

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 19, 2022

LATHROP: Looks like we're continuing our tradition of showing up a little bit late to the committee. I'm referring to my members. Are we on TV right now?

LAURIE VOLLERTSEN: Yes.

LATHROP: OK. I take all that back. Welcome to the Judiciary Committee. Our first hearing of 2022. Good afternoon. Welcome. My name is Steve Lathrop. I represent Legislative District 12 in Omaha and I Chair the Judiciary Committee. Committee hearings are an important part of the legislative process and provide an important opportunity for legislators to receive input from Nebraskans. If you plan to testify today, you will find yellow testifier sheets on the table inside the doors. They are right over there on that table. Fill out a testifier sheet only if you're actually testifying before the committee and please print legibly. Hand the yellow testifier sheet to the page as you come forward to testify. There's also a white sheet on the table if you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you are not testifying in person on a bill and would like to submit a position letter for the official record, all committees have a deadline of 12:00 p.m. Central Time, the last workday before the hearing. Please note that there is a change this year in position letters to be included in the official record must be submitted by way of the Legislature's website at nebraskalegislature.gov. This will be the only method for submitting-- submission of letters for the record, other than testifying in person. Letters and comments submitted by way of email or hand delivered will no longer be included as part of the hearing record, although they are a viable option for communicating your views with an individual senator. Keep in mind that you may submit a letter for the record on the website or testify at the hearing, but not both. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally by anyone, anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have copies of your testimony, bring up at least ten copies and give them to the page. If you are submitting someone-- testimony on someone else's behalf, you may submit it for the record, but will not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table turn-- will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that

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you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone the use of cell phones and other electronic devices is not allowed during public hearings, although you may see senators use them to take notes or stay in contact with staff. I would ask that everyone look at their cell phone and make sure it's in the silent mode. A reminder that verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Since we have gone paperless in Judiciary Committee, senators will be using their laptops to pull up documents and follow along with each bill. You may notice committee members coming and going. That has nothing to do with what-- how they regard the importance of the bill under consideration, but senators may have to introduce bills in other committees or have other meetings to attend to. And with that, I'd like to have the committee members introduce themselves, beginning with my friend, Senator Brandt.

BRANDT: Good afternoon, I'm Senator Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

McKINNEY: Good afternoon. Senator Terrell McKinney, District 11, north Omaha.

LATHROP: And for those of you that are kind of new to this process, my committee members, it looks a little thin here. Some of them may be introducing bills in other committees. Some of them may just be wrapping up lunch. I know-- anyway, I expect others to come along, and that's not uncommon. Assisting the committee today are Laurie Vollertsen, our committee clerk; Josh Henningsen, one of our two legal counsel; and our committee pages today are Bobby Busk and Morgan Baird, both students at UNL. We'd like to thank them for being here today as well. And with that, we'll begin our hearing on the first bill today, which brings us to Senator Wayne and LB946. Senator Wayne, welcome.

WAYNE: Thank you, 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 had to go outside because I wanted to make sure the cameras weren't here for this bill.

LATHROP: We were wondering the same.

WAYNE: This isn't the bill to put on cameras. And the reason is, is, first, I want to point out that the bill itself-- the language, there are some problems with the language and juveniles in custody of the

state is fine, but where it says "or" it should probably be under the jurisdiction of the court, which would be probation. And so first, I do have a conflict and I'm actually in litigation regarding the kid who had some off-label medication. But that isn't the reason for this bill. The bill-- and actually if this bill passes today, I wouldn't get a dime. So there's really no real conflict. But the issue is what I discovered through that case, but more importantly, when I was working with juveniles when-- in Douglas County. And I think some of this will resolve itself, so I'm hedging here saying, I don't know where this bill will go from here. There's going to be more conversations with DHHS and the courts. But what seemed to happen is that there was no real database and no real clarity on when they were prescribing medication and particularly off-label. And the word off-label is very broad, but where I'm trying to focus in on is psychotropic drugs and just mental health drug-- mental drugs, deals-- things that deal with the brain and the chemical makeup of the brain, whether it's psychiatric or psychotropic. Because what we're finding out is that kids who are in the system, if they act up or have a behavior, they want to just throw medication at them and treat them to calm them down and make them zombies versus actually deal with the underlying issues. It happens a lot at YRTC. But the bigger issue isn't necessarily the YRTC, but it's the transition back from YRTC. YRTC will have them on medications with local providers. When they transition back, there is a clear directive to the parent or to the individual who's overseeing that person, what drugs they're on, or even where to go get drugs. And so they'll immediately just get off drugs. And that's not very good for people who are dealing with whatever mental issues or behavioral issues that just go, go cold turkey and that we see that quite a bit. And I think you'll get some testimony from DHHS, which will talk about the conflict of probation to when they, when they actually are dealing with that. The other issue we had, quite frankly, was with Saint Francis, not necessarily Saint Francis, but the number of turnovers with caseworkers. And that's kind of where this bill came from and why I'm hedging my bet because I don't know how it got to Judiciary. I wasn't paying attention. I thought this was going to be a DHHS bill in that committee and Senator Arch and I had a conversation over the summer during the investigation about just how many kids are on these types of drugs, and I think it is a serious, serious thing we have to look at. So I'm not, I'm not here to say we should ban all, but I am concerned that, one, we don't have an informed consent policy. Just because your parent is-- just because your child is in the system doesn't mean you lose your right to, one, educational rights or psychotropic drugs on how you medicate your kid. There may be court

orders that say they have to follow all recommendations, but a parent still should be engaged and there still should be informed consent. You don't lose your right as a parent just because they're in state custody and, two, there just isn't a clear checkup and oversight. And what I will say is since I introduced this bill, I had a conversation with the department, and if a kid is on Medicaid, there is a different type of oversight where there is a medical director who kind of oversees because Medicaid is paying for it. But if outside of that, it's really up to the individual doctor. And if you think about YRTC in Kearney, that doctor in Kearney may be overseeing that patient, but then when they come back to Omaha or to Lincoln, there is nobody to oversee that patient and it can go 60, 90, sometimes 120 days before that child is checked again on where the meds are, and what are things doing. And so just because the long-term effects of these type of drugs on children, particularly psychotropic drugs, I think as a state we have to really look into, and hopefully it can be handled by regs, but we have to really look into this issue when it comes to children being placed on these adult medications. And for those who don't know, off-label simply means that they really haven't been approved for FDA use for children. Most drugs, particularly psychotropic drugs, none of them are approved for children. They've, they've just been used off-label. It doesn't mean it's not scientifically backed. It's just not been used. And so last year, during a medical marijuana debate, we heard a lot about it's not approved by FDA, but yet there are many children who are using drugs, not in our system, being prescribed drugs in our system that are not approved by FDA. And so I think it's very inconsistent as a body for us to have that. So that's why this bill was introduced and the background of this bill. Health and Human Services said we will continue to have conversations, but I do-- I did want to raise this this year in a short session to make sure people understood it because going into a long session, we have to put some guardrails and some guidelines around this issue.

LATHROP: OK, very good. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Wayne, for bringing this bill. My experience as a farmer is in pesticides. We cannot go off-label and animal medications, I cannot go off-label. So-- and I don't know if you have the expertise to answer this or not, but is this permissible under medicine in Nebraska today to go off-label?

WAYNE: It's permissible across the country to go off-label, but it still has to meet medical standards. So there, there are still some medical standards. So let's take diabetes. Metformin has-- Metformin

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has been around-- I'm on it-- for-- 1930s, I'm looking back for somebody to say yes. If a kid is diagnosed with type 2 diabetes, they will put him on it. That's technically considered off-label, but there has been hundreds of hundreds of-- you know, research behind it to say it's OK. That doesn't mean that we should be doing it. I'm more concerned about psychotropic drugs, which have long-term effects, especially on the brain. So, yes, I think it's something as a state we have to look at. But when writing these complex bills, as you know, sometimes you don't know how to get into all the intricacies of it. And so you take one shot and get everybody to the table, come back and figure out how to do it better.

BRANDT: And then the second question is, I was surprised there is no fiscal note on this because it appears that we're going off-label to save money. Therefore, if we went on-label, I would expect there to be an increased cost to the state. Would there not?

WAYNE: Which was interesting because if you read the notes, it says it's supposed to be an increased cost, but they didn't put a fiscal note on. So I don't-- so I'm going to say no fiscal note, vote it out.

BRANDT: All right. Thank you.

LATHROP: On the bill, you don't want us to do anything.

WAYNE: No, not necessarily. I, I want to hear the testimony and I want to make sure we have a conversation. But I-- next year, I think between this committee and, and the other committee, we have to, we have to figure out something. This is a big issue.

LATHROP: OK, very good. Any other questions for Senator Wayne? Are you going to stay to close?

WAYNE: Yes, I am.

LATHROP: OK, perfect. All right, we will begin by taking-- how many people intend to testify on this bill one way or the other by a show of hands? One, two, three, four, five. The reason I ask is so we can tell the next introducer and get them in here and not have a big delay between bills. OK, so we'll take proponent testimony. If you're in favor of the bill, you may come forward and speak. Anyone here to testify as a proponent? Seeing none, opponents of LB946? Good afternoon. Welcome.

JANINE FROMM: Hello. Thank you. Should I just start?

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LATHROP: Oh, yeah, yeah, start-- give us your name and spell it for us, and then your title too.

JANINE FROMM: Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Dr. Janine Fromm, J-a-n-i-n-e F-r-o-m-m. I'm the executive medical officer for the Department of Health and Human Services, and I'm here to testify on behalf of DHHS in opposition to LB946, which would prohibit prescribing off-label medications to juveniles in the custody of the state or a court. Off-label prescribing is very different than pesticides. It's a legal practice, very common, especially for children. Estimates of off-label prescribing vary in the literature, but it's been noted to occur in one out of every five prescriptions at least. And the younger the child, the more off-label it is because we can't do studies in, in little children. The absence of labeling for a specific age group or a specific disorder or a way of administering the medication does not mean that the drug's use is improper. All of the medication used are approved by the FDA, and there's ample evidence of the efficacy and safety of the medication, which is a separate issue from how a pharmaceutical company seeks labeling from the FDA. In no way does a lack of labeling signify that the therapy is unsupported by clinical experience or data in children. Off-label use of FDA-approved medication is not using medications in an experimental fashion. It is evidence based, and it's often the best practice. Examples of medications that are frequently prescribed off-label for children includes drugs that treat gastrointestinal conditions, antibiotics, antidepressants, respiratory, and cancer treatments. About 83 percent of newborn visits, 49 percent of infant visits, and 40 percent of visits for other pediatric ages result in physicians ordering drugs for off-label use. According to the American Academy of Pediatrics, three-fourths of the prescription drugs currently marketed and approved by the FDA in the United States is off-label in pediatric marketing. Medical practitioners make medical decisions based on sound scientific evidence, expert medical management, or published literature. The FDA regulates the approval of medication, but not the practice of medicine. This means that providers can use medications in ways that are best for their patients, even if it's outside of the FDA-approved labeling. If off-label prescriptions are prohibited, many, if not most, of the medications used to treat both physical and mental health conditions would be made unavailable to our youth. Currently, at the YRTC's, about 90 to 100 percent of our youth are treated with both-- with either physical or psychiatric medications and in our foster children approximately 29 percent of the Medicaid foster children receive some sort of prescription medication. About

half are for physical health issues and half are for mental health. So this bill would withhold necessary treatment to our most vulnerable children. Please know that the medical care for each child in the state's custody is directed by a licensed medical provider and that this care, including medications, are specific to each child's medical needs. When restrictions and limitations are placed upon a physician's choice among medications, children and adolescents are exposed to unnecessary risk and do not receive the best possible evidence-based care. We are happy to collaborate with Senator Wayne to understand and address any concerns he has regarding the medical care of children in state custody, and we've started a conversation just a couple of hours ago to really start looking at some of those things. Thank you for the opportunity to testify today, and I'm happy to answer any questions that you might have.

LATHROP: Very good. Any questions for Dr. Fromm? Senator McKinney.

McKINNEY: Thank you, Senator Lathrop. And thank you for your testimony. One quick question. Has there been any negatives to the usage of off-label prescriptions that you are aware of in the YRTC's up to date-- up to now?

JANINE FROMM: If any negative outcomes?

McKINNEY: Yes.

JANINE FROMM: Well, there's always side effects from medication. Some, some kids will have a side effect, right? There's, there's no-- no. There's no negative effect because something was used off-label. Some kids might not respond well to a medication, or they may have a side effect or an allergic reaction, but that really has nothing to do with how the medication is labeled by the FDA.

McKINNEY: So if they have a side effect and a negative reaction, who's responsible?

JANINE FROMM: We are and we change the medication and make sure that that doesn't happen again. And certainly if they have a history of allergies or a reaction to medication, we don't use it.

McKINNEY: Do you communicate with a, a youth's parents or custodial guardians about which off-label prescriptions you're prescribing to the youth?

JANINE FROMM: I'm sorry, can you repeat, I'm--

McKINNEY: Sorry.

JANINE FROMM: Thank you.

McKINNEY: How, how often do you communicate with the parents of these youth or guardians about the usage of these off-label prescriptions?

JANINE FROMM: So all of the medication-- so when a child comes to the YRTC they're in our custody. We can make those decisions. But we always inform the parents when we-- if the parents are available and we want to get them to agree with us or not. And if they really don't want the medication or a vaccine or a procedure done, we don't do it. They don't have to sign informed consent because the child is in our custody, right? But we do reach out to the parents and get their input.

