they can't kill people. And for, for them to, to do this sort of act, there has to be some sort of severe penalty. Now when it comes to the sentencing, we have to give the judge the discretion to determine what that is. We're not advocating that it has-- everybody has to be sentenced to death or anything like that, but there has to be some sort of severe consequence, because although corrections and the state prison system does have a rehabilitative part, there is also a penalty part for what they did. Thank you, and I'll stand for any questions.

**LATHROP:** Doesn't look like there's any questions,--

**JIM MAGUIRE:** Thank you.

**LATHROP:** --but thanks for being here, Mr. Maguire.

**CHAMBERS:** Just one.

**LATHROP:** Oh, I'm sorry. Senator Chambers. I didn't see that.

**CHAMBERS:** Whatever a cop is charged with, he could have shot a black kid in the back, and when he's charged, the police union come to his defense and say he was justified and he didn't do anything wrong. That happens all over the country. And then they come in here as grown men and say these things about kids. So your testimony-- I, I have respect for you and the work you do, but you're representing a group of people who say one thing when it's about children and then something else when it's one of their own. Even the cop who said when they stopped this white woman, they stopped the car and she was, she was scared, he

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said, we only kill black people, don't worry. He was not punished, he was not punished, and that was on television.

**JIM MAGUIRE:** I can't comment on another agency on how they dole out discipline when you, when you talk about police unions and why we represent our members, we have-- we are obligated to represent those, those officers. If we don't represent them, they can sue us for failing to represent them. So there-- although if it is a criminal act, that's, that's something that is completely separate. And they generally have to represent themselves. But you know, there could be umpteen circumstances that we could, we could go back and forth on, on was this officer justified in doing this or not? We're talking about you have to take each one individually. Just-- I don't want to get into a, a position where we're making blanket statements saying all, you know, all cops, when they get involved in a, in a, in a shooting were completely unjustified.

**CHAMBERS:** Well, some of us feel that about children, despite what cops say and prosecutors say, we accept the science and we'll base judgments on that. And I don't look for police to think in a nuanced way. I've had too much experience with them myself. And when I was a child, I saw things and I came upon a situation about a block from where I live now on Binney Street where these cops had two kids on the ground, it was winter on their knees-- hands and knees because one had a cap pistol. I saw that. Now you can say I didn't see, but I know what I saw. And I know what I seen them do in my community. So for cops who do that and then get away with it to say, will these children-- yeah, you can say they're young, but they knew what they were doing, but the cop didn't, he didn't mean that. And he's a grown man, he's a criminal, and he gets away with it and the union will defend him.

**JIM MAGUIRE:** I, I think the-- what you're explaining is somebody that was clearly a juvenile's age, you're talking about somebody who is 18 or younger. What we're talking from, from an organization standpoint is wanting to kind of change the rules on, on the definition of a juvenile moving it up to the age of 21. And, and it's our position that a 19- or 20-year-old should certainly have the, the understanding that killing somebody is against the law.

**CHAMBERS:** My friend, I'm trained in the law, and if I were assigned to defend Jack the Ripper and I took the case, I would defend him. But here's the way I would do it. What he is accused of is conduct that is criminal because the law said it was. And in order to punish a person

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for a crime, the state has to do it by following certain rules. My responsibility to Jack the Ripper is to make sure that if you get it, you apply the rules of the game that you laid out. And this is why defense lawyers would take the case of people who everybody in society say should be taken out and shot now. Everybody's entitled to the defense, and the fact that the defense is given doesn't mean that the one doing the, the defending approves of it. Adolf Eichmann, who put together what was called the final solution with the Jews had one of the top lawyers defending him in Jerusalem when they captured him down in Bolivia or wherever it was and took him to Israel. They knew they were gonna convict him. They knew they were gonna hang him. And they did all that. But that lawyer made them do it according to the rules. You, I'm gonna give the same consideration I give to a lawyer. You want to be sure that if you get him, you get him according to the rules and prove that his conduct, in fact, violated the rules. And that's how you can justify defending these low-down, no good scoundrels that ought to be taken out and shot. OK.

**JIM MAGUIRE:** Obviously, we have different points of opinion when it comes to--

**CHAMBERS:** The [INAUDIBLE]--

**JIM MAGUIRE:** --representing law enforcement officers.

**LATHROP:** Yeah, and that he opposes the death penalty.

**JIM MAGUIRE:** Yeah.

**LATHROP:** OK. I think that'll do it. Thanks, Jim.

**JIM MAGUIRE:** Thank you.

**LATHROP:** Any other opponents?

**JEFF LUX:** Good evening.

**LATHROP:** Good afternoon once again, almost evening.

**JEFF LUX:** My name is Jeff Lux, first name Jeff, J-e-f-f, last name Lux, L-u-x. I'm a deputy Douglas County attorney representing Douglas County Attorney's Office and the Nebraska County Attorneys Association. I guess, jumping to some of your questions, Senator Lathrop, about, you know, which court should we have all, all of the, the potential classes handled in? And, and our, our opinion is that

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the district court is the most appropriate for IIAs and above. Maybe that's not surprising, but the district court has significantly more experience in dealing with those more serious cases, having dealt with them because of their original jurisdiction for those. So the murders, rapes, sexual assaults, shootings, robberies, those types of crimes, they routinely deal with, the district court has more tools at its disposal than the juvenile court. By statute and by case law, a district court can impose a disposition under the Juvenile Code if it feels that it's appropriate in district court and can tap into all the services that district court-- that a juvenile court can use. The Supreme Court has said a district court has the same dispositional alternatives as a juvenile court would have under the Nebraska Juvenile Code. Nebraska statute says, says except when the defendant is found guilty of a Class IA felony whenever the defendant was under 18 years of age at the time he or she committed the crime for which he or she was convicted. The court may, in its discretion, instead of imposing the penalty provided for the crime, make such disposition of the defendant as the court deems proper under Nebraska's Juvenile Code. So the district court has that option. Obviously, the district court has the option of probation and can have a pretty long-term probation if that's what's needed, five years, they can make it even longer if they want to stack a couple of charges for probation and make those consecutive if that's what makes sense. Obviously, it has the option for incarceration. The district court routinely deals with comprehensive mental health evaluations, drug evaluations, competency evaluations and all of the expert testimony that regards that evidence. We've also got problem-solving courts, if that fits for the particular case. And the district court doesn't lose jurisdiction by the defendant aging out, which is a pretty, a pretty big advantage for having the district court, especially if the district court can, if appropriate, impose juvenile-type sanctions and dispositions. So we feel that the, the district court's the more appropriate place for Class IIAs and up, at least to begin,--

**LATHROP:** To start out.

**JEFF LUX:** --to begin, yes. So you know, a defendant-- a juvenile defendant, can file a motion to transfer. And then again, if that doesn't get transferred at the time of sentencing after conviction, they can also ask the judge that instead of sentence under the criminal code can do a disposition under the Juvenile Code.