McKINNEY: Besides the FDA, what other evidence-based research do you rely on before you offer any of this medication?

JANINE FROMM: Well, all of the medications we use are approved by the FDA. And just to correct something that was said earlier, many of the medications are approved and on-label, but they are for a specific indication or age group. So, for example, an antidepressant might be approved for, for depression, but not anxiety. And yet in the literature, you know, there's, there's ample evidence that the medication helps with both. So we may be using it for anxiety and that would be off-label or that the medication is approved for children 12 and-- well, we don't use under 12, but 16 and over and yet we're using it in a 15-year-old. Right?

McKINNEY: So--

JANINE FROMM: So they're all approved medications. Nothing's experimental or investigational.

McKINNEY: I get that. I'm just, I'm just curious if, if you prescribe something that is supposedly for depression and not for anxiety, what evidence-based research do you rely on to make the decision to use it for something else as well?

JANINE FROMM: There's usually ample literature,--

McKINNEY: From who?

JANINE FROMM: --research from universities, from, from standards of practice that will address those things and show that they are

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efficacious in, in multiple different age groups or different-- for different disorders as well-- diagnoses.

McKINNEY: All right. Thank you.

JANINE FROMM: Sure.

LATHROP: I don't think there's any other questions. I'll just-- you will continue to dialogue with Senator Wayne?

JANINE FROMM: Absolutely.

LATHROP: I, I heard a lot of concerns expressed and it was--

JANINE FROMM: Which are my concerns as well--

LATHROP: OK.

JANINE FROMM: --and I am more than happy to, to work with him in addressing some of those things.

LATHROP: OK, very good. Thanks for being here, Dr. Fromm.

JANINE FROMM: Thank you.

LATHROP: Next opponent. Good afternoon. Welcome.

BETH ANN BROOKS: Good afternoon, Senators Wayne, Lathrop, and Judiciary Committee members. I am Beth Ann Brooks, B-e-t-h A-n-n B-r-o-o-k-s, a Nebraska licensed physician from Lincoln representing the Nebraska Regional Council of the American Academy of Child and Adolescent Psychiatry, Nebraska Psychiatric Society, Nebraska Medical Association, and Nebraska Association of Behavioral Health Organizations. I am testifying in opposition to LB946 as a board-certified psychiatrist and child/adolescent psychiatrist who has practiced for more than 40 years. I currently treat adolescents at a therapeutic group home who often are referred by state entities. These youth have caseworkers, probation officers, and guardians ad litem already working with them. LB946 would prohibit the use of off-label medications for juveniles in state or court custody. Prescribing medical professionals should be able to exercise clinical decision-making when treating patients with any condition, whether related to physical or mental health. The subsequent paragraph of my written comments, I will not extend time and just refer you to them because Dr. Fromm covered the background with off-label use. Psychiatric medications are an integral component of the treatment for

a broad range of conditions in children and adolescents. Prior to recommending any medication, the prescriber should conduct a comprehensive psychiatric assessment. And then, before prescribing, a clinician should discuss the following with parents and/or guardians: results of the assessment, diagnosis, symptoms that are being targeted for medication treatment, risks and benefits of the medication, anticipated adverse effects, and whether the medication is being prescribed off-label. When prescribed appropriately and taken as directed, medication may reduce or eliminate troubling symptoms and improve daily functioning of youth with mental disorders, which have not responded to psychosocial interventions. These can include: attention deficit hyperactivity disorder, irritability and autism spectrum disorder, depression, post-traumatic stress disorder, psychotic symptoms or disorganized thinking, impulsive aggression, bipolar disorder, severe mood swings, impulse control disorders, and disabling anxiety. Psychiatric disorders often are comorbid along with other psychiatric or physical conditions, resulting in greater clinical complexity and the need for flexibility. The next paragraph of my testimony gives two clinical examples, and it does address, in part, what Senator McKinney was raising. Here cited is the Child/Adolescent Anxiety Multimodal Study, and you can see that it was well done and they were using an off-label medication. In this case, Zoloft, which is now available generic. To close: Judicious clinical decision-making which pairs target symptoms with appropriate medications, must be preserved in treating neuropsychiatric disorders without being constrained by legislation. If prescribing professionals are prohibited from ordering off-label psychotropic meds, negative unintended consequences would result in an increase in suicide attempts, emergency department visits, and hospital admissions. All youth, whether or not they are in custody, deserve to receive the best possible evidence-based care. Thank you for the opportunity to testify about this bill which would hinder appropriate mental-- medical and psychiatric care for juveniles in state or court custody. I'm happy to address any questions.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Dr. Brooks, for testifying today. You've been at this a while. What percent of, of prescriptions are off-label that, in your experience, that you, you work with on a daily basis?

BETH ANN BROOKS: Well, that's a, a general question. I'm not a pediatrician. They would have a different answer. An adult psychiatrist, a different answer. Currently, with adolescents 12 to 18

at a Lincoln therapeutic group home, a very small number, and there's turnover every month. I would say that probably 30 percent of the youth there are off-label, and most of the time they have come to the group home already on those medication or similar medications. One rule I have is I don't duplicate classes of medication. So if someone comes in on two antidepressants, two antipsychotics, those need to be addressed. Psycho stimulants most often are prescribed for ADHD, there often is indication for more than one, those because they, they treat a specific child/adolescent disorder. However, most of the time are not off-label.

BRANDT: And then to follow up in your testimony, you used the example of Lexapro approved for ages 12 and you, you had an 11-year-old. Is a lot of the off-label usage simply because of a line in the sand? I mean, you got to-- it's, it's just like for--

BETH ANN BROOKS: Often times--

BRANDT: --when you're, when you're younger than they need to be.

BETH ANN BROOKS: Yes, and the history of the way these medications are developed over time, adult populations are available, oftentimes, adolescents. And in the initial stages, a pharmaceutical company gets a patent. After they've gone through a number of FDA hoops, they get a patent for the medication and there is a labeling for disorder and age. And over time, my experience in the psychiatric arena has been they broaden the diagnostic categories for which it is labeled, but they don't often go low enough to help us in child/adolescent psychiatry. And YRTC youth, other youth in custody, the hard to handles, or as I sometimes lovingly call them, the train wrecks, they, they need medications oftentimes for-- that are not approve-- not FDA labeled, I'm sorry, for that age.

BRANDT: All right. Thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming, Dr. Brooks. I-- just a couple of things. So when you-- when, when I hear about an off-label drug, it sounds scary to me. And I-- that's, of course, because I'm not a medical professional, but I can-- when I first hear about this, I think, oh, my gosh, we're giving children off-label drugs and what does that really mean? And does that mean that-- I mean, if there were language that said have it in compliance with standards maybe at lower doses that adults are given that, that drug? I'm just-- do you

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understand the, the general public would look at that and think, well, they just get to prescribe whatever drug they want to a kid?

BETH ANN BROOKS: You know, yesterday someone, I was having a discussion about this bill and the topic of, quote unquote, off-label and the Food and Drug Administration, the FDA, would prefer that off-label not be used, but it be referred to as an FDA-approved medication-- I don't like the word drug, for which the specific indication or age group has not been studied.

PANSING BROOKS: OK, so if these off-label-- if we were to ban the use of off-label medication, what is the result? The result is then no medication for these children?

BETH ANN BROOKS: The first result would be probably more often to in general children and adolescents' medical physical health, whether that be asthma, diabetes, whatever it might be. That would be very serious. And in the psychiatric arena, as I iterated, you might have more need for seclusion or restraint. There would be more suicide attempts. Our emergency departments now can handle psychiatric situations in many parts of our state, and we don't have a sufficient number of-- I'm not so sure I would say about inpatient psychiatric hospital beds for minors, but certainly we don't have treatment options, residential treatment group homes, active programs in the community that can protect children. So it would be medical as well as psychiatric morbidity and could be mortality.

PANSING BROOKS: OK. And I probably should have asked Dr. Fromm, but do you have a feel for how many states use this same kind of practice of using off-label medications for children?

BETH ANN BROOKS: Well, as Dr. Fromm indicated, this is-- or maybe it was Senator Wayne, this is nationwide. There are-- I am not familiar with any state that has banned the use of off-label medications. I think there would be a hue and cry, and those bills would not be successful.

PANSING BROOKS: OK. And just one final question. So if I look at the-- at what's been happening with COVID-19, they have done tests. So those shots for children that are going on right now five and above, I think it is, those would not be considered off-label, right, because the testing has been done on those children?

BETH ANN BROOKS: I am not an FDA official--

PANSING BROOKS: Oh, I have people behind you.

BETH ANN BROOKS: --but that's emergency use authorization. And to my knowledge, that's in a, a different category.

PANSING BROOKS: OK, the people behind you are nodding yes.

BETH ANN BROOKS: I think we have representatives from Children's Hospital.

JANINE FROMM: [INAUDIBLE] off-label for under 16.

PANSING BROOKS: OK, so all right, well, that's, that's helpful-- I can see why this might have gone to HHS, right, Senator Wayne. OK, thank you very much for your time.

LATHROP: If only we knew. Senator McKinney.

BETH ANN BROOKS: Oh, sorry. I'm sorry, Senator McKinney.

McKINNEY: Thank you, Senator Lathrop. I have a few questions. The first, what do you mean by train wrecks?

BETH ANN BROOKS: Well, just that these children have been at various stations in terms of treatment and that things have been unsuccessful for them. And then there is a collision that results in some type of higher level of care, whether that is because of suicide attempt, because of domestic violence in the home, because they were not medicated when they should have been, because there wasn't appropriate psychosocial treatment of them in terms of psychotherapy, parent management training, those types of interventions.

McKINNEY: Do you think there-- there's a better term to refer to them as than train wrecks?

BETH ANN BROOKS: Well, I was probably looking this way, I had a glint in my eye and I, I should have said, quote unquote. That's just a Brooks term that I acquired when I worked in Detroit.

McKINNEY: All right.

BETH ANN BROOKS: We had a train station that had stood empty for decades and hoped it would come back. And it has.

McKINNEY: The next question I have, what are the long-term effects of using these drugs?

BETH ANN BROOKS: Well, many of the agents have had 50 years of use. Sometimes they started as medications for physical conditions if I

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were thinking that they now have a, a psychiatric indication and every medication has a different side effect profile and any medication can have long-term effects.

McKINNEY: So if I start using Zoloft at the age of 16, would I still probably have to use it at the age of 30?

BETH ANN BROOKS: It would definitely depend on what the targeted symptoms were and what diagnosis you were given and what other treatments were undertaken. There are some individuals who take antidepressants for many years. There are others who take them only during episodes of depression and they may have a episodic disorder. And there are others who only take them for maybe perhaps a year and with the help of other treatments are able to be off them.

McKINNEY: Are you aware of any services that are given to youth after they are released from the YRTC's or under the care of the state that assist them with their life once they begin to take these type of drugs?

BETH ANN BROOKS: You're talking about post discharge, post discharge from YRTC?

McKINNEY: Yes. Is there any helpful services or programs in the community once a kid begins to take Zoloft to ensure that their, their safety is ensured for the rest of their lives since the state has elected to prescribe them these type of drugs?

BETH ANN BROOKS: Well, they would have a licensed prescriber who would have to re-prescribe. And I know that a child in Family Services has an indication where they screen and review if minors are on more than three psychotropic agents at a time.

McKINNEY: I guess my question is if a doctor prescribes a 16-year-old Zoloft and a, and a youth ages out of the system, is it the responsibility of the youth to continue to pay for that prescription? Or is it on the state because the state decided to prescribe them this prescription for the rest of-- who, who should it be on?

BETH ANN BROOKS: Well, that's perhaps a question for Medicaid or perhaps for looking at what happens in that transitional period. Say perhaps in Nebraska's case, age 19 to 21, in some states, for example, special education goes until they turn age 26. There-- we have Bridges to Independence.

McKINNEY: I guess--

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BETH ANN BROOKS: We have programs.

McKINNEY: I guess the hypothetical I have, and I'll end it here. Say you-- the state prescribes a 16-year-old a drug because they have depression, they age out of the care of the state, but they can't afford the drug and end up killing themselves. Who's responsible?

BETH ANN BROOKS: When they would be discharged from state care, usually age-related, they would be-- and I can't speak for the state, but in terms of judicious practice of any type, they would be referred for outpatient and community services. They would very probably have a new prescriber who would review all the information and determine if the medication should be continued. In terms of payment, that-- that's beyond my scope.

McKINNEY: Thank you.

LATHROP: I see no other questions. Dr. Brooks, thanks for being here.

BETH ANN BROOKS: You're welcome.

LATHROP: We appreciate hearing from you today. Next opponent. Good afternoon.

SUZANNE HANEY: Good afternoon. Sorry. Good afternoon, Senator Lathrop and members of the Judiciary Committee. Thank you very much for allowing me to testify. I am testifying in opposition to LB946. My name is Dr. Suzanne Haney, S-u-z-a-n-n-e H-a-n-e-y. I'm the state's currently only board-certified child abuse pediatrician, and I'm testifying on behalf of both Children's Hospital and Medical Center and the Nebraska Chapter of the American Academy of Pediatrics. I'm the division chief of child abuse pediatrics at Children's, and we have the region's only comprehensive foster care program where we provide medical care for a lot of the children, if not most of the children in care in the Douglas/Sarpy, as well as Lancaster/Lincoln areas. First of all, I want to commend Senator Wayne for looking out for the interests for these children. They are some of our most vulnerable children and as it was pointed out, they don't have the same checks and balances because they don't have their parents there to look out for them. However, I have significant concerns that this proposal will have greater ramifications, and I think it's been pointed out by our previous physicians that have testified. As was stated, off-label is not necessarily unsafe. Actually, off-label just means it's not age and it's not purpose as was approved by the FDA. There are significant issues with getting FDA approval: its

significant cost, and there's also ethical issues in testing children. So that is one reason why a majority of our medications in children, especially in our youngest, our intensive care units, and our critically ill children, a majority of those medications are considered off-label as based on that term. These are lifesaving medications. So clearly, this bill will have ramifications much greater than just the adolescents on psychotropic medications. I do want to say that pediatricians and pediatric subspecialists are uniquely trained to understand pharmacology, research studies and the risks and benefits of medication for prescription. We're taught throughout medical school and throughout all of our training, here's the medication, here's the risks, here's the benefits, here's how to prescribe it. That is part of our education. And it would tie physicians hands if we were to actually be unable to prescribe these medications. I do agree that the high rate of off-label prescribing for pediatric patients is concerning, but rather than preventing it, we need to put more into actual FDA testing and research. That's really where we would need to look at it. And then to go off what Senator Wayne was saying, we'd be happy to collaborate with him. We do see concerns when children are transitioned from care or there's transitions with caseworkers where prescription medications are lost, and it's not just the psychotropic medications, it's across the board. And we would love to collaborate with HHS to continue to work as we've been doing on making sure that these children are in the safest environment they can be. So thank you, guys, very much for letting me testify and I would be open for any questions.

LATHROP: I don't have a question, but I'll just make this comment when people come up and say, thanks for letting me testify. Like, we're your Legislature, so you're welcome to be here on any bill you care to show up on. So thanks for being here, Doctor.

SUZANNE HANEY: Thank you for listening. How's that?

LATHROP: We-- yeah, that's fine. We appreciate having you here today and hearing what you have to say about the topic, so--

SUZANNE HANEY: Thank you.

LATHROP: --thanks for being here. I don't see any questions.

PANSING BROOKS: I have a question.

LATHROP: Oh, I'm sorry. Senator Pansing Brooks.

PANSING BROOKS: That's OK. Sorry. Thank you for being here, Doctor. I just-- I guess I'm interested in the thought that-- I mean, you say that it would be good to have more federal testing and approval. You know, it's-- every person is different and I presume every child is different and every child is different from an adult in a way in how they might react to a drug. So I, I guess-- this, this is all new to me that this is something that's going on out there and I don't really have a solution to it, but it seems as if-- I don't think we should be letting the kids not have the medications they need. But the question is whether those are actually the medications they need and you talk about that people are trained to understand the pharmacology and the research and the risks. I guess my, my question is how, how are you trained? I think you're trained on what the adults do, not necessarily what-- how it would affect the children. Is that right?

SUZANNE HANEY: No, ma'am. There are significant medical studies that have been done on, on the medications we use, and just because there's been medical studies done doesn't mean that it's been finally made on-label. So the medications we use are backed up by, depending on the medication, anywhere from years to decades of medical research. And we're not going to be prescribing a medication just willy-nilly. We base it on our understanding of the evidence. It's evidence-based medicine. FDA approval is an incredibly high standard and requires funding as well as studies, as well as, again, to, to do a bunch of studies on neonates over and over and over again sometimes becomes unethical. When we know it works, why do we need to do any more? If that makes sense? And then the pharmaceutical companies, once they get their initial approval, don't necessarily want to pay for any more to go for the actual FDA approval. They know it's getting used, they're making the money they want. So it's kind of the way the system works.

PANSING BROOKS: So if, if a doctor goes through medical school and isn't a psychiatrist, isn't a pediatrician, how do they have that experience and knowledge about how to treat a child like this with these drugs?

SUZANNE HANEY: Again, they-- family physicians are also treating children, and they are trained to some extent on--

PANSING BROOKS: And are they, they the only ones doing this or can any doctor prescribe these medications?

SUZANNE HANEY: Depends on the age. You're right, any physician technically can. Most of us practice within our scope. As a pediatrician, I usually limit my prescriptions to age 24 or so. I also

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as a child abuse pediatrician, I'm rarely prescribing psychotropic medications. On the other hand, I usually will diagnose an ear infection in a child I see, so it's within the scope of our practice. And we're also governed by not only our licensure, but then our institutions will credential us to practice also.

PANSING BROOKS: Thank you for that help. And, wow, the only board-certified child abuse pediatrician because we need more of you and thank you for being here.

SUZANNE HANEY: Thank you.

LATHROP: Any other questions? I see none. Thank you. Appreciate it. Any other opponents to LB946? Opponent testimony? Good afternoon and welcome.

TAYLOR GIVENS-DUNN: Hi. Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Taylor Givens-Dunn, T-a-y-l-o-r G-i-v-e-n-s hyphen D-u-n-n, and I'm here today representing Voices for Children in Nebraska in opposition of LB946. I won't rehash my entire testimony because between Senator Wayne's opening and the incredible physicians behind me, a lot of what I've written here has already been said. But I do really want to drive home the point that off-label use of a drug doesn't mean that it hasn't been specifically studied and approved for the condition, age group, or weight of the person getting the prescription. And that off-label doesn't mean that the drug is inherently harmful. I really want to drive home from a child advocacy perspective that the broad prohibition of the use of off-label medications can impact a lot of physical health issues that children may be facing, along with some of those mental health issues as well. So, for example, kids with asthma may be prescribed an antihistamine, which is approved for allergies but not specifically approved for asthma because they may have allergies that trigger their wheezing. So the three most common types of off-label medication are antihistamines, antibiotics, and antidepressants. And we understand that the purpose of off-label use is to benefit the individual patient, the individual child in state's care, and we understand that practitioners use their professional judgment to determine these uses. And as such, the term off-label does not imply an improper illegal contraindicated or investigational use. And we believe that medical decision-making must always rely on the best available evidence and the importance of the benefit for the individual child. And this kind of blanket prohibition of off-label medication is really concerning because it doesn't allow for that case-by-case medical intervention for children in state's care. So as

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it's been said today, and as Senator Wayne mentioned in his introduction, we too care a lot about the issue around potential over medication for children in state care. It's a really valid issue that we as a child advocacy organization, have our ear to and are listening to and are looking to find solutions for. However, we do believe that LB946 is too broad to be practical and have concerns about it preventing kids in care from getting the medical treatment they require. So we'd be happy to discuss our concerns further with Senator Wayne, but at this time we respectfully urge the committee not to advance LB946. I'm happy to take any questions.

LATHROP: OK. Any questions for, for Ms. Givens-Dunn? I see none. Thank you for being here today.

TAYLOR GIVENS-DUNN: Thank you so much.

LATHROP: Anyone else here? Good afternoon and welcome.

ANDY HALE: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Andy Hale, A-n-d-y H-a-l-e, and I'm vice president of Advocacy for the Nebraska Hospital Association, and I'm here in opposition to LB946. Off-label use of medication is very common in children since most medications are approved only for use in adults and may not have been studied in younger populations. While the rate can vary greatly, less than 50 percent of medication labels have any guidance for, for, for providers for use in children. At an academic medical center, the rate might be as high as 60 to 80 percent for those medications being used among hospitalized patients. However, a lack of child-specific prescribing guidance does not mean the FDA prohibits a drug's use in children. It means there are no data or substantial evidence from adequate or well-controlled investigations upon which the FDA can make a determination regarding safety and effectiveness in children. The purpose of off-label use is to benefit the individual patient. Practitioners use their professional judgment to determine these uses. The term off-label does not imply any improper, illegal, or investigational use. The decision-making relies on the best available evidence and the importance of the benefit for the individual patient. And to your question, Senator Pansing Brooks, there are several sources providers can use for evidence regarding a medication's use and safety, such as peer-reviewed literature, consensus statements, American Academy of Pediatric policies, practice guidelines, and other resources. Providers also rely on their own colleague's expertise, as well any expert opinions or trial data they can access. Reducing availability to medication could result in increases in treatments and costs, and I think Senator Brandt, that is

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maybe why the fiscal note could potentially be high. This bill could have unintended consequences of preventing many already prescribed medications from being prescribed to children, which could lead to worsening of conditions or even hospitalizations. Thank you, and I'll take any questions.

LATHROP: OK. Thank you, Mr. Hale. Any questions for Mr. Hale? I see none today.

ANDY HALE: Thank you.

LATHROP: Thanks for being here.

ANDY HALE: Thank you.

LATHROP: Anyone else wishing to testify in opposition? Anyone here in a neutral capacity? Seeing none, Senator Wayne, you may close.

WAYNE: Thank you. First, I want to point out the irony in the fact that many of the people who testified against this bill are the same people who testified against medical marijuana, saying it is not FDA approved, but yet they're saying we should use off-label even though it's not FDA approved. That's just interesting. What's concerning to, Senator Pansing Brooks, your point or your question was any physician can prescribe these things, particularly psychotropic drugs and 90 percent to 100 percent of YRTC are currently being medicated. Think about that number. The reason why this is important is, Missouri just settled a case in 2019 for kids in foster care system and in the state custody for being overprescribed psychotropic drugs. And their attorney fees in that case that was just affirmed in 2001 by the Eighth Circuit was \$3.3 million. Abbott Labs in 2000, I believe, '12 also paid \$1.5 billion to the federal government for their marketing of off-label drug, of drugs to children. This is an ongoing concern, and what concerns me the most is kids who are in custody or under the jurisdiction of the court are our most vulnerable children who we should have safeguards around. And right now, there is no standard practice of how and when these kids should be prescribed drugs. And I'll end this with this-- well, two things. First, most of the physicians in this area do not work directly for the state. There's a Moser issue. You can never hold the state accountable for this. You always have to go after the doctor. That's a huge burden for medical malpractice. And we're talking about children. Which brings up the second point, these things and these effects can last an entire lifetime. We have a Medicaid-- medical cap at \$4 million. The expenses of these type of medical malpractice cases are to \$12 to \$14 million

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and which again falls back on the state to pay for it because those kids end up back in Medicaid. So there's multiple prongs to this issue of why we need to make sure we safeguard our most vulnerable children, particularly those in custody. And with that, I'll answer any questions.

LATHROP: OK. Any questions for Senator Wayne? Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thanks for bringing this, Senator Wayne. It's interesting. What, what is your thought if, if we disallow all off-label drugs, then what?

WAYNE: It isn't as so much-- and when I opened this, I said, I don't know if I really agree with removing all off-label, but I do think there has to be systems in, in, in place to track what is going on. Oftentimes, Senator McKinney alluded to, people come back from YRTC or they get out of state custody and then they have no option in treatment. So you're stabilized for four or six months, maybe a year, and then they are immediately released and they have to go cold turkey, which often results in multiple times worse for the child. So I do have a lot of concerns just about how to monitor and how to-- some guidelines.

PANSING BROOKS: Yeah, and how to follow up.

WAYNE: Correct.

PANSING BROOKS: And then you're saying some of them, but you don't really have the plan yet on which ones, right?

WAYNE: No, I, I thought this bill would be in HHS and we would have longer conversations and, and work with it. So when my staff said you're, you're up Wednesday in Judiciary, I was like, what bill is in Judiciary? And so it's--

LATHROP: I guess it was the in custody part.

PANSING BROOKS: At least we didn't ask you what a medication was. So that's good.

WAYNE: Yeah, trigger words "in custody." I get it.

PANSING BROOKS: Thank you.

LATHROP: Any other questions? I see none. Thanks.

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WAYNE: Thank you.

LATHROP: Senator Wayne, thanks for being here.

WAYNE: Yep.

LATHROP: That will close our hearing on LB946 and bring us to LB810. Senator John Cavanaugh, you are up. Senator Cavanaugh, welcome to the Judiciary Committee.

J. CAVANAUGH: Taking off my mask. Thank you, Chairman Lathrop. Ready?

LATHROP: You're good.

J. CAVANAUGH: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in Midtown Omaha. I'm here today to introduce LB810, which improves the reporting requirements of room confinement in juvenile facilities. I'm bringing LB810 at the request of the Office of the Inspector General for Child Welfare, who is here to testify today and answer any questions you may have. Several years ago, the Legislature passed a bill requiring certain rooms-- reports of room confinement in juvenile facilities. LB810 proposes two changes to the reporting requirements. It does not make any changes to the standards or requirements around the use of juvenile room confinement. First, LB810 requires facilities to report all incidents of room confinement. Currently, facilities are required to report all incidents over one hour, cumulative, over a 24-hour period. This means that shorter incidences of room confinement are not included in the data, creating an incomplete picture of room confinement that may understate the frequency of room confinement while overstating its duration. Changing this requirement will give a more complete picture of the use of room confinement. Second, LB810 requires facilities to provide a summary report of room confinement data. This allows data to be verified by facilities prior to reporting to the OIG, and encourages facilities to analyze and assess their own data and room confinement practices. Finally, LB810 makes some minor technical changes to clarify the form in which data is provided to the OIG, providing for an electronic sortable format such as an Excel spreadsheet. Jennifer Carter is here from the Office of the Inspector General to go into greater detail about the need for this legislation and the need-- and to answer any of your questions. With that, I'd like to thank the committee for your time, and ask you to advance LB810 out of committee. And I'm happy to take any questions at this time.