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**LATHROP:** OK. So you talked about where the case starts out, 17-year-old kid involved in a, a shooting. That right now starts out in the district court, the bill would have it start out in juvenile court. What about the idea that juveniles or somebody under 21 shouldn't be sentenced to life in prison? Like, do you, do you appreciate that at least as bad as what they did is and as culpable as they may be, that they ought to have an opportunity decades away from here to secure some release?

**JEFF LUX:** I-- you know, I appreciate the science. And I would think that especially with, you know, my boss, who's dealt with multiple murders and one of the things he's, he's said several times that over the course of his career, the one thing that he notices is that there's more and more violence happening at a younger and younger age. So in terms of that specific issue, I would think that he would be at least open to your call in terms of, hey, is that something that's workable. Is that something we can discuss? You know that the science is there. I mean, part of me is like, well, you know, we've got-- why can't we take that evidence, that information, and the good story of, of what this person does while they're incarcerated and present all that to the, to the Parole Board and say, hey, this person deserves a chance. Look at, look at, look at the science, look at what they've done while they're in, and look at the good conduct reports and go that route because it's already there.

**LATHROP:** But if they're, if they're doing life without parole, they never had that opportunity. Right?

**JEFF LUX:** Yeah, that's correct. That's something that I believe that we should probably get people like Don Kleine involved in that decision making and talk that over because in terms of that option.

**LATHROP:** OK, I'm just gonna pick around here asking you questions--

**JEFF LUX:** Right. Exactly.

**LATHROP:** --so Senator Pansing Brooks has an idea where people are at. OK. I don't see any other questions. Do I? None.

**JEFF LUX:** Thank you very much.

**LATHROP:** All right. Thanks, Mr. Lux.

**COREY O'BRIEN:** Not to sound like a broken record, but my name is Corey O'Brien, C-o-r-e-y O-'-B-r-i-e-n, and I appear on behalf of the



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Nebraska Attorney General's Office in opposition of LB1117. Some of the issues that we have with the bill have already been addressed. Some of them are very wide ranging. But there's particularly three that I wanted to talk about having been here before this committee in 2013, after the Miller decision, I and several others in the county attorney realm, as well as on the defense realm, worked extensively with Senator Ashford to make Nebraska compliant with the Miller decision. I think we did a pretty good job making sure that our law reflects beyond what Miller actually requires. And we found a very nice balance that fits the interest of the juvenile as well as the interest of the public. So I guess my first question would be what has changed and why do we need to again make changes to the sentences for those that are under the age of 18? Then, of course, we've got the issue of what about the 18, 19 and 21-- I'm sorry, 18-, 19- and 20-year-olds. After the Miller decision, I personally handled about seven of the resentencings. I sat through the depositions. I read all the literature. And the one thing that Mr. Lux brought up, Mr. Kleine talking about, you know, this is more recurrent, it seems to be more recurrent, the, the violence. And one of the things that I learned is that [INAUDIBLE] years ago, juvenile murder was almost unheard of and it's become more and more commonplace. And is it because now that kids are less mentally developed than they were before, or is there some other explanation for that? And the psychologists were never able to answer that, but it was an interesting point. Obviously, we're opposed to 18-, 19- and 20-year-olds because, again, I'm not aware of any states that have specifically said that they should be sentenced differently. And again, we are Miller compliant. We went through this before. One of the other aspects that obviously I have issues with is the exclusive jurisdiction of the juvenile courts. I think that we've had some issues at YRTC that I don't have time to talk about at length, but some of the things could be fixed by giving us the opportunity to seek appropriate placement, whether it be in adult court or juvenile court. The final objection that I have is that there's a portion of the bill that would cost significant dollars to counties, both on the defense side as prosecutors as well and perhaps even the courts, and that would require a mental health professional to evaluate anybody that's convicted of a crime that's less than 21. Speaking for the smaller counties that I go to most of the time, they couldn't afford one of these cases. So for those reasons we have some issues with the bill. I can take any questions anybody has.

**LATHROP:** Senator Brandt has a question for you.

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**BRANDT:** Thank you, thank you, Chairman Lathrop and Mr. O'Brien. Could you continue your thoughts on the YRTC's? I'd be interested to hear that about appropriate placement?

**COREY O'BRIEN:** So one of the issues that we've run into, and I've-- I got to admit I know about as much about juvenile law as to fill the lead of a pencil. But recently, I've become more involved in it because of the issues that are going on at YRTC. We had the, the kid that stole the van along the interstate and then last week we had a, a staff member get stabbed, and we had the four assaults that I saw on the videos. So one of the things that I've learned is that if you're not charged in adult court, the only thing that we can do with you is keep you at YRTC. That's the highest placement we can go. There are situations such as some of the crimes we're talking about here, like murder, assault with a deadly weapon, they're-- unless I can bring him into the adult system, I can't put him into a jail. Sometimes we can obviously put juveniles in jail as long as they are kept from the sight and sound of adult inmates. And sometimes HHS just doesn't have the staff. They don't have the facilities that are secure enough to keep somebody that's 17 years old that takes apart a bed and starts bashing staff members over the head. And so, unfortunately, sometimes we need to put them in a secure confinement. Well, we're prevented from doing that unless they're in the adult facilities and they start out in adult court. And so sometimes we need to have those options to be able to bring those to adult court.

**BRANDT:** But couldn't that individual now be charged in adult court and sentenced to OCJ?

**COREY O'BRIEN:** He could-- well, they could, but we can't start out there. And that's the problem. So it has to start-- under the bill, it would have to start out in juvenile court, which means that the kids that assaulted the staff members there, the highest placement they can go to is YRTC.

**BRANDT:** All right. Thank you.

**LATHROP:** Assuming the case isn't transferred to district court on a motion by the prosecutor. The bill, the bill says juvenile courts, where these cases get filed--

**COREY O'BRIEN:** They start there.

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**LATHROP:** They start there. And the prosecutor can file a motion to move it to district court and say, among other things, the kid will age out, the kid's 18, or the kid's nearly beyond the jurisdiction of the court. It's a very serious offense, here's his rap sheet, send him to district court.

**COREY O'BRIEN:** But that doesn't happen overnight. I mean, you know, a motion to transfer usually gets scheduled weeks, maybe months down the road. And so what do you do with the kid in the meantime?

**LATHROP:** I was just making sure that,--

**COREY O'BRIEN:** Sure, no, I know.

**LATHROP:** --that we kind finish the thought that you,--

**COREY O'BRIEN:** And just--

**LATHROP:** --you were making.

**COREY O'BRIEN:** --one, one other point along those lines is, you know, even though the bill says-- the current law says that we can't file Is, IIs, and IIAs in adult court. There are a lot of Is, IIs, and IIAs. A 15-year-old kid commits a robbery, they get charged right out of the bat in juvenile court right now. They don't automatically have to start in adult court. So those decisions are being made every day. I don't see any reason why we should tinker with that, especially when there are circumstances where we do need to start in adult court.