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LATHROP: OK. Thank you, Senator Cavanaugh. Any questions? Senator Pansing Brooks.

PANSING BROOKS: Thank you for bringing this, Senator Cavanaugh. That was my bill that you were referring to, and we made an agreement to just look at everything over an hour and make sure that, that it was cumulative. So can you tell me what, what the issue is, what's happening right now that is not working?

J. CAVANAUGH: So your question is, Why would we want to include reporting less than an hour, cumulative, in a 24-hour period?

PANSING BROOKS: I just-- yeah, I'm interested in what you're finding that's happening, because we initially wanted all--

J. CAVANAUGH: Right.

PANSING BROOKS: --too, but I'm just interested if you found something that's not being reported accurately or if you're getting some type of skewed vision of what's going on. Sorry, I should take that off for you.

J. CAVANAUGH: No. So I think that the Inspector General might be better answer-- suited to answer that question, but I guess my position is that, you know, you brought this bill, which was great. And then we started collecting data. And once you start collecting data, you kind of see what you're-- you may-- may be a different way you'd want to collect it. And that's kind of--

PANSING BROOKS: All right.

J. CAVANAUGH: --how I see this bill. It's just building on your original bill--

PANSING BROOKS: Yeah.

J. CAVANAUGH: --and taking it from where, where we got and what that's told us, and, and following that direction.

PANSING BROOKS: Thank you, Senator Cavanaugh.

LATHROP: Any other questions for Senator Cavanaugh? Are you going to stay too close?

J. CAVANAUGH: Of course.

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LATHROP: Yeah, I guess you got the bill after that, so-- all right. Thanks, Senator Cavanaugh. Anyone here to testify as a proponent of LB810? Welcome. Good afternoon.

JENNIFER CARTER: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Jennifer Carter, and I serve as your Inspector General for Nebraska Child Welfare. As you know, the OIG or Office of Inspector General, we provide oversight and accountability for the Child Welfare and Juvenile Justice systems through system monitoring review and independent investigations. And one particular statutory duty we have is to review the juvenile room confinement data that's presented to the Legislature each year. We've been doing this for about five years, and we appreciate we had conversations with Senator Pansing Brooks and also Senator Cavanaugh. We really appreciate that he brought it because, after that many years, we found there might be ways to make the data for the review a little more accurate and give us a better and a more complete picture. And just to be clear, we do not intend in any way to expand who has to report. That was not-- this is truly just about the reporting requirements. So one of the things that LB810 would do was to require that facilities report all incidents. And to Senator Pansing Brooks' question, what we've actually found is by not having a complete picture, it does skew the data, often to the extent of making it seem like facilities are doing a worse job than they're doing in terms of confinement, because what we see is only the time over an hour. So a very quick example, and because I'm not great at math, I did it at 100. If you had 100 incidents of confinement in a year, and 60 of those were under an hour, we-- our office would never see that. We would just be looking at the 40 that are above an hour, maybe over 4 hours, over 24 hours. So our analysis is making it look like the majority of their confinement is for a long period of time. And it matters because, when you look at best practice, confinement should be only used as a last resort and should be short-lived. And so the picture we would get was that, well, this facility is actually using it for long periods of time. They're not necessarily as close to best practice as it should be, when in reality, 60 percent or a majority of their use of confinement is under an hour. It is short-lived. It's more for a cool-off. It's not a true confinement in the same sense that we would be concerned about. So that is one reason why we would like-- and I've actually heard this from facilities also, that they're sort of concerned that their data is getting skewed. The other thing that this would do is provide an annual summary from the facilities about some of these key data points. And some of this is, is partly wanting the facilities to do some of that analysis directly in terms of making

sure they're looking at their data and gathering those key points, but also our resources. We have two assistant inspector generals who have to do the death and serious injury investigations. One of them spends almost three months combing through the data and Excel files, finding a lot of errors: duplications, things that are actually not to the facility's benefit. We work back and forth with them to correct that. But these are probably errors that should be taken care of before it comes to the Legislature. It's also probably not the best use of the OIG's time to be combing through that data in that way. And we want to make sure it's accurate, and we don't have a way of verifying that; the facilities have to do that. I see my red light is on, but-- so--

LATHROP: OK.

JENNIFER CARTER: Oh, give me-- can I just finish up quickly?

LATHROP: Sure.

JENNIFER CARTER: So, so for that reason, it would be very helpful if they had completed the data in a, in that way. These pieces of data that we're looking for, I mean, that is something that can be pulled out very, very quickly; and we would really appreciate that. And we do appreciate the facility's been working with us for years on streamlining this process. There are a few other minor changes in the bill I'm happy to talk about or take any questions.

LATHROP: OK, let's see if there's questions. I don't see any. Thanks.

JENNIFER CARTER: Simple, thank you.

LATHROP: Good to see you again.

JENNIFER CARTER: You, too.

LATHROP: Next proponent. Good afternoon and welcome.

JULIE WERTHEIMER: Good afternoon. My name is Julie Wertheimer, J-u-l-i-e W-e-r-t-h-e-i-m-e-r, and I'm here in support of LB810, on behalf of the ACLU of Nebraska. I'm a contract attorney with the ACLU and a Ph.D. candidate at UNL. For the last several years, I have worked with the ACLU to code and analyze data regarding Nebraska's use of juvenile solitary confinement. I'm testifying in support of LB810 because updating the reporting requirements will help protect Nebraska's juvenile, the youth in Nebraska's juvenile correction facilities. The research is clear that solitary confinement causes extreme psychological, physical, and developmental harm, especially

for children who are still developing and are thus more vulnerable to irreparable harm. The reporting requirements outlined in LB810 are extremely important because reporting requirements hold the juvenile correctional facilities accountable for their harmful solitary confinement practices. The year after the ACLU and I started analyzing the data, the average duration of an incident of confinement dropped from nearly 40 hours to 26 hours. After four years of collecting and analyzing the data released from these facilities, the average duration of an incident of confinement for the 2019/2020 fiscal year was 20 hours. While it's clear that the existing reporting requirements, in addition to other legislation restricting the use of juvenile solitary confinement, have reduced the amount of time that children spend in solitary confinement, more work is still needed. Nebraska still does not always follow evidence-based best practices, as children are still spending, on average, close to a full day in solitary confinement. More stringent requirements will reduce the use of juvenile solitary confinement down to much smaller and more developmentally appropriate levels. I can also say, from my personal experience working with the data released from the facilities, under the existing law, the changes laid out in LB810 are necessary because they expand and streamline the amounts and kinds of information that the facilities must submit in their reports. It has been difficult and time consuming to work with some of the data in the past years because of-- the facilities report different kinds of information and in different formats. So for example, some facilities report the total duration of each incident of confinement in both hours and minutes, as LB810 would require, but other facilities only report the start and end dates and times for each incident of dura, for each, the duration of each incident. So that means that, before any useful analysis can occur, anyone who wants to use the data has to painstakingly calculate the duration for each incident of solitary confinement. LB810 removes this barrier to analysis, and requires that the facilities provide the most relevant information in the most useful format. I thank you all for your time, and I urge you to advance LB810 to General File.

LATHROP: Very good. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Ms. Wertheimer, for testifying today. Just a math question. The 20 hours, is that 20 hours for each confined individual or if there's 100 people at this facility, it's 20 hours average for 100 people? What does that 20 hours represent?

JULIE WERTHEIMER: Yeah. So the data we get, it's just aggregated and, therefore, impossible to sort of match each, each incident of

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confinement to a unique individual. So the analogy-- the mean number that I reported, the 20 hours is the average of all of the incidents of confinement that were reported. So if there were 1,000 incidents, it might have been, you know, 100 kids that were confined several times, but the average duration of that is going to be-- was 20 hours for this past fiscal year.

BRANDT: All right. Thank you.

JULIE WERTHEIMER: Um-hum.

LATHROP: OK. I appreciate your testimony. Thank you.

JULIE WERTHEIMER: Thank you so much.

LATHROP: Anyone else here as a proponent of LB810? Welcome back.

TAYLOR GIVENS-DUNN: Yeah. Once again, good afternoon, members of the Judiciary Committee. My name is Taylor Givens-Dunn, T-a-y-l-o-r G-i-v-e-n-s-D-u-n-n, and I'm here on behalf of Voices for Children to support LB810, because it improves reporting requirements and cleans up and simplifies some of the language from the current statute. Since July of 2016, Nebraska law has required juvenile facilities to document and publicly report every time a child is placed in room confinement for an hour or longer. The goal of this law is to reduce the use of juvenile room confinement and to incorporate best, best practices throughout the state's juvenile facilities. Through this required reporting, we have seen facilities reduce their use of this practice. LB810 simply strengthens the already present reporting measures by reporting all instances of home confinement, even if they take place for less than an hour. It also allows Nebraska to continue its examination and restriction of room confinement. For those reasons, we thank Senator John Cavanaugh for his commitment to youth justice, and thank the committee for your time and consideration. We respectfully urge you to advance LB810.

LATHROP: OK. Any questions? I see none.

TAYLOR GIVENS-DUNN: Thank you.

LATHROP: Thank you so much for your testimony. Any other proponents of LB810? Anyone here in opposition? Anyone here in a neutral capacity? Seeing none, Senator Cavanaugh, you may close.

J. CAVANAUGH: Thank you, Chairman Lathrop, and thank you, members of the Judiciary Committee, for listening and your questions today, and

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thank you to the testifiers for coming. Basically, I just wanted to sum up that, you know, we're collecting this data, and this is just an attempt to get a little bit cleaner, more usable form, and a little bit deeper dive; and that's where the data has led us so far. And the reason we collect data is to understand the situation and to gain information. What this bill seeks to do is take information we're already gathering and make it a little bit more useful. So with that, I'd ask for your support of LB810.

LATHROP: Very good. That'll close our hearing. Oh, any questions for Senator Cavanaugh? I see none. That'll close our hearing on LB810 and bring us to LB879. And Senator Cavanaugh--

J. CAVANAUGH: That's me.

LATHROP: --you may open.

J. CAVANAUGH: Thank you. Chairman Lathrop and members of the Judiciary Committee. Again, my name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th District in Midtown Omaha. I'm here today to introduce LB879, which allows for the answer of "no contest" in juvenile proceedings. LB879 is a relatively simple change to the statute that allows adjudication in juvenile courts to accept the answer of no contest. The no-contest plea or nolo-contendere plea is commonly used in criminal courts in the course of plea bargains, where the defendant accepts a penalty but does not admit guilt. Currently, state law is silent on whether juvenile adjudications can accept an answer of no contest, resulting in inconsistent application in juvenile courts across the state. This simple change will improve outcomes for all parties in juvenile courts. I thank the committee, again, for your time, and I'd ask for your favorable consideration of LB879. I'm happy to answer any questions.

LATHROP: OK, very good. Thanks, Senator Cavanaugh. Any questions for Senator John Cavanaugh? Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Cavanaugh, for bringing this bill. As a layman, can you tell me why this is needed?

J. CAVANAUGH: So-- well, a lot of people will enter, when you go into a-- in a plea agreement, some people will want to accept the benefit of a, the negotiated plea agreement without necessarily admitting that they did the act that they're accused of. So it essentially means that you take the punishment without admitting guilt, and that can be-- sometimes make-- it's, it's an important issue for some people in

cases, and sometimes it has implications in civil case where there is maybe a, say, a car accident. When you hit somebody and there's a crime associated with that, you would want to plead no contest to the criminal aspect of it if you were planning to contest the civil action of your responsibility for that accident. So it essentially allows to resolve the criminal case and still, without any reserve, it would protect your right to maintain your innocence or lack of culpability in a civil case.

BRANDT: All right.

J. CAVANAUGH: Does that--

BRANDT: Thank you.

J. CAVANAUGH: Did I answer that?

BRANDT: Sort of.

LATHROP: Maybe I can ask a follow-up question. So if I go in on a traffic ticket, for following too closely and I rear end somebody or running a stoplight, a failure to yield, something that results in a car accident, if I admit guilt, then that admission can be used in the civil case where the litigations happen and over the injuries?

J. CAVANAUGH: Correct.

LATHROP: Currently, if I go into juvenile court and I make some kind of an admission, I'm charged with something that you've been successful in getting transferred to juvenile court, some traffic offense, for example, do you plead guilty or do you admit? Or what's the, what's the process in juvenile court that's comparable to the county court proceeding for the ticket?

J. CAVANAUGH: Yeah. So I, I just think of things like damage to property or some kind of vandalism. And it would be admit or deny are the two acceptable pleas in juvenile court currently, which admit would be a similar to a guilty plea, and deny would be a similar to a not-guilty plea.

LATHROP: Can a civil lawyer then take that admission? Do we even have access to that admission in juvenile court?

J. CAVANAUGH: That-- they would be-- I mean, it is a court record, but that is probably a question for another person. But I think-- I mean, so this is a twofold question, right? It's that it's not only that

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civil reason, but there's also-- some people find it a more, a more desirable plea to enter for themselves, I guess. And so--

LATHROP: OK.

J. CAVANAUGH: --it's affording an option. There's essentially,--

LATHROP: So you're saying it might have some benefit other than-- or some role in how a, how a case is disposed of aside from being admission for the civil case that would follow.