**LATHROP:** Was a reason there was a line drawn probably. I see no other questions. Thanks, Mr. O'Brien. Anyone else here as an opponent? Anyone here in a neutral capacity? Seeing none, Senator Pansing Brooks, you may close. We do have a number of letters in the record and I'm gonna read those before Senator Pansing Brooks closes. Preston Shipp, The Campaign for the Fair Sentencing of Youth-- these are supporters; Gabriella Culliver; Janice Kammerer; La Verne Belt; Janet Coleman; Vickie Taylor; Delight Becker; Brian Evans, Campaign for Youth Justice; Nila Bala, R Street Institute. In opposition: Michelle Faeller Bridger; Todd Schmaderer, the Omaha Police Department; Anthony Conner, Omaha Police Officers' Association.

**PANSING BROOKS:** Thank you.

**LATHROP:** Senator Pansing Brooks.

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**PANSING BROOKS:** Thank you, Chairman Lathrop. Wow, I can bring him out, can't I? I want to thank everybody for being here. I really appreciate it. I sort of feel like I should have maybe done 25 instead of 21, we could really have had the discussion. I also want to thank Senator Chambers because he's worked on all these issues for so many years. And, and I'm grateful. So a, a few things. I guess I'll just jump quickly to what Mr. O'Brien was talking about. If you look at page 3 in the bill on line 18, it says "The convicted person may submit mitigating factors to the court, including, but not limited to." So it is not a requirement that there be a mental health-- we, we left it that way if we need to change it so that it could be a little bit more permissive. But seems like the bill on page 7 refers back to 28-105.02, which is what is on page 3 in line 18. And it says "may submit." So that's, that's number one, just to sort of throw that little argument out. Again, we have 30, we have 30 people originally charged as juveniles with life without parole, 4 have been resentenced like Mr. Abdullah that you heard today, 26 remain who were sentenced as juveniles. I, I also ask you to look at the fiscal note. The fiscal note says "This bill has the potential to reduce the prison population because it would change sentencing provisions for crimes committed by a person under twenty-one years of age." Literally, we continue to hear time and again from prosecutors who just oppose every single form of sentencing reform. We have a bill on the floor that deals with sentencing reform, and it caused such consternation with prosecutors that they met with and, and not coming to me, but all the Lincoln and Omaha senators to get them to not just oppose, but to kill that bill that will help lead to some sentencing reform. I would love-- we continue to ask, where are your ideas? Why don't you come to us? No, no, no is not helpful when we are-- when, when the Legislature is attempting to do work, that, that will make a difference with our overcrowding crisis. I, I also received information that there is at least one judge in Lancaster County that has never declined to transfer a child to adult court when a prosecutor asks. So to claim that this is just, oh, it's just gonna be terrible, we don't trust our juvenile judges. We don't trust the prosecutors to actually make an argument about why it should be moved back to juvenile court. These are bogus, these are bogus arguments, in my opinion. Lots have been transferred. You know, no one is arguing against severe penalties for these children. There are, there are-- we absolutely have severe penalties listed. I, I just think that, you know, the Supreme Court clearly spoke in both Montgomery and-- my mind just lost the other bill, Miller and Montgomery. And again, it, it says, even if a court considers a child's age before sentencing him or her to a lifetime in

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prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity. Yes, we've had some terrible cases. We, we do have terrible cases. But that doesn't mean that these children are hopeless and that their lives should end at that moment and that they should stay in prison for the rest of their lives. We've seen that, that this is not so-- that this is so. And I trust our judges. There's, there's complete lack of confidence in these-- in this testimony about our juvenile judges or any of our judges to be able to figure this out and make decisions. We, we, we just need to go ahead and, and sentence everybody to life and throw away the key and that's the answer. And then we have somebody like Shakur Abdullah who comes and has turned his life around and is now advocating for others and making a difference in our world. So I thank you for your time and patience on this bill, and I'm happy to answer any questions. Thank you.

**LATHROP:** I do not see any fresh questions for you.

**PANSING BROOKS:** Thank you.

**LATHROP:** That'll close our hearing on LB1117 and bring us to your LB985. Senator Pansing Brooks.

**PANSING BROOKS:** Hopefully, this will be quicker. Thank you, Chair Lathrop and fellow members of the Judiciary Committee. For the record, I'm Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here today to introduce LB985, which adds two new penalty classifications: Class ICA and Class IDA. This would create 12 classifications instead of the current 10. And I'm just going to remind you to look at the bill because then you can understand, some of you might not be familiar. I know you are, Chairman, but just to look at the, at the current penalties that we have for felonies so you can see what I'm talking about. Under LB985, Class ICA and IDA felonies carry the same penalties as IC and ID Classes, respectively. Except that minimum sentences are not mandatory under ICA and IDA, these new, these new penalties. When an offense is a IC or a ICA penalty, a prosecutor may elect to charge as a IC or ICA penalty at their discretion. When an offense is a ID or IDA penalty, a prosecutor may elect to charge as a ID or IDA penalty also at their discretion. I came up with the idea for this bill as I worked on other legislation related to penalties, particularly concerning our successful efforts to increase penalties on human traffickers. In the process of working in partnership with the Attorney General's Office and county attorneys, it became very

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apparent to me that the mandatory minimum penalties imposed on IC and ID penalties were creating a special problem as we all work to bring justice to traffickers. Similarly, when we worked to coalesce child sexual assault laws within our Nebraska statutes, we couldn't align penalties because we would be required to impose additional mandatory minimum laws and that is a nonstarter for many of us in the Legislature. I do not want to set penalties within the classifications that had met mandatory minimums because I believe judges should retain the discretion to weigh the myriad of circumstances relevant to the crime. I also believe mandatory minimums contribute to our overcrowding crisis. So when we looked at the penalties for trafficking offenses in order to avoid putting penalties in the mandatory minimum categories, we either had to bump the classification up to a IB, which carries maximum life imprisonment and a minimum of 20 years or place the offense in a Class II category, which carries a maximum of 50 and a minimum of 1 year imprisonment. There is a large gap between these two classes of 1 to 50 versus 20 to life. So I have had disagreements with the county attorneys on the issue of mandatory minimums as they oppose efforts to abolish them. They argue that there are cases where a mandatory minimum sentence is appropriate. They do not want judges to have sentencing discretion on IC and ID Classes, the only Classes that have mandatory minimums, by the way. Not our more serious crimes, but the IC and the ID. So LB985 presents an opportunity for county attorneys to weigh whether they believe an offense is truly worthy of a mandatory minimum. It allows an opportunity for a prosecutorial pause. It is my hope that they will use this discretion seriously, particularly since many of the offenses that fall under these mandatory minimum classifications are nonviolent drug possession cases. Officials from the Department of Corrections have indicated on other sentencing related legislation that a decrease of sentences tied to mandatory minimums could help reduce prison overcrowding. I've said it before and I'll say it again. I believe we all have a responsibility to help with our prison overcrowding crisis. This includes legislators, the Governor, judges and prosecutors. As the Council of State Governments has told us, sentencing reform is a crucial component of any attempts to reduce the prison overcrowding crisis in Nebraska. While I continue to believe that judges should not have their hands tied with mandatory minimum sentences and should be able to weigh the myriad of circumstances in each case, I also believe LB985 could help reduce mandatory minimum sentences under the current framework and give prosecutors an ability to voluntarily help with our prison overcrowding crisis. So I ask you to move LB985 to General

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File. And with that, I'll be happy to answer any questions you may have.

**LATHROP:** I see no questions.

**PANSING BROOKS:** Thank you.

**LATHROP:** Thanks, Senator. Proponent testimony?

**SPIKE EICKHOLT:** Good afternoon, Chairman Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB985. It's a, it's a straightforward bill, but it's a very important bill. Because as Senator Pansing Brooks explained, a lot-- we could arguably I would suggest that we could-- one thing we could do is moderate our penalty structure with particularly with the felony level offenses. If you look at the bill on page 2, starting at line 13 all the way to line 30, that's the classification for the existing penalties. And if you look at, for example, between lines 28 and 29 on page 2, our felonies start with Class IVs and it's zero to two and it goes to IIIA, zero to three, and then a Class III is a zero to four, and then it jumps from zero to 20. What Senator Pansing Brooks is doing, is doing something on the sort of the ceiling edge. I would first suggest the committee do that. I think that would take some of the pressure off when you start bumping into that mandatory minimum level. Also, I would respectfully suggest that perhaps the committee consider amending the bill to include something between the zero to four and the zero to twenty. Now obviously, the next fight or discussion we're probably gonna have is what crimes fit in those new categories. But I think that's-- perhaps that's a way out and they don't keep bumping into this mandatory minimum versus, versus nonmandatory minimum, or sometimes some people on one side of the equation want judges' discretion and the others don't and vice versa. You hear that. You heard it this morning. You're hearing it today. Maybe that's something we could do is just to alleviate the pressure, the condensing at the very high end. And maybe we can even try to do something on the top numbers because you've got sentencing options that range from 1 to 50. That's just a heck of a range or a 3 to 50 or a 5 to 50. And the judges go there. They go all through that range there. As Senator Pansing Brooks talked about the mandatory minimums and this deals with that problem. The problem is on the low end of those because that is such a diffi-- significant thing, particularly when we have a youth offender or even a first-time offender. This is not like the habitual criminal. It's a whole

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separate area of the criminal code. You can be a first-time offender and get caught up in one of those mandatory minimum of 3 or mandatory minimum of 5 to 50. And those are the people who judges might otherwise consider placing on probation, but they can't because of that mandatory minimum. And those are the people who may not go to prison for what would be six or ten years, but with the good time that's what a mandatory minimum calculates to be. And that's the frustration part that we see and how that adversely impacts other people in the court system. But it's a very good bill because it, it is a different way. It's a, it's a novel way in some respects of looking at this situation that we found ourselves in and coming up with a sentencing reform option, so I think it's worthy of consideration and advancement.

**LATHROP:** No questions. It must be the last day of the week. Any other proponents? Seeing none,--

**COREY O'BRIEN:** Opponents?

**LATHROP:** Good evening.

**COREY O'BRIEN:** Thank you. I'll be brief. My name's Corey O'Brien, C-o-r-e-y O-'-B-r-i-e-n, with the Nebraska Attorney General's Office testifying in opposition to LB985. The reason why we are in opposition to this bill is: one, I gotta admit that I'm a little confused about it. Two, the issue that we have is, and to remain consistent, as we have on other bills is county attorneys and prosecutors they have this discretion and they use this discretion every day. It does not need to be legislated. You know, now you're giving us an option of 5 to 50. I'm really shocked that the defense attorneys are in favor of this because it just gives us and other prosecutors an option to give a more serious sentence then-- we normally drop these down to Class II felonies. So you know, every day a decision is made, whether or not somebody gets caught with 12 grams of cocaine should be charged with a ID felony or a II felony. And every day prosecutors sit there and go, OK, he's got no record, he had no weapons, there's no violence, seems like a good kid. We're gonna cut him a break and we're gonna charge him as a Class II felony. Our sentencing structure that exist in 28-105 is getting longer and longer by the day and it's more and more confusing by the day. And I'd like to see if we could just keep it more simple. So we'd ask you to oppose 28-405 [SIC] and not send it to the floor, because, quite frankly, it does something that is already done every day.



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**LATHROP:** OK. I don't see any questions after that.

**COREY O'BRIEN:** Thank you.

**LATHROP:** Anyone else here in opposition-- to testify in opposition? Anyone here in a neutral capacity? Seeing none, we do have two letters in opposition: Anthony Conner, with the Omaha Police Officers' Association; and Todd Schmaderer, with the Omaha Police Department. Senator Pansing Brooks.

**PANSING BROOKS:** OK, well, I'm taking a breath right now so that I don't just lose it. But I called the AG's Office, I asked them how they, you know, what they thought. If they had some concerns about it, they have come to me two different years in-- on two different bills to ask me to help coalesce and-- different penalties like on child sexual assault and on human trafficking. And I've had to say, no, because they are mandatory minimums to, to make them be the same. So to come forward and say, oh, we see no purpose for this when it's quite clear that there will not be a coalescence of these penalties until we have that option available, that there might not be a mandatory minimum. So I-- I'm, I'm really aggravated, of course, you know, I'm grateful that the county attorneys didn't come forward and happy about that. But I do want to point out the fiscal note and say to you that it says "This bill has the potential to reduce the prison population." If the impact of this bill is to decrease the state inmate population by more than the current law, then the Department of, of Correctional Services could see a reduction in their per diem costs. The FY19 per diem costs for an individual inmate was \$9,408 per year, which includes DCS inmates in county jails. It goes on to say: If the impact is to decrease the state prison inmate population by more than current law, this could help reduce the prison population, which could help reduce prison overcrowding. As of February 2020, the prison population was at 156 percent of capacity, or 159 percent if DCS inmates housed in county jails are included. So again, no judicial discretion. And, and here we have, nope, we don't even want prosecutorial discretion. And so the answers are no, no, and no. And I'm, I'm-- this continuation, since I've been in the Legislature now six years, this continuation and refusal to come to the table and figure out anything and just say, no, that we don't understand this, this is confusing. There's nothing confusing about it. In fact, I came up with this idea when I was meeting with the Attorney General's Office and they know it. So I'm very disappointed. Please don't bring me any more of your bills where you want to coalesce the, the various

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penalties in our laws, because it's disingenuous. So I appreciate this time. I'm happy to answer any questions and that's it. I hope you'll pass this bill forward, because I think it's a good way to allow prosecutors, some who might not want to use a mandatory minimum, to go forward and prosecute an individual without that minimum and to allow the judge to determine what should happen, just as in our most serious penalties. Thank you.