J. CAVANAUGH: Yes, I think that there's two-- the two reasons I think it can expedite the disposition of cases.

LATHROP: OK. And this bill would allow that third option.

J. CAVANAUGH: Correct.

LATHROP: No contest.

J. CAVANAUGH: Correct.

LATHROP: Go ahead and do what you're going to do to be in juvenile court.

J. CAVANAUGH: Right. It-- yeah, it does not change the penalties associated, doesn't change any of the potential ramifications.

LATHROP: But it would not be an admission for purposes of a civil suit.

J. CAVANAUGH: Correct.

LATHROP: Got it. OK, I understand the bill, I think. Any other questions for Senator Cavanaugh? I see none. Thanks, Senator Cavanaugh.

J. CAVANAUGH: I will stick around.

LATHROP: Anyone here to testify as a proponent? Welcome.

JOE NIGRO: Good afternoon. Senator Lathrop, members of the committee, I am Joe Nigro, J-o-e N-i-g-r-o. I am, I'm the Lancaster County Public Defender. I appear on behalf of our office and the Nebraska Criminal Defense Attorneys Association in support of LB879. I want to thank Senator Cavanaugh for introducing this bill. LB879 gives juveniles in juvenile court the option to plead no contest. Some judges believe

that the current statute only allows juveniles to admit or deny the allegations in the petition. The denial of no-contest pleas is a fairly recent development. The language in juvenile court, admit or deny is used instead of pleading guilty or not guilty. And so in some juvenile courts right now, we have judges who will only allow the juvenile to say, admit or deny, which is the equivalent of saying guilty or not guilty. Pleading no contest means you are not saying you are guilty, but you are not going to fight the charge. Sometimes a person may dispute the state's version of the facts, but they want to accept a plea bargain. A no-contest plea helps accomplish this. If the juvenile feels compelled to deny, then the case will be delayed while it is set for a formal hearing, which is the equivalent of a trial. Trials take time, and they cost more. The subject may remain in custody longer. A no-contest plea is a good option to sometimes resolve the case to the satisfaction of all involved, and, and then really, I mean, we really are talking about expediting proceedings and, and saving costs, and I can tell you that this is-- it's not going to be any different in juvenile court than it is in adult court. And no-contest pleas are sometimes a, a satisfactory way for everyone to be satisfied with, with the ultimate resolution of the case. And I've had countless clients who, if they had, if they had to accept the state's version, then they're going to want a trial. But they may want to take advantage of a plea agreement or, for whatever reason, they may not want to contest the proceedings. And I think that juveniles should have the same rights that adults do in adult court, and they ought to have the option to plead no contest. I'm not here on behalf of the Bar Association, but it's my understanding that the Bar Association, since I'm in the House of Delegates, also supports this bill. I don't see it as a controversial procedure.

LATHROP: OK, very good. Any questions for Mr. Nigro? I do not see any. Thanks for being here, Mr. Nigro.

JOE NIGRO: You're welcome. Thank you.

LATHROP: And now we're going to hear from the Bar Association, I believe.

TIM HRUZA: Good afternoon, chairman, later members of the Judiciary Committee. My name is Tim Hruza; last name is spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association. I don't have much to add in terms of technical stuff since we are still in the preliminary stages of finalizing our positions, but I have been authorized to appear today in support of the bill. For all of the reasons stated by Senator Cavanaugh and Mr. Nigro before me. I'm happy

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to answer some questions if you have them. But suffice it to say that it's a pretty straightforward bill. And there, there is some inconsistency in how judges are accepting these sort of plea agreements is really where, where it comes into play. So with that, I'm happy to answer your questions. And thank you for your time.

LATHROP: I see no questions. Thanks for being here, Mr. Hruza.

TIM HRUZA: Thank you.

LATHROP: Any other proponents? Anyone here to testify in opposition to LB879? Or in the neutral capacity? Seeing none, Senator Cavanaugh.

J. CAVANAUGH: Well, I would echo Mr. Nigro's comment that this is not controversial, as you obviously can see the Bar Association is in support, defense attorneys. And I believe you should have gotten a letter of support from the county attorneys as well. They told me that they were in support of this. Anything that brings all of those factions together must be a good idea, so if you can get all those groups to agree on something [LAUGHTER]--

LATHROP: At least it's not a bad one.

J. CAVANAUGH: But I would ask for your support of LB879 and a favorable disposition.

LATHROP: Very good. Thank you. Any questions for Senator Cavanaugh? I see none. That will close our hearing on LB879, and bring us to LB732 and, once again, Senator John Cavanaugh. And you may open on that bill.

J. CAVANAUGH: Thank you, Chairman Lathrop. And thank you, members of the Judiciary Committee. Once again, my name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in Midtown Omaha. I'm here today to introduce LB732, which would prohibit the use of deception in questioning of juveniles by law enforcement. It will not surprise members of this committee to know, but it may shock some of the public that police are allowed to lie in interrogations. And in fact, a common interrogation technique is to tell a person being questioned false information and to make promises to obtain a voluntary confession. Police are allowed to, and often do lie about evidence linking a person to a crime, even if no such evidence exists, with the goal of listening to a confession or testimony implicating someone or someone else. This is often coupled with an offer of leniency, even if the officer has no authority to offer it. None of this is news to this committee, of course. Law

enforcement will not deny that this happens, although they may take issue with the characterization of deception. They have and will continue to defend the practice as necessary, a necessary tool to catch criminals. However, these deceptive practices can and do lead to false confessions. 27 percent of the exonerations obtained by the Innocence Project involved false confessions. I might add that the Beatrice Six were convicted using a false confession obtained through deception and coercion. According to the data from the National Registry of Exonerations, of the 211 individuals who were convicted as juveniles and later exonerated, 36 percent of those convictions were based on false confessions, putting that number 9 percent higher than all exonerations overall. False confessions are a serious problem in the criminal justice system, and juveniles are more susceptible to making a false confession. They are more likely to make a false confession when presented with false claims about evidence or a friend's statement because their brains are still developing. The United States Supreme Court has held juveniles cannot be subjected to the death penalty or life without parole because their brains are still developing. The danger of false confessions is greater with juveniles who may not understand the consequences of a statement made to police, or that police are not authorized to make any promises regarding the disposition or leniency of the case in exchange for testimony. So LB732 aims to address this danger by making statements-- danger by making statements by juveniles obtained by deception inadmissible, either by making false statements about facts regarding the evidence in the case or making statements of leniency and arrest, prosecution or disposition in exchange for certain statements or admissions. My intent in subject, in subsection (3)(a)(ii) is to cover instances of officers making offers of leniency which they are not authorized to make, and then using statements made in reliance on those offers against the child who has made that statement. My intent is not to disrupt the ordinary plea-bargaining process. If an amendment is necessary to clarify that, I'm open to that language as long as it's not inconsistent with the intent of the legislation. I would like to thank the committee for your time, and ask for favorable consideration of LB732, and I'm happy to answer any questions. And I just would like to point out, I cited some of my data there, but I have Laurie Robinson [SIC], the state policy advocate from the Innocence Project, is here to testify after me for any of-- maybe more detailed questions about that kind of [INAUDIBLE].

LATHROP: Senator DeBoer.

DeBOER: Senator Cavanaugh, thank you very much for the bill and testifying. Can you explain to me? I, I understand on the, with

respect to leniency, why someone might give a false confession, like they think, oh, they're going to somehow get me wrongly for this worst thing, so I'll say that I-- you know, they'll plead down or something. But why would people make-- other than with respect to leniency, are they confused about what they did? Like, do you have any sense of what the general impetus is behind false confessions that we're, we're dealing with here?

J. CAVANAUGH: Well, I guess, not being a psychological expert, especially about children, but my understanding is that essentially-- I mean, it has to do with kids' brain development. But well, if you just take the example of the Beatrice Six, those folks, a number of them were convinced that-- one of them was convinced that they were actually, in fact, guilty, and they-- the conviction of that, the belief that they, that they were guilty was partly rooted in the consistent insistence by law enforcement that they were, in fact, guilty and they had evidence of their guilt. And so when presented with that sort of situation, I think children, in particular, are more susceptible to say, Well, maybe I forgot, or maybe I didn't. And so it's not-- the argument here is not necessarily that individuals are knowingly falsely confessing. Sometimes people are falsely confessing because they have been browbeaten into thinking that they actually did it. And then it was later discovered that they didn't.

DeBOER: Is that because they mis-- misapprehended the elements of the crime, or is it because they have some sort of implanted memory?

J. CAVANAUGH: I think that the, the-- I mean I-- probably a question for a different person, but what the data shows is that there are, that when presented with these tactics of deception, children are more likely to give a false confession.

DeBOER: OK.

J. CAVANAUGH: And I think that there probably is any number of reasons under the sun as to why they would do that, and it would be fact-specific to that case.

DeBOER: But we have found-- I guess what I'm really trying to get to other than it just seems boggling-- is that this is consistent across the data that, given deceptive statements, they'll accede to those deceptive statements to-- for a number of reasons.

J. CAVANAUGH: Right. I think the data-- what the data shows is in terms of the data we have available, which is people who have been

exonerated later, after having confessed, we find a higher incidence among juveniles who confessed falsely to a case that they were later exonerated of. And the reason they have confessed is because there is a practice, a pervasive practice of deception.

DeBOER: And that's been linked to those false confessions.

J. CAVANAUGH: Right.

DeBOER: OK, that's the link I wanted to--

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Cavanaugh, for bringing this. First of all, the Beatrice Six were not juveniles.

J. CAVANAUGH: No, they were adults and they were still caught.

BRANDT: That's right, so that's--

J. CAVANAUGH: And this is, is they were, they-- what I'm saying is it's more likely to happen to juveniles. It does still happen to adults.

BRANDT: So then just-- a nice thing, it's a, it's a half-a-page bill, so we read her top to bottom. The first question is, In the, in the process of a peace officer interviewing a juvenile, if they have an attorney or an adult, a parent with them, does that make a difference on this bill on whether the law enforcement is using a deceptive practice?

J. CAVANAUGH: No, this bill would say you can't use a deceptive practice against a juvenile across the board.

BRANDT: Regardless of who's in the room.

J. CAVANAUGH: Right.

BRANDT: And then it says "if committed," and then the third line down defines the, the same crime as "if committed by an adult." Define that for me. What, what does that mean? It would be on line 3.

J. CAVANAUGH: So essentially, trying to-- that's trying to capture would have been-- because some things are charged in juvenile court that would be a crime for an adult in adult court. So it's essentially saying, trying to encompass all actions that may be preceded against a child, whether it's in juvenile court or adult court.

BRANDT: So then you go down to the line 9, where it defines "deception means intentionally and knowing" by a police officer. How do you prove that? How do you prove that that officer intentionally or knowingly tried to deceive the accused?

J. CAVANAUGH: Well, that would, of course, be a fact-specific question. And what would happen in this situation is-- so this is-- the purpose of this bill is to say that, if you elicit this statement from a child, it is not admissible in court. So you'd have a hearing, a motion to suppress in court where you would bring in evidence in front of a judge, and the judge would determine whether or not that they-- the-- I mean, I think in this case, what you would do is the judge would determine whether or not the officer had a basis to, a good-faith basis to make the statement they made. So if they said, if you go and-- if they were to come in and say your friend confessed and said you did it, and then the officer, that didn't happen, that would be evidence of the fact that they knowingly, intentionally deceived them, because they said something that was not true. And so that would have to be elicited at a hearing in an attempt to suppress this statement.

BRANDT: OK. And then the last question I've got-- so is the remedy, remedy to the statute simply that the case would be thrown out? Is that the remedy, because you don't list in here an action?

J. CAVANAUGH: No, no. The remedy is-- well, the action is that it's under statement-- in Section 2: A statement made by the juvenile as a result of a violation of this section shall not be admissible.

BRANDT: OK.

J. CAVANAUGH: So the remedy is that the-- that statement that is elicited--

BRANDT: Got it.

J. CAVANAUGH: --as a result of a deceptive tactic would not be admissible in court. The case could still proceed. They can still elicit any other evidence in, in that case, but they would not be able to use that statement.

BRANDT: All right. Thank you.

LATHROP: This is going to sound weird, but I'm sitting here and I'm thinking about the uniform commercial code. When we were in law school--

J. CAVANAUGH: OK.

LATHROP: --and we talked about the difference between puffery and representations, right?

J. CAVANAUGH: Yeah.

LATHROP: So if I'm selling used cars, I can engage in puffery, which is: This is a darn good car. You know? Some older lady drove it to and from church on Sundays, and that's it. Like, that's puffery. But if I say the engine is perfectly fine, we had it checked out and there's no problems with it, then there's a material representation. And I bring that up because I wonder if it's going to be that easy to recognize deception. So if I'm a law enforcement officer and I say, You know what, if you talk to us, I'll see what I can do about getting this in juvenile court, OK? So if some kid is involved in stealing-- let's say he goes out to Apple and steals an Apple laptop. So it's something of decent value, a felony. And the law enforcement officer says, you know, tell me what happened and I'll see what I can do about getting you into juvenile court. Do you think you've offended this definition of deception?