**LATHROP:** OK. I don't see any questions. That might be everyone's looking forward to Senator Wayne's bill.

**PANSING BROOKS:** Yeah, I bet that's it.

**WAYNE:** I doubt that.

**LATHROP:** Senator Wayne, good evening.

**WAYNE:** Good evening.

**LATHROP:** You know, you left your LA here last night to open on a bill at about 8:00.

**WAYNE:** Yeah, so I decided to stay tonight because--

**LATHROP:** That's--

**WAYNE:** --I'm being nice and we just got done in Government, Revenue, and now here. So it's been a--

**LATHROP:** OK.

**WAYNE:** --long day. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. I'll try to read this quickly, because I'm sure we will not have a lot of questions. LB1181 is the Fair Sentencing Act, which makes several changes to the criminal code-- or criminal law and sentences for offenses with mandatory minimum penalties. I got this idea from the First Step Act, which Trump-- President Trump signed into law. So I think it will be able to pass this body. LB1181 would prohibit any defendant from being held in custody for any offense awaiting trial for a period of time longer than the maximum sentence possible that imprisonment for the offense in which the defendant is being currently held. Believe it or not, that happens. So if you have something that's-- you only get penalty

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of 6 months, you'll sit in jail for 6 months and then you'll go 45 days or 30 days after that and you'll get time served and you actually couldn't get more than what you've already got. And you actually wasted a couple days-- more than a couple, usually around 20. Some people are held on jail for bonds for months and months awaiting trial and even for misdemeanor offenses. And they actually max out before they're even sentenced. This bill also makes two changes to mandatory minimums. It eliminates mandatory minimums for drug offenses. A mandatory minimum sentence-- you guys know that definition, so I won't read it to you. But basically, you know that they don't earn any good time. Some drug felony offenses carry a mandatory minimum. LB1181 would provide means in which the court could-- would be permitted to not impose such mandatory minimum on drug offenses. If the court finds by considering usual factors that the judge is considering a sentence other offenders, such as a post-supervise-- I'm sorry, PR-- PSR, then they can look at those and say basically you don't need to do mandatory minimum. We'll serve it as a minimum, not as a mandatory minimum. In regards to habitual criminal reform under the current law, a person who is convicted of a felony offense and sentenced to prison for two prior occasions may be charged a habitual criminal for any subsequent felony crime. This is Nebraska's version of the three-stripes law-- three-strikes law. If a defendant is charged as a habitual, it means that the sentence they are facing is at least 10 years to 60 years imprisonment. The ten-year minimum is a mandatory meaning that person actually serves ten years and there's no good time. The habitual criminal penalty replaces the penalty for the underlying felony charge. For instance, if a underlining crime is a Class IV felony is zero to two, such as simple possession of a controlled substance, the person is alleged to be a habitual criminal, then the potential penalty of a zero to two is now a ten to sixty. LB1181 would eliminate nonviolent felony offenses from the application of the habitual criminal law. A nonviolent felony is any felony that does not contain an element of sexual contact, sexual penetration, a threat of to inflict serious bodily injury or death on another, or the infliction of serious bodily death, injury, or death on another, or the commission or attempt of kidnapping, false imprisonment, arson, human trafficking, or use of explosives to commit a felony. Finally, LB1181 provides for a means by which a prisoner may ask the court to resentence itself if the Legislature eliminates or reduces the penalty in which the prisoner is serving a sentence. And this is in response to Senator McCollister's change to the constitution. And I think there's even a legal challenge that says that judges may have the

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authority to do so today. And so that's what that section of the bill does.

**LATHROP:** OK.

**WAYNE:** With that, I'll answer any questions.

**LATHROP:** Seeing none, we'll take proponent testimony at this time.

**SPIKE EICKHOLT:** Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of both the Criminal Defense Attorneys Association and the ACLU of Nebraska in support of LB1181. I want to thank Senator Wayne for introducing the bill. There are four components of the bill, three of the components you've already heard about all day today, even a little bit this morning. And in many respects, this is-- I suppose you'll probably be able to end today's hearings because it does sort of have all those earlier issues you've heard today. The one part I want to maybe ask the committee to consider, if you're not gonna be able to move anything else with respect to mandatory minimums, habitual criminal reform, or any kind of resentencing process, at least the bond part that's on page, page 4, lines 19 to 24. Because that does happen, it doesn't happen very often, but it does happen perhaps in some of our larger counties when somebody's held on a high bond for a relatively low offense. And if they insist on having a trial and they don't want to plead it out, it's not uncommon or it's not-- I would not say it's common necessarily, but it does happen that people are incarcerated for longer than they would be if they had just pled it out and been serving the sentence the entire time. We've heard about that over the interim when we had the interim studies on the bond reforms as well. You heard testifiers talk about that. That's one component I think is separate perhaps from the mandatory minimums components as well as the habitual criminal reforms. I think what Senator Wayne is trying to do is encourage the Supreme Court possibly to reconsider that decision and [INAUDIBLE] those other cases which held that a final order can't be asserted by the sentence. You know, other states have done this, this is modeled after the federal Fair Sentencing Act. Other states, I think I mentioned in an earlier bill, that Delaware passed a bill last year that provided one that amended some habitual criminal offenses. They also provide an opportunity for those people who are serving earlier and post-sentences to go back in front of the judge to be resentenced under that scheme. Maybe our Supreme Court will reconsider its decision. Maybe that's a way to resolve this. It's worth a try. And I would ask the court to consider-- or I'll ask the committee to at least consider that point.

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I've made the points I made earlier about mandatory minimums, I think the committee gets it. One thing about this, it does have that what other states call the escape [SIC] valve to the mandatory minimum. And that's what Senator Wayne talked about with the drugs where it's not an issue necessarily what's mandatory or not, but the defendant at least has an opportunity to basically plead to the court, if you will, don't do the mandatory minimum to me. It wouldn't be just for whatever reason. You can see it in the Presentence Investigation Report, the PSR, or anything else you can somehow come up with, whether it's an evaluation you've had separate or something. It's a way out. It's an escape valve. I think Arizona did that a while ago and a number of other states as well. I distributed some things that other states have done, and that's not-- that's a typical thing that other states have done. And really all these ideas-- I think I said somebody earlier this morning-- I pitch some of these ideas to people, I'm just doing what other states have done. I'm not that clever to come up with a lot of these things. We, we so quickly follow what other states in implementing all these crimes, and it just seems like that's not an answer or justification or even kind of valid point that anyone is willing to consider to take one away or to mitigate it in some way. I'd ask the committee to do that.

**LATHROP:** Spike, on the-- on that escape valve that you were talking about. So is it presumptively mandatory minimum, but somebody has to overcome that with some kind of an argument and say,--

**SPIKE EICKHOLT:** Right.

**LATHROP:** --in this particular case, the mandatory minimum is unjust? So what's the, what's the burden? Just a burden of persuasion with the court?

**SPIKE EICKHOLT:** I'd say it's probably a burden of persuasion. Senator Wayne left it-- look like he left it pretty straightforward and simple. But I think you could look at it-- or perhaps-- you don't want to shock the court or have a whole new process to the court, so what Senator Wayne did makes sense, it just refers to the same fact the courts always want to consider. And maybe it's just preponderance on the defendant's side. Well, that's a little bit tricky because usually the burden of proof is on the state side and maybe it could be something that they have to sort of disprove the imposition of mandatory minimums, something like that. I hadn't really decided how that worked.

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**LATHROP:** Do you think we can make it presumptively a mandatory minimum and require the defendant overcome that presumption with the,--

**SPIKE EICKHOLT:** I think you probably could.

**LATHROP:** --the circumstances.

**SPIKE EICKHOLT:** I think you could for sentencing, yeah. As long as you were found guilty, advised all the way along the way if you pled to it or have been found guilty after trial, that the worse you're gonna get is mandatory minimum and the defendant knows it, I think the court always has the ability to go down, and I think it's fair to put that burden on the defendant.

**LATHROP:** OK. Appreciate your testimony. I assume there are no other proponents. Anyone else here to speak in favor of the bill? Anyone in opposition?

**COREY O'BRIEN:** Good evening, my name's Corey O'Brien, C-o-r-e-y O-'-B-r-i-e-n, and I'm with the Nebraska Attorney General's Office appearing in opposition to LB1181. Some of the issues that we have with LB1181 are similar to what we had to Senator Vargas' bill respected to the habitual criminal so I won't repeat that. And then obviously similar to what our reservations were with Senator McCollister's bill, we have serious questions on whether or not Section 6 and Section 7 of the bill are constitutional without the passage of a constitutional amendment that McCollister had-- Senator McCollister had proposed. With respect to Section 4 of the bill, that does seem to be something that we would be interested in talking to Senator Wayne about and seeing what we could accomplish there because I do know that that happens and that's, that's a cost on our counties and our correctional system that could easily be allayed and free up space for the people that actually need to be in those facilities. With that, I'd ask-- answer any questions anybody has.

**LATHROP:** So you're OK with the idea? I, I don't know how that isn't unconstitutional to hold the person beyond the time that they could possibly get.

**COREY O'BRIEN:** I agree.

**LATHROP:** OK. What about this idea of making the mandatory minimums, which are now just plain mandatory minimums, but make them

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presumptively mandatory minimums subject to permitting the convicted to argue or overcome that presumption with some--

**COREY O'BRIEN:** Is that--

**LATHROP:** --call it clear and convincing something?

**COREY O'BRIEN:** As I understood it, and Senator Wayne can correct me if I'm wrong or somebody can correct me, I thought that that applied just to the drug offenses. Maybe I'm wrong about that, but the nonviolent offenses,--

**LATHROP:** OK.

**COREY O'BRIEN:** --but mainly drug offenses.

**LATHROP:** So you're warming up to that idea?

**COREY O'BRIEN:** You know, I haven't really thought about it enough. My brain is fried like everybody in this room right now. So I don't know that I can necessarily answer that. But certainly--

**LATHROP:** You might, you might break your pattern here today.

**COREY O'BRIEN:** --but, but, but, but certainly I think our office and all county attorneys recognize that we only want people doing mandatory minimum time, habitual time that absolutely deserve it. So if there is a reason that they don't-- and one of the things that we talked about, and I think two years ago Senator Wishart had a bill talking that we got to the issue of the safety valve, the safety valve is one that's used in federal law. And again, that's something that I know about as much as to fill a thimble. But as I understand it, the safety valve is, and everybody is gonna groan, is something that is utilized by the prosecutor in order to determine whether or not somebody should actually get the mandatory minimum that's statutorily required.

**LATHROP:** Isn't that kind of what we had here with Senator Pansing Brooks's bill that would give you the opportunity to impose the same five-year sentence without making it a mandatory?

**COREY O'BRIEN:** My, my objection, my objection to Senator Pansing Brook's bill, and I don't, I don't understand why it's being taken personally, is, is that we have been consistent, our office, in saying we want bills that mean something. County attorneys have that ability

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that's in the bill right now. And so our objection is that from a procedural standpoint, we can charge somebody with a Class II felony or we can charge them with a mandatory minimum and we just are diametrically opposed to legislating discretion.

**LATHROP:** What's the federal safety valve you just talked about?

**COREY O'BRIEN:** As I understand the federal safety valve to be is that if, and again, don't hold me to it, if certain checklist items are present, then the defense attorney can talk to the federal prosecutor about federal-- utilizing the federal safety valve and basically they make an application to the court and it's up to the federal prosecutor to agree or disagree, and a lot of times they agree and say, OK, you shouldn't be held to the mandatory minimum, but sometimes they don't. So it's, it's kind of finding common ground on those cases where the sentence may have been a little too harsh. Now frankly, in the state system, those conversations usually happen before they enter a plea. But because of the rigid statutory guidelines that they use in the federal system, they may not necessarily know what the sentencing range is when they enter a plea and then they get the PSI back and go, oh, crap, he's now at a level 36. What can we do about this? And then they go to the prosecutor and they say, can we employ the safety valve and reduce that number down so that, you know, instead of 47 months he's gonna do 37 months?

**LATHROP:** OK. Senator Pansing Brooks.

**PANSING BROOKS:** Can't help responding to that one. So I guess if it seems a little bit personal, it's because it is. I consider Attorney General Peterson a friend and I consider now Josh Shassere a friend. I called your offices yesterday and asked about it and said that the county attorneys were not going to come forward on my bill and to see what was going on. I never heard a word from your office about this big problem that you have and how, oh, this just isn't even necessary. But clearly, yes, you can do what you want. But the problem is that it's not part of statute, not everybody knows that that's available. So I, I don't-- I'm hoping that we can get to a point where we can work together again, because I've had great interaction with the Attorney General's Office and I expect better communication in the future on, on things that I called you about and asked what's the issue? And then to show up after I've called and, and act like you're surprised that I have some problem that you show up without communication. Yeah, I do have a problem with that. So thank you.



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**COREY O'BRIEN:** You're welcome.