J. CAVANAUGH: I do-- well, because the deception includes representing or communicating facts, information, and statements to a juvenile regarding leniency in arrests, prosecution or disposition. So essentially, what this does is say that they can't make any representations of that nature about that they will pursue leniency, because, as you and I know, that officer doesn't make that decision about whether it gets transferred to juvenile court. They could, at best, make a recommendation to the prosecutor about that, but they cannot themselves control the outcome of the case. And so that, in and of itself, is a representation of leniency that they are not authorized to make.

LATHROP: So in my example, if you believe that's, that comes within the bill, in my example, let's say the juvenile then says, You know what? I went out there with John Cavanaugh. We went out there and we were going to swipe a laptop from Apple out at Village Pointe, and yep, I did it. So how do you know if it's a result of what the officer said?

J. CAVANAUGH: Well, you--

LATHROP: I mean, the two happened.

J. CAVANAUGH: Right.

LATHROP: There was the, the, the statement by the law enforcement person, which you regard as falling within the prohibition of this bill. And then there's an outcome, the confession. How do you, how do you establish that it's a result of, as just, as opposed to just the officer-- the guy was going to admit to it anyway?

J. CAVANAUGH: Right. Well, I, I think that, in this case, it would be akin to maybe a un-Mirandized statement or something like that. So anything made during the course of that interrogation would still fund, fall under the category of the umbrella of the deception. You'd have to have a renewed interrogation [INAUDIBLE].

LATHROP: So shouldn't your bill say that, in the event any one of these things are done, any, any statement or admission by the juvenile is not admissible? Because there, there either has to be a causal connection between the two-- and that's the language that's in there now-- and it will be-- as a defense lawyer, your burden on a motion to suppress to prove--

J. CAVANAUGH: Right.

LATHROP: --that the juvenile would not have made the admission, but for the suggestion of leniency or the deception.

J. CAVANAUGH: Well, I, I don't think that you need to demonstrate a causal connection in this bill. I think that the causal connection is inherent in the fact that they used deceptive--

LATHROP: But it says that in, in lines 5--

J. CAVANAUGH: Line 5 says--

LATHROP: --a statement made by a juvenile as a result of a violation--

J. CAVANAUGH: Right, of these sections. So what I'm-- I guess what my intent is to say that if they act, actually deceive, if they deceive in that interrogation and, as a result-- in that interrogation, after the deception, they make a statement, that statement would be suppressable or suppressed, OK?

LATHROP: Regardless of whether it was the, the reason the juvenile--

J. CAVANAUGH: Right.

LATHROP: --made the statement.

J. CAVANAUGH: And I think-- I mean, then you're talking about a lot of things that would be hard to substantiate and hard to prove, right? That, that would be even harder [INAUDIBLE].

LATHROP: Well, I'm talking about the language in line 5.

J. CAVANAUGH: Right.

LATHROP: It-- I would think it would be hard to prove. Like, I would expect a prosecutor to say he was going to admit to it anyway. It's not the result of anything the law enforcement officer said.

J. CAVANAUGH: I, I would agree that they would say that, but--

LATHROP: I mean, that would be my-- if I'm a--

J. CAVANAUGH: Right.

LATHROP: --prosecutor, that's probably what I would say.

J. CAVANAUGH: And I would say that, if you're making a statement after you've been promised an outcome or leniency or been told of a lie-- I think they're told that they have evidence that proves that you did something-- and then you make a confession after that in, in the confines of that same interrogation, I think it certainly would be as a result of, of--

LATHROP: But you think, you think if you make a statement, this case goes to juvenile court. That's a clear, that's a clear offer of leniency. But if somebody says, I'll see what I can do, that you, you regard that also as offending the prohibition in this bill?

J. CAVANAUGH: I do. If-- yes, I think that any offer, specifically in that capacity where they're offering to make some sort of, take some kind of action to see what I can do, has a heavy implication to it. All right? And that is said, that type of thing is said a lot. But I don't-- I do think that the implication there is that they are going to either-- I mean, that would probably be even worse than "I'll get it transferred to juvenile court" because I'll see what I can do" could be interpreted as, "We'll get this kicked for you, we'll have it dismissed." And so I think any, any promise of, of any-- and that's why it's kind of expansive that a promise of leniency or in the disposition, I think, is in, intended to elicit that sort of statement against your own interests and has the potential-- well, it is deceptive because the officer doesn't actually have that authority to do that.

LATHROP: Do you think the court needs to find that, that it has resulted in a statement that is not, no longer the truth?

J. CAVANAUGH: No.

LATHROP: What if the, what if the juvenile doesn't disavow the statement, like I didn't say-- like, I'm not telling you, I haven't backed off the statement I made to law enforcement that I stole a laptop at Apple?

J. CAVANAUGH: So are you saying whether that-- that at a later date, they did not, they had not yet recanted? So I think that would fall under the category of-- the idea here is that this would not be admissible, and so you couldn't use this as a statement in a proceeding. And when you have no statement, there is no onus or responsibility on the defendant to come in and affirmatively deny. You don't have to come and give testimony and saying you denied something, and the fact that you did not make a statement denying something cannot be used as evidence of, of guilt. And I think, then, it gets you back into that category. So if, regardless of whether the child has subsequently denied, if this statement was elicited as a result of deception, the statement should not be admitted. And then you have no statement and you're in the same position you were as though there was no statement ever given.

LATHROP: One more question, and maybe this is better for one of the people testifying as a proponent. What percentage of statements do you think are not true that are made by a juvenile as a result of any of this? Is this a, is this something that happens with a, with a huge promise, one out of a thousand times? Or is this a-- happens all the time-- as soon as you offer him something, they're going to start telling a story and, and implicating themselves in crimes they didn't commit?

J. CAVANAUGH: Well, you're probably right that I'm not the right person to answer it, but I can tell you, as I said in my opening remarks, that the information I found on the National Registry of Exonerations shows that 36 percent of exonerated juveniles were, had given a false confession. Obviously, you can't tell how many false confessions are still out there have nonexonerated people. So I mean, it's probably not realistically knowable, but I'm sure there is some better answer than I have.

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LATHROP: OK. I have no other questions for you. Anybody else have questions for Senator Cavanaugh I don't see any. Thank you. I assume you're going to stick around for closing?

J. CAVANAUGH: I will stick around.

LATHROP: OK, very good. Pro-- we'll take proponent testimonies. Welcome.

LAURIE ROBERTS: Hi, there. Good afternoon, Chairman Lathrop and members of the committee. My name is Laurie Roberts, R-o-b-e-r-t-s, appearing today on behalf of the Innocence Project and the Midwest Innocence Project, in support of LB732. We're a national legal organization that works to exonerate the wrongfully convicted, and we work with our local partners to advance policies like LB732, which will safeguard against wrongful convictions of juveniles stemming from false confessions, by prohibiting police officers from using deceptive tactics during interrogations. As Senator Cavanaugh noted, false confessions are the most common contributing factor among homicide exonerations in the country and present in 30 percent of all exonerations that have been proven through DNA. The courts, national law enforcement organizations, officer training agencies, interrogation researchers, and even High-Value Detainee Interrogators with the military have advocated against deceptive tactics in interrogations because we know that these tactics increase the chance of a false confession and increase the chance of a wrongful conviction, which allows real perpetrators to remain in their communities in positions to commit more crimes. And this is especially true when the suspect is a juvenile. One leading study of 125 proven false confession cases found 63 percent of false confessors were under the age of 25, and 32 percent were under 18. I'd like you to consider the case of Johnny Lee Wilson in Missouri, who was a mentally impaired 20-year-old who local detectives came to focus on in connection with a brutal 1986 murder, despite the lack of any physical evidence against him. Deception was used throughout his entire interrogation, starting with tricking Johnny into coming to the precinct under false pretenses, to lying about an eyewitness who said Johnny was at the scene and he saw them there, and lying about a witness who said Johnny had confessed to him. Because of Johnny's disability and his inherent trust in authority, he assumed that police were telling the truth, that when they gave him a false promise of leniency and said that he could go home if he confessed to tying up a 79-year-old woman, beating her brutally with a blunt object, and then setting her house on fire until she died. Of course, he was instead arrested, convicted, and sentenced to life without parole, and it would be almost a decade

before he was exonerated after a gubernatorial pardon, which stated it was clear he did not commit this crime. And he eventually settled a civil rights lawsuit for \$615,000. And the real perpetrator, the likely real perpetrator actually had confessed in prison, but not before he went on to rob, beat, and murder another elderly woman. This story demonstrates how deceptive interrogation techniques can amplify tunnel vision and result in false confessions, which steal people's liberty and result in real, real perpetrators remaining in the community. Our analysis of DNA exonerations has found false confessions-- or excuse me-- involving false confessions found that real perpetrators went on to commit and be convicted of at least 48 additional violent crimes, including 14 rapes and 25 murders. So global police training organizations like Wicklander-Zulawski, the second largest training organization in the country, have developed new interrogation techniques that do not use deception and reduce the risk of false confessions, while still enabling police officers to obtain reliable confessions and solve crimes. So we strongly support this legislation and really appreciate Senator Cavanaugh for introducing this critical information. And I'm happy to answer any questions.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Ms. Roberts, for testifying today. Are you an attorney?

LAURIE ROBERTS: I am not an attorney.

BRANDT: OK. I'll wait till an attorney gets up here then. Thank you.

LAURIE ROBERTS: Sure.

LATHROP: Anyone else have any questions? I don't see any. Thanks for being here. Did you come from Missouri?

LAURIE ROBERTS: I did not come from Missouri.

LATHROP: OK.

LAURIE ROBERTS: Now if possible, I'd like to address a question from Senator DeBoer, if that's possible--

LATHROP: Sure, go ahead.

LAURIE ROBERTS: --relating to why someone might falsely confess. There are a lot of reasons, but research has shown that, while the risk is

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much higher for juveniles, anyone including able, able-minded adults can, and do, and have falsely confessed to crimes they didn't commit. And reasons for that include: real or perceived threats from law enforcement; real or perceived uses of violence in an interrogation; compromised reason, reasoning ability relating to stress, hunger, dehydration, substance use, mental illness, mental limitations; age; deceptive tactics; and also fear that if you don't confess that you'll receive a harsher punishment, up to and often including the death penalty, so that can be a cause for, for a false confession.

LATHROP: OK. Very good. Thank you.

LAURIE ROBERTS: Thank you very much.

LATHROP: Next proponent. Welcome back.

JOE NIGRO: Thank you. Senator 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 am here on behalf of our office and the Nebraska Criminal Defense Attorneys Association, in support of LB732. I want to thank Senator Cavanaugh for introducing this bill. This bill would prohibit police from lying to juveniles. Illinois passed similar legislation last year. It's a crime to lie to law enforcement. So why should police be able to lie to children? Don't buy any arguments that lying is necessary for an effective investigation; that is nonsense. You might get someone to falsely confess, but it's not a way to get to the truth. And whether it's lying about evidence or the sentence, it is wrong. People falsely confess all the time. It might be that they just think that'll get them out of their interrogation room, or they'll get to go home, or they'll avoid trouble, or they'll be treated more leniently. I know there were questions earlier, and if you haven't ever seen the series on Netflix, "Making a Murderer," they-- I mean there are videotaped interrogations there, and one of the, one of the people involved is a juvenile who's lower-functioning, intellectually. And, and when you watch his statement, you're kind of incredulous that he ought to be convicted. And, you know, he clearly-- I mean he doesn't understand what's going on. Last week, a juvenile court judge said that, once an officer has lied to a juvenile, it poisons that child. They won't trust their attorney, they won't trust the judge, they won't trust probation officers. And that's true whether the child's charged in juvenile or adult court. We have to be able to trust the police. That's the lesson we want children to learn. And so I urge you to advance LB732. Thank you.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Nigro, for testifying today. And as a defense attorney, are all the interrogations recorded and available to the defense?

JOE NIGRO: Not always. I mean, certainly there might be times when police might talk to somebody right on the scene, although any more, most officers are carrying recording equipment, and if they're going to do an interrogation at the station, they really have no excuse not to record it.

BRANDT: But as a defense attorney, you have access to all of that. Is that correct?

JOE NIGRO: That's correct. And, and I think that, you know, some of the questions earlier, like, Well, how, how is this going to be determined, any more, I think a pretty high percentage of the interrogations are recorded, so court's going to be able to see that, and they're going to be able to see if promises are made because it should be on videotape.

BRANDT: And I guess that's why I'm just kind of a little bit confused here, is you already have access to make that determination before this goes to trial. I would assume you're meeting with the judge and, and opposing counsel and everything else to make this determination. And you already have the grounds to do that, do you not?

JOE NIGRO: Well, right now, though, the police can lie. So you could have it on tape, but what good is it if it's OK? This legislation would say, that's not OK. If you tell the juvenile that we have your fingerprints on the evidence when they don't have fingerprints, or they tell the juvenile that Tommy said you were the one with the knife. And then, and then the person admits it or says, no, he was, or, or the officer says, you know we're, I, I, we'll get you into juvenile court, or, or the officer says, tell me, tell me you did it and you get to go home tonight. So all of those things could be OK right now.

BRANDT: OK, so based on the examples you just gave, would that be grounds to toss?

JOE NIGRO: The statement, correct.

BRANDT: OK.

JOE NIGRO: And this would say, No, you have to tell the truth if you want to use the confession.

BRANDT: OK, thank you.

LATHROP: Senator DeBoer.