**PANSING BROOKS:** And thank you for that really smarty answer, too. So--

**COREY O'BRIEN:** Thank you.

**LATHROP:** Thank you. Other opponents?

**JEFF LUX:** Good evening, my name's Jeff Lux, first name Jeff, J-e-f-f, last name Lux, L-u-x. I'm a deputy Douglas County attorney representing Douglas County Attorney's Office and Nebraska County Attorneys Association. I guess just jumping into the ROR Section 4 section of the bill. I guess I just, I just had some questions in terms of, you know, what happens if we have multiple offenses? Are those considered the sentences concurrent, consecutive? How do we figure that out? Does the maximum possible sentence include good time so that a Class IV maximum sentence two or it's actually really just a year with the good time? You know, those kind of issues in terms of, you know, how would this really work in, in practice. In terms of the, the mandatory minimums with regard to the drug cases, actually like Senator Pansing Brooks's bill from before better than the language in here, kumbaya. But if we want to talk about safety valve, I would argue that this really isn't a safety valve. What the safety valve like that the federal government uses, there are, you know, factors that are laid out. It's not as vague as would not serve the public interest. Their actual age, record, the scoring that they do before a presentence investigation, whether there was violence involved, was there violence involved in the previous record? Was there a gun involved? Was there any weapons involved in this particular crime? Is the defendant willing to cooperate if he's gonna get the benefit of a safety valve to take the mandatory minimum off? Is the defendant gonna take responsibility for his actions? Those are kind of factors, I can't remember them all but that are built into the safety valve. And if they meet those criteria, it keeps the first-time offender out, the person that may be young and made a stupid mistake, but a really big crime. It can safety valve them out so that the mandatory minimums are kept for the people that we are really worried about that we'd like to put a mandatory minimum on. So I mean, so the, the kind of wide range and the standard of would not serve the public interest, I guess is worrisome for me. With regard to the resentencing portion, I think it was illustrated by the First Constitutional Amendment that I think that's-- if you want to go that route out, I think you got to change the constitution and there's a real separation of powers issue. And I think why the feds are able to do it and not us, number one, our

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constitutional language. Number two, is the feds got rid of their-- completely got rid of their federal parole system. And so they got rid of that and then implemented a federal court to allow them to have jurisdiction throughout the, the time that somebody served their sentence.

**LATHROP:** OK. Any questions? So we're at the end of the day and you're up here representing the County Attorneys Association. I'm gonna ask you a question and put you on the spot,--

**JEFF LUX:** Great.

**LATHROP:** --because we've, we've just been through six bills. And I appreciate you being down here today. And you've expressed opposition to all of these changes that are some-- in some manner or another sentencing reform. In November, we had the Director of Corrections in front of this committee during an interim hearing when the population was exactly where it's at today or pretty darn close, within a couple guys. And he said, I'm 150 men away from full, 150 people, more men away from full and in 2 years we grew the population by 400. So we are looking at full within the year. OK? And, and last night, Frakes was in here and told us if we were to try to build our way out of this, we would have to build 200 beds a day-- or pardon me, a year just to tread water, given the projections that we received from JFA just a couple of weeks ago. So I'm asking, is there any sentencing reform of any type that the county attorneys would agree to that would help alleviate the overcrowding situation? Because I think most people believe that we can't build 200 beds a year and build our way out of this problem. And today you have sincerely come before this committee in opposition to each one of these bills that provide some measure of, some measure of sentencing reform. And we are in a place where there is delusional thinking going on. It's, we don't have the money, the interest, or the resources to build 200 beds a year and we don't want any sentencing reform and we are watching a train wreck happen in slow motion from the Judiciary Committee. And I expressed my frustration last night with the director, everything that this Legislature puts forward as an idea, they come in and say that's not the right solution, you're wrong, see you later. What's your plan? I don't have one. OK. So we're policymakers and last night we heard this, too, we need to do things collaboratively. And I try to sit down with the director, there's nothing collaborative about it. We just keep getting told we're doing this wrong and we're on the wrong path. And I'm asking you as a representative of the County Attorneys Association--

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and I know, Jeff, I'm putting you on the spot, but is there anything because this isn't something that can wait in my judgment, it's something that is at a crisis level. And people are walking around like, we're gonna-- you were there, you were there this morning. I saw you. You listened to that debate for 45 minutes. The usual suspects stood up with little background on the topic and started in on we want to take care of the victims and we don't want to let criminals out of jail. And it's not that simple. And you know it, and we know it. And I'm asking you if you have any direction for this committee or if the answer is figure it out, but don't, don't come to-- don't put bills out on the floor that provide sentencing reform of any kind.

**JEFF LUX:** Well, that wasn't--

**LATHROP:** I know I'm putting you on the spot.

**JEFF LUX:** --that was a short question?

**LATHROP:** No, it is, it is a question. The question is tell us-- give us an idea-- what, what would be acceptable? Because everything you heard today, what was on the floor this morning, every bill that we put out, every bill that we've considered that might in some measure provide some measure of relief in the overcrowding that we experience has been opposed by the Attorney General's Office, law enforcement predominantly, and the County Attorneys Association. And then when we talk to the director-- I put a bill in last week to build more beds, you were there. He said, don't give them to me. I don't want them and I don't need them. It is, it is in a place where it's like watching a, a train wreck in slow motion. So help us out.

**JEFF LUX:** I was, I was at that Appropriation's hearing.

**LATHROP:** Yes, you were.

**JEFF LUX:** I, I can't pretend to speak in support of your bill, the County Attorneys Association.

**LATHROP:** I, I, I appreciate, I appreciate that, I appreciate that.

**JEFF LUX:** And it was a-- and obviously that in terms of where they put who when someone's incarcerated is outside of our lane. Do we think that there should be a step down? I think that really makes sense in terms of Corrections so that there's people that aren't just being plopped out on the street.

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**LATHROP:** Even if we built that, even if we built that, it would take three years probably, and we would still be in an overcrowding emergency. And then have to, then have to build at a 200-bed-a-year pace, and whatever those costs, \$50, \$60 million, the cost to run them, if we can find people to work in them, is 10 percent of that number annually. And--

**JEFF LUX:** I, I guess from our perspective specifically, you know, the experience that we are having in Douglas County is that we're diverting hundreds of felony cases through program after program.

**LATHROP:** We appreciate what you're doing. I can tell you as much as you're doing is--

**JEFF LUX:** One of the things that we're learning from doing those types of programs is how much work it takes, how many beds there needs to be, how many treatment providers there need to be, how many services that they need to be, mental health, PTSD, drug and alcohol, we don't have them, we don't have enough. And so to be able to say, OK, well, let's start lopping people out of prison, we don't have the capacity in the community to give the services that they need so they don't reoffend. We don't have enough mental health beds. We don't have enough treatment providers. We don't have enough of these options that I would really love to have on the front end for sure to try and take care of these to divert more people. But it wouldn't--

**LATHROP:** Divert 200.

**JEFF LUX:** And because that we don't have a lot of those options, we-- there's-- we don't have incentives to make sure that people who have a psychology degree stay in Nebraska and work on these types of cases. We need more of all of these things because of the huge problems that we have, addiction--

**LATHROP:** So let me, let me ask the question differently, since you brought up resources. If we had the resources, what sentencing reforms would you be comfortable with?