DeBOER: I think I might clarify what you were asking, Senator Brandt. Currently, under current law, even if they had deceived and said all of the things that you just listed a minute ago, the statement would still be admissible. Under the proposed bill, they would arguably, pending some questions we have with the wording that Senator Lathrop pointed out, not be admissible. What, what I'm curious about is currently, under current law, if there are misstatements made by law enforcement to anyone, could you, as a defense attorney, present those misstatements to the trier of fact to suggest that, although it has been admitted, that the, that the confession is tainted in some way?

JOE NIGRO: Yes, you can make those arguments, but I passed out some examples of some case law and then, also, some examples that came from the Douglas County Public Defender's office. And you know, the problem is you can make those arguments, but I think, with the current state of the law, it's pretty iffy whether you're going to prevail. And, and again, I just think, I think what Illinois did is the right thing, and I think we should take the same position that police should not lie to children.

DeBOER: So despite the fact that you could present evidence now that the cops were lying or the police officers were lying to elicit the statement, nevertheless, you believe that it's prejudicial enough to have the statement, that it outweighs the ability of a defense attorney to present the evidence of how that statement came to be?

JOE NIGRO: Correct.

LATHROP: Senator McKinney.

McKINNEY: Thank you. I was curious, are you-- you mentioned Netflix, and the first thing that popped in my head was "When They See Us." Are you familiar with the Central Park Five case?

JOE NIGRO: Yes.

McKINNEY: And--

JOE NIGRO: Not the details--

McKINNEY: Not the details.

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JOE NIGRO: --but if I remember correctly, some of those individuals made admissions--

McKINNEY: Yes--

JOE NIGRO: --at least initially.

McKINNEY: --under stress, and they were lied to, as well. And that, and that's all I was thinking about, and I just thought it related to that case, as well.

JOE NIGRO: Yeah. Well, and I think, you know, earlier there was talk about the case in Beatrice. That involved adults. There was a case in, in Cass County, where two-- a husband and wife were murdered in their home, and a cousin and either a friend of his or another cousin were arrested, and the cousin that made admissions, he was lower-functioning, intellectually, and then he later recanted. And that's the case where there was somebody from Douglas County who did crime scene investigation who had planted blood evidence. They ultimately found a coin that was taken from a burglary, and it was a couple from Wisconsin. That couple, the, the two guys in Cass County were not involved at all; and those are adults. But I get-- you know, but I think-- and with children, I mean, I think it's even easier to picture a child, in that interrogation room, admitting to something that they didn't do. I think a lot of us think, why would anybody ever admit to something that they didn't do? And I'm telling you that it's a reality, that it happens all the time. That really-- confessions and eyewitness evidence are the worst kinds of evidence because there's all kinds of reasons why it can be tainted, and it doesn't mean that the person could not still be prosecuted. It just means that that particular statement could not be used as part of the state's case. So if they can put together other evidence, they can still prosecute that person, but they can't use a statement if the police lie, according to this bill.

LATHROP: Joe, I got a couple of questions for you. Currently, if you believe that law enforcement-- by the way, I think you have to record all in-custody interrogations-- so these things are recorded. If you believe that somebody's confession is not freely and voluntarily given or that it is the result of some deception, currently, you can file a motion to exclude the confession. Am I right?

JOE NIGRO: Yes.

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LATHROP: So that's a-- that option is available to you now. We're just going to-- with this bill, you're asking us to put into statute that, if someone makes a statement that is the result of deception, that it's not admissible.

JOE NIGRO: Correct.

LATHROP: But it already isn't, isn't it?

JOE NIGRO: Well, this is-- this goes beyond somebody waiving their Miranda rights and agreeing to talk. This means that-- let's assume that happened.

LATHROP: Let's, let's say that somebody waives their Miranda rights, that [INAUDIBLE].

JOE NIGRO: And then, and now they're, they're conversing with the police, and then the police lie about the evidence or about what's going to happen in court. And the person then goes ahead and makes admissions that this bill would say, you can't use that statement.

LATHROP: Can you, can you make that argument today without this bill?

JOE NIGRO: You can make the argument, but I think that there's a pretty good chance you're going to lose.

LATHROP: OK, 'cause it's not-- there's not, if this happens, this doesn't come in.

JOE NIGRO: That's correct--

LATHROP: OK.

JOE NIGRO: --because there is case law that's allowed deception.

LATHROP: I want to ask you one more question about this puffery versus deceit. So if I'm law enforcement, and I pick the kid up for swiping a computer out at Oak, out at Village Pointe, from the Apple Store, and I put him in an interrogation room and I leave him sit there till he starts to look like he's getting antsy and nervous. And I walk in as a law enforcement officer and say, the best thing you can do is tell me what happened. Are we, are we crossing a line?

JOE NIGRO: I think so.

LATHROP: So a statement that the best thing you can do, which, which actually turns out not to be the best thing that a criminal defendant

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can do, is tell me what happened. That would, that would offend this provision.

JOE NIGRO: I-- yeah, I think that's pretty obvious.

LATHROP: OK. That's all the questions I had. Is that-- I don't see any other questions, Joe. Thank you for being here today.

JOE NIGRO: And, and, and I will give you an example that-- OK, so that statement doesn't come in, but let's say they had a legitimate, a legal search of the car and they found the computer in the car.

LATHROP: Oh no, I get it.

JOE NIGRO: You know--

LATHROP: Or the video tape from the Apple Store.

JOE NIGRO: Yeah, they could still prosecute, but they just can't use that statement because of the deception by law enforcement.

LATHROP: But that all-- yeah, that gets back to the resulting from, too--

JOE NIGRO: Sure.

LATHROP: --that it resulted from--

JOE NIGRO: Well, yeah.

LATHROP: --or the person was going to confess anyway.

JOE NIGRO: Yeah. If the statement led to other evidence, then that's-- those are different evidentiary questions that a court might have to decide.

LATHROP: Well, that's an interesting question or an interesting thing you bring up, which is a little bit different, which is if a law enforcement officer says something deceptive, and that leads to some other evidence, does that evidence come in? Because--

JOE NIGRO: Well,--

LATHROP: --it's the fruit of the--

DeBOER: Poisonous tree.

LATHROP: --of the--

JOE NIGRO: Well, then you see-- the fruit of the poisonous tree--

LATHROP: Exactly.

JOE NIGRO: --I, I think it's-- you know, then you get into questions about could it have been discovered in other ways, and those are going to be different.

LATHROP: But [INAUDIBLE].

JOE NIGRO: It's possible--

LATHROP: --But at its [INAUDIBLE]--

JOE NIGRO: --but it's different questions.

LATHROP: So your answer to that question would be, you, you believe this bill would result in fruit of the poisonous tree. In other words, it's not only inadmissible, anything that's found as a result of that, that you can, as a prosecutor, show what had come in or had been discovered anyway--

JOE NIGRO: Which--

LATHROP: --could be excluded.

JOE NIGRO: I, I think it, I think that, yeah, I think that that is possible--

LATHROP: OK.

JOE NIGRO: --but you know, again, my, my main point is, I don't think police should lie to children.

LATHROP: OK. I think Senator DeBoer has a question for you.

JOE NIGRO: Sure.

DeBOER: So I think part of what some of us are kind of thinking about here is that, maybe you don't call it puffery, but if you say to somebody, the best thing you can do is tell me what happened, that is subjectively, possibly the best thing you could do, because, I mean, you could help out. Like if, you know, the-- how does the cop not know it's the best thing? If the cop thinks maybe this guy is not the right one, the best thing he can do is tell me whether or not he's the right

one. So the kind of subjectivity to the question of-- you know, we have in other places abilities to test whether or not something is a subjectively true statement or not. But here we don't have anything at all that helps us with that. We don't have the case law to refer to, that would tell us whether or not we're, you know, outside the bounds of subjectively true or false. I think what Senator Lathrop was probably expecting you to say is that, No, that's OK. You can say the best thing you could do is not. So it is, it's tell me here. And then, you know, you get to a more egregious thing where you say, OK, now the best thing you could do is-- 'cause I'm going to try and help you out. Maybe the guy is going to try and help him out. Maybe he thinks, you know, so these kinds of things, like at what point, can a police officer say anything if they can't say the best thing for you is to talk to me. Like you've taken away more than just lying there, you've taken away trying to empathize with the kid. I mean, there's a lot more than just lying that's happening there. Can you, can you kind of address that issue here? Because it seems like this has taken a-- if, if what you're saying falls within this bill, then that's a whole huge swath of things that isn't just lying to kids. It's--

JOE NIGRO: But I think that--

DeBOER: --more new--

JOE NIGRO: --the example you're giving, I think, without the officer expanding on, you know, it's the best thing is for you to tell me what happened, I, I think, without the officer expanding on that, I think we have to, we have to protect the rights of the child and say that, that, that's not OK. I mean, I'm sure you're aware-- for decades, you know, people in jail have said, don't talk and you can walk. I mean, that's just kind of a saying. It's like-- it's, it rarely pays off to, to talk with the police would be the view of the people who are in the system. But a juvenile sitting there with an officer-- and again, I-- you know, as I said earlier, if that's allowed, then you poisoned that juvenile for everybody in the system trying to work with them. And I-- you know, I-- again, but I-- what you've described, I, I don't see it as problematic. In terms of passing legislation, I see it as problematic, and the officer shouldn't say that. They-- if they're going to say that--

DeBOER: So--

JOE NIGRO: --they'd better expand on it significantly.

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DeBOER: --you would like, you would like to, with this bill, limit what an officer can say to a child to a very limited scope of things that are in terms of-- I mean, what can an officer say to a child? Well, I'm going to get you into trouble if you tell me this, but tell me this anyway. Like, you know, I don't know how you would not worry about it. And then if, if there is fruit of the poisonous tree from this, then now you've taken out basically a huge swath of the investigative process.

JOE NIGRO: But how hard is it to tell the truth?

DeBOER: Well, if one of the things is the best thing that you can-- I mean, we don't need to argue about this--

JOE NIGRO: Sure.

DeBOER: --but if one of the things is the best thing you can do is tell me what happened, then, if that's a lie, I would never in a thousand years have considered the best thing you could do is tell me what happened to be a lie. So you know, then I think there are going to be a lot of officers out there who aren't going to know what is and is not OK for them to say. And I think we're getting at a lot of, a lot of things that we maybe don't intend to get at. Like, there's a difference between saying, Tommy said you stole it, and the best thing you can do is tell me what's going on here. So--

JOE NIGRO: Well, I, you know-- and I think, as you heard earlier, I think the Innocence Project could give you lots and lots of examples of people where it was not in their best interest to tell, tell what happened. And, and, and, and again, I think-- sure, there are people who really did commit an act and they wound up admitting because they were deceived. And obviously, as a defense attorney, we're going to try and protect their interests. But I think, beyond that, as a society, we don't want people falsely admitting the things that they didn't do, and that happens all too often.

DeBOER: I don't think--

JOE NIGRO: And this would reduce that.

DeBOER: I don't think anybody is disputing that we don't want people falsely-- I think my concern is just, are we with this bill? Is the bill getting at a larger swath of investigative techniques than what we actually intend to get at with the intent of the bill? And I don't know if that's true or not. So that's something that we're still working on. Thank you.

LATHROP: Interesting bill. Interesting bill. It presents a lot of-- no one, no one wants to have a court accept evidence that's not accurate, right, whether it's a confession or anything else? I just wonder while I'm sitting here, let's say that an officer interrogates somebody or is in the room, in the interrogation room with somebody for 45 minutes, OK? Walks in, and the first thing he says is the best thing you can do is tell me what happened. And the kid tells a whole bunch of excuses: I was, I was at my girlfriend's house; I was here. And the guy finally says they're, they're trying to find a body. Where's the body buried? Well, it's buried in Josh's backyard, and they go and dig it up. And there it is. Like, you didn't say something that wasn't true, right? But 45 minutes before he gave up where the body is, the officer walked in-- I keep pointing at Jim over there-- the officer walks in and says, the best thing you can do is tell us where, tell us what happened. So now, did that precipitate him to say something 45 minutes later? Is that what the resulting in is about? I see people shaking their heads vigorously. We're just trying to--

JOE NIGRO: Yeah.

LATHROP: --test the limits of this bill.

JOE NIGRO: I don't think that's something officers should say to somebody in an interrogation room who's in custody.

LATHROP: Well then, how does the, how does law enforcement explain how they found the body in Josh's backyard?

JOE NIGRO: Well, there's a difference between saying, the best thing is to tell me what happened, and saying, after you've revised [SIC] Miranda, saying, What happened?

LATHROP: OK. There's-- I've carried, I've carried bills for the Midwest Innocence Project. I appreciate what they do, and I appreciate very much what they do for people that are wrongfully convicted-- very, very, very much appreciate that. There's a little gray in this one, just from my take, but I get what the point of the bill is.

JOE NIGRO: Yeah, and there may be other proponents who don't agree with some of the things I've said, and I'll leave it to Senator Cavanaugh to clean that up.

LATHROP: OK. Well, hopefully he can. Thanks, Joe.

JOE NIGRO: Thank you.

LATHROP: Any other proponents of this bill?