**JEFF LUX:** Well, of course, all that costs a lot of money and it's a lot of money on the front end. It's a lot of money on the back end. It gets spent one way or it gets spent another. When--

**LATHROP:** I know.

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**JEFF LUX:** --coming from our perspective, when a lot of people that we give a lot of chances to, and then that's why we say, look, if-- you know, they come out of Douglas County, they pretty much earned it because a lot of times they've went through everything we have.

**LATHROP:** Jeff, Jeff, that isn't answering the question. We will, we will be up-- in the next ten years, we'll be up to about 7,500 inmates. That's, that's what we're gonna-- we're at 56 now. And I think we'll go by a, a couple thousand in the next ten years. And we can't-- this place isn't gonna buy off on building. The director isn't there, the administration isn't there. Nobody's there. We need some help. And telling us no all the time isn't helping us. And at-- you've, you've listened to me make this plea to you for two years.

**JEFF LUX:** Yes. Yes. And I guess when we look at our lane as, as a prosecutor, can we divert? Yes, we can. The folks that are already down there, they deserve to be there, in our opinion, because most of the time in Douglas County, they've run through everything else. They've already shown to the judge that probation isn't gonna work, treatment isn't gonna work. We've, we've, we've, we've, we've gone through and done a bunch of it. Now--

**LATHROP:** I-- I'm going-- I, I don't want to be disrespectful, I don't want to be disrespectful, and I'm being very, very sincere, but I don't hear you giving me an answer. I, I hear you telling me what you're doing, which this committee appreciates. I-- I'm being very sincere, Jeff, when I tell you we appreciate what they're doing in Douglas County with problem-solving courts. This--

**JEFF LUX:** And I think that what we're doing in Douglas County needs to be replicated across the entire state because we are diverting hundreds, if not more than that, we've got 700 open cases before our board of mental health, 700. Most of those would be in the criminal justice system. We're, we're diverting 2-- 300 cases all felonies. I mean, yeah, those numbers are up-- we're talking into the thousands. And--

**LATHROP:** Tuesday, we'll go take up Senator Pansing Brooks's bill. We still got an hour and a half to go. And can I go on the floor and say, I've talked to the county attorneys and they are not in favor of any sentencing reform?

**JEFF LUX:** Any sentencing reform?

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**LATHROP:** See, that's what I'm looking for. I, I get-- when you tell me what you're doing, when you tell me what you're doing, first thing I want to tell you is thank you. I know you divert people. I know you have people that you send for mental health treatment and you have problem-solving courts. All of that's true. And we still are going to grow our population by 200 people a year for the next 10 years. We don't have the room. I mean, we're gonna be putting them in the hallway in bunk beds or out in the lawn.

**JEFF LUX:** I think that if we were to sit down with my boss, Don Kleine, and talk about, I mean, different things that have come up today in terms of an actual safety valve. I mean, there are those things that, you know, we could talk about. Obviously, I can't promise everything for the entire state and the entire County Attorneys Association. But you know-- I mean, we're-- we've charged last, last-- you know, last year we charged 4,800 felony cases. There's just-- there's a lot of crime going on. We try and divert as much as we can. We've been expanding that. I don't believe that we overcharge things. I'm sure maybe some defense attorneys might disagree. But if I've got someone who's a drug-- you know, gets a ID, IC charge on a drug offense, I'm looking at them, do they have a prior record? If no, if they're young, I'm, I'm giving them a II. I'm not even keeping them up at the ID, IC level without a mandatory minimum. They're getting a II. I mean, there's, there's things that we're doing on the front end that are meaning that they're not gonna be getting those higher sentences. But some of them are different.

**LATHROP:** In our lane, in our lane, we got the Department of Corrections, it's at 160 percent and, and--

**JEFF LUX:** Yeah, and I don't,--

**LATHROP:** I'll let you go, I got to talk to Senator Chambers, he needs to leave.

**JEFF LUX:** --I don't have any control over it they're medium or they can-- you know, Community Correction-- where they stick who, where, when. I mean, I'd like a bunch of them to be in Community Corrections so we can work with them so they become-- get out and become a productive member of society.

**LATHROP:** OK. Thanks. I appreciate that. And I'm being sincere when I--

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**JEFF LUX:** Well, thank you.

**LATHROP:** Thank you.

**BRANDT:** Is Wayne closing?

**PANSING BROOKS:** Is Wayne closing?

**BRANDT:** Yeah, he gets to close.

**PANSING BROOKS:** Oh, I'm sorry.

**PANSING BROOKS:** Or neutral?

**LATHROP:** Oh, yeah, sorry.

**PANSING BROOKS:** He also needs neutral.

**WAYNE:** Any neutral?

**PANSING BROOKS:** Neutral? OK, he's gone. So is there any neutral testimony? Nope. Senator Wayne, to close.

**WAYNE:** OK. I wasn't gonna talk a whole lot, but there's some things I want to just point out. The First Step Act of 2018, it broadened the safety valve at the federal level before-- it was a point system, it still is a point system at the federal level even in 2018. But what happened differently at the federal level now is they expanded the, the point system to add an extra point so you can have the safety valve and they also reduced stacking of criminal crimes. And they also added nonviolent-- a whole bunch of nonviolent crimes that previously wasn't a part of the safety, the safety valve. So that's what happened with, with Trump and the Republican Congress and everything, which brings me to my next point. And I don't think people who don't practice in criminal systems really know this, and so that's why I want to stress it. When I first entered in 2000, I came out in 2005, if you robbed a bank, you were charged federally, the state didn't pick it up. If there was a gun crime, the state didn't pick it up. You were going federally. I, I worked-- actually I interned in Don Kleine's office. We turned them over, in most major drug crimes, we turned over. But the feds are now understanding that they can't sentence their way out of it at the federal level. So if you robbed a bank today, you are typically charged at state level. Most of our drug operations that are metro wide with law enforcements and with the feds, they're charged also at the state level because of the mandatory

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minimums and especially gun crimes, because of the mandatory minimums. The federal government and the feds and the prosecution of the judges in Congress are moving in a different direction. And there are more state crimes that have not moved in decades. When you were charged a felony for stealing a \$500 item, it was because you walked into somebody's house and you picked up a big TV. Today, that's a phone. And none of our laws have been updated to reflect that. It isn't even the same context of what it was when it was passed. And because of our laws haven't caught up, we're dealing with the issues that what we got right now. And I think that's the major problem that we have, is that we're just not updating our code. It isn't just criminal reform on the back end with sentencing reform. We got to have bigger conversations about our criminal code and whether the crimes actually matter. You get, you get less of a penalty for stealing a horse than you do for stealing an iPhone in Nebraska. With that, I'll answer any questions. Go ahead.

**LATHROP:** Senator Brandt.

**BRANDT:** iPhone's worth more.

**WAYNE:** No, it's not. Thank you.

**LATHROP:** Thank you, Senator Wayne. That'll close our hearing on LB1181.