TAYLOR GIVENS-DUNN: Once again, good afternoon, members of the Judiciary Committee. My name is Taylor Givens-Dunn, T-a-y-l-o-r G-i-v-e-n-s-D-u-n-n, and I'm here representing Voices for Children in Nebraska, in support of LB732. All children deserve society's protection to grow into healthy, productive adults. I think that's a fact that we can all agree upon. We support LB732 because it would prohibit investigators from knowingly communicating false facts about evidence and unauthorized statements regarding leniency when interrogating youth in custody, which can lead to false confessions instead of reliable ones. When a child is in a stuffy interrogation room after being grilled by adults, they're scared and more likely to say whatever it is they think the officer wants to hear to get themselves out of that situation, regardless of the truth. Police officers are at liberty to exploit the situation in an effort to elicit false information and statements from minors in order to help them with the case. We've known for a long time now that this has devastating consequences. We've heard it today with cases of the Central Park Five and some of the other things, right? Real safety and justice can never be realized if we allow this practice to continue. National research demonstrates that children are substantially more likely to confess falsely to crimes they did not commit. Study of exonerations have found that about 13 percent of adult exonerations involved a false confession, while 43 percent of juvenile cases did. The younger the child, the more likely the false confession. One study found that of all juvenile wrong convictions, 69 percent of children aged 12 to 15 falsely confessed, compared to about 25 percent of youth ages 16 and 17. Generally speaking, the younger the child, the more likely they are to accept responsibility for an act that he or she did not commit. Desiring to please or desiring to leave, the child may be willing to just go along with the interrogator, believing that agreement will end the interrogation sooner and make it all go away. As I've led the Nebraska Youth Justice Policy Fellowship over the past several years, this is a story that I've heard more than once. And I want to also note that this is not unprecedented. In early 2021, Illinois became the first state in the nation to enact legislation of this kind. And a similar bill in Oregon, sponsored by a law enforcement officer, was signed into law last summer, and there's currently pending legislation of this kind in New York to look at to maybe get out some of the issues that we've talked about in this current iteration of the bill. I want to thank Senator Cavanaugh for his work on this critical issue, and thank the committee for your time and consideration. And if I have a moment, I do want to address

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Senator DeBoer's comment. So you asked earlier, Why might a young person admit to falsely admit, falsely admit to a crime that they did not commit? And through my time working through it with young people through the Nebraska Youth Justice Policy Fellowship, there's two major arguments that I've heard from youth who have experienced this. One is they wanted questioning to be over, right? They're scared. The interrogation process is already intimidating, and they just want it to stop. I've heard that a couple of times from many people. And the second one, which really breaks my heart, that I've heard from young people, is they want someone to be on their side. So if a police officer is using deception in this way or they're saying, like, I can provide you leniency here, like, I'm here for you in this way, right? Those kinds of deceptive arguments, for, for the young people that I've worked with, that has led them to, to falsely admit to something that they did not do because it feels like someone is supporting them or it feels like someone is on their side. Now, I can't tell you how often this is happening because I'm using anecdotal evidence from Nebraska youth. But I do want to, want to say that, from our young people's perspective, this is something that's happening. So we support LB732, and we hope that this use of deception will be diminished or completely removed so that our young people are getting a fair chance, and so we're also seeing fewer false convictions overall. So thank you all. I'm open to any questions if you have them.

LATHROP: OK. I'll see if there's any, any questions. I don't see any.

TAYLOR GIVENS-DUNN: Thank you so much.

LATHROP: Thanks again for being here. Any additional proponent testimony? Anyone here in opposition? Good afternoon and welcome.

JIM MAGUIRE: Afternoon. Chairman Lathrop, senators of the Judiciary Committee, my name is Jim Maguire, J-i-m M-a-g-u-i-r-e. I'm here under two hats, with the Omaha Police Officers Association and the Nebraska Fraternal Order of Police. We're here in opposition of LB732. I've heard some of the, some of the comments that were made earlier, and let me just start this off. We are not in the business of obtaining false confessions. We don't use deceptive tactics on every interview. It just seems like that, that the, that the word is out, that this is the only technique that we use. It is a technique that is allowed through case law in the Supreme Court that says law enforcement can do this-- doesn't mean that we do it all the time. But the last thing we want to do is deceive a juvenile or an adult, in any circumstance, to obtain some sort of a false confession. That is simply not true. Ultimately, all we want to do is find out the truth. Now, if we, if we

happen to use this deceptive tactic, it might just be to go ahead and see what kind of body language that we're going to get from it. It doesn't mean we're going to use that. All we want to do is just, is, is just kind of gauge it. So it's just, it's just a technique that we're using. And there is, there's-- you cannot tell me that we are out here abusing all of these, these children. That is, that is not the case. All we-- again, I will, I will reiterate it, one after the other. All we want to do is find out the truth; that's it. We're not trying to throw a bunch of people in jail. We've got cameras everywhere. The majority of the departments have body cams. If we have somebody that's being arrested for a felony, we're going to have to have them interviewed on, on videotape so anybody can, can review those. They can file a motion to suppress the statement, which they most likely will, and it'll be up to a judge or a jury to determine whether or not that statement was, was made under coercion. And I can assure you, we don't have the authority to make any kind of a, of a promise. Only the county attorneys or the prosecutors are the ones that can do that. So if-- we are not out there saying, Tell us this and, and we're not going to arrest you, and we'll make sure that, you know, you're going to, you're going to get home and everything else. That's not happening. We don't have that authority to do that. Only the county attorney can say, Yeah, you're going to-- I can assure you we'll, we'll dismiss that charge. We, we can't say that if you tell us this, we'll dismiss the charge; it's not happening. We don't have the-- we certainly don't have that capability. It's not in our job description. So in the end, I just want to say that this is a bill that is, is, is an attempt to fix a problem that simply doesn't exist. Thank you. If you have any questions, I'll answer any.

LATHROP: Senator McKinney.

McKINNEY: Thank you. I got a lot of questions, actually, but I'll start with this. So is it, is it possible for police to convey a plea without lying or deceiving a youth?

JIM MAGUIRE: Are you saying that, if they, if they--

McKINNEY: Is it--

JIM MAGUIRE: --tell us something that we go to the county attorney?

McKINNEY: Is it, is it possible for you to get a youth to confess to something without deceiving them?

JIM MAGUIRE: Well, of course. If we're not, if we can, we can--

McKINNEY: If it--

JIM MAGUIRE: --get them to admit their guilt without having to use deception, then no, we don't have to. But sometimes it just-- you have to come up with something and just to judge their body language. I think, you know, that's-- it is not an attempt to trick them. All we want them to do is tell us the truth.

McKINNEY: So what is the, the definite-- in your opinion, what is-- if you're not trying to trick them, in your opinion, what's the definition of deception?

JIM MAGUIRE: Yeah, that's, that was a, that was a misstatement on my part. I mean, we're not trying to intentionally get, get them to tell us something that they didn't do.

McKINNEY: So why is it wrong, I guess? 'Cause I was listening to the conversation. If an officer deceives a youth and it's thrown out in court, and whether-- regardless or not, the youth said some other stuff that brung about some other things, why is that wrong to be thrown out if the officer initially lied or deceived the youth into confessing?

JIM MAGUIRE: Are you saying why that, why the, the, the further evidence, saying, hey, we got this information based on a bad statement, and because of that, why can't we use that against him in these other things?

McKINNEY: Yeah.

JIM MAGUIRE: That's court law. That's fruit of the poisonous tree.

McKINNEY: Yeah, that, that's my point. And I guess-- so are you saying, also, that cops never lie to youth?

JIM MAGUIRE: Well, are you say-- what we're saying is that it is a deceptive tactic used in an interrogation in order to get to the truth.

McKINNEY: What is your, what is your clear definition of deception?

JIM MAGUIRE: Well, I-- there's, there's, there's a bunch of definitions--

McKINNEY: What's yours?

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JIM MAGUIRE: --but I, I don't have one off the top of my head. But if you're saying, hey, we have a carload of kids, and what-- there's a there's a bunch of stolen equipment in there, and we, it, you know-- and this is hypothetically-- you go up to one of the kids and say, hey, so-and-so told me that you, you're the one that were breaking into all these cars over here. And he says, No, it was the other guy. And you go to the other person, you say, OK, we know that you're the one that did it. And he says, Yeah, I did. Everything would be thrown out under this case, under, under this, under these rules.

McKINNEY: What's wrong with that?

JIM MAGUIRE: Doesn't mean that, that, that the person didn't do it. It's just a tactic; that's all that is.

McKINNEY: So if it's your, if it's your kid, would you be OK with law enforcement lying to your kid to get a confession?

JIM MAGUIRE: I guess I would have to look at the circumstance. But if you're saying that I, that we can't even come in and ask them simple questions, and you're saying, Well, that, that violates this, you can't say it's in your best interest to, to tell me the truth,--

McKINNEY: I guess my trouble with--

JIM MAGUIRE: --I don't even know where you would go for, for simple car accidents.

McKINNEY: I guess my trouble with this all is, why can't law enforcement, who has these humongous budgets, get a conviction without lying to a youth?

JIM MAGUIRE: Well, I think what you're-- the, the budget doesn't have anything to do with, with the convictions or anything else. All we're trying to do is get to the, get to the truth. That's all it is.

McKINNEY: So why can't you, why can't you do it without lying or deceiving?

JIM MAGUIRE: Well, who's to say that, that we can't? It's just-- all, all we're saying is that it's a, it's an investigative technique. That's all it is.

McKINNEY: Thank you.

LATHROP: Senator DeBoer.

DeBOER: Thank you very much for being here today. Let me come at it this way, 'cause I'm trying to figure out-- you've heard now that there's been some false statements that are produced that way, that it's maybe more likely to happen with kids, that sort of thing. Does hearing that this particular investigative technique will, from time to time, lead to false confessions, make you less likely to want to use it?

JIM MAGUIRE: Well, obviously, you would have to, to pick the time and place when you're going to utilize that, but to remove it from our, our investigative tool box, in-- just, in my opinion, would be unnecessary. We need everything that we can at our disposal because we've got victims that are telling us we need to find out what happened, that we need to get to the truth. And that's the whole thing. Now, yes, some of these cases that they have brought are, brought up are absolutely-- they're heartbreaking, and it is unfortunate. And that's why, when it comes to law enforcement and everything else, yeah, we need to-- do we need to change some of our tactics? Of course we do, but a lot of that comes with training and, and going with best practices. But in the end, I mean, you know, you have to sometimes read people and, and just ask them certain things just to get, kind of, a reaction from them.

DeBOER: So would you say--

JIM MAGUIRE: And it's not so much to get them to falsely state that they did it or not. It's just, you know, because there are times where, you know, you go ahead and you're, you're talking to them, and they're saying stuff. And it's like, you know, there are-- that the, that's not right. But now, just to take that away from us would be unfortunate.

DeBOER: Do you think it is a critical investigative tool for you to be able to lie or deceive?

JIM MAGUIRE: No. Critical? No.

DeBOER: No.

JIM MAGUIRE: Is it, is it necessary? Sometimes, yes.

DeBOER: If guardrail, guardrails were placed around this investigative tool so that-- not, maybe, as we have it written, but in, you know, certain circumstances or something like that, to limit the use?

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JIM MAGUIRE: As I've stated in the, in the past, you look, you create the laws and we will enforce them, and we will, we will work around what we have to do. Ultimately, our goal is always to find out the truth, advocate for the victims, and make sure that whoever did it is really the person that did it.

DeBOER: Um-hum.

JIM MAGUIRE: And yeah, we will, we will do what you tell us to do. But in the end, I guess I'm just saying, don't take away this, this tool because it is, it is not like every time. Like I said before, it's not like every time we talk to a juvenile, the first thing that's going to come out of our mouth is a lie. That is not true.

DeBOER: Um-hum.

JIM MAGUIRE: You know, we deal with a lot of kids, and we deal with a lot of adults. I mean, we're in the people business, and, and all we want to do is help people. And sometimes, you know, we just, we, we will advocate strongly for the victims.

DeBOER: And, and if there were ways to assure that the, the use of deception with children, like maybe-- I don't know, I'm going to throw something wild out there-- like you can't use deception with a kid under five. I mean, not that you're-- you know what I mean. Like--

JIM MAGUIRE: We're not, yeah.

DeBOER: Yeah, you know what I mean, like--

JIM MAGUIRE: I know what you mean, absolutely.

DeBOER: --say, saying crazy things, but like, would you all be willing to talk about how we might help some, put some guardrails around this practice so that there are fewer instances of false confessions coming out?

JIM MAGUIRE: Absolutely, yeah.

DeBOER: All right. Thank you.

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

JIM MAGUIRE: Thank you.

LATHROP: We appreciate your testimony and perspective. Any other opponents? Good afternoon.

TRACY SCHERER: Good afternoon. My name is-- I'm Captain Tracy Scherer, T-r-a-c-y S-c-h-e-r-e-r, on behalf of the Omaha Police Department. I wish I could change everything that I wrote, based on what everybody's talking about here. But initially, regarding this bill, OPD respects, respectfully opposes this bill for a couple of reasons. First, as stated earlier, there is Supreme Court law that has consistently upheld decisions regarding the use of deception during suspect interviews, and has not totally delineated between adults and juveniles as suspects. Second, this bill narrows the scope of police interviews so narrowly, to the point that interviews would almost become obsolete and, quite frankly, listening to the arguments here, I'm not even sure that I understand. I have 27 years experience, and now I no longer understand the difference between deception and conversation. Police questioning of suspects is subject to just suppression if it violates the suspect's Fifth Amendment rights, and I believe that it's already been stated that there, that the defense can try and suppress that interview. And that would be based on-- you could show that, if we used this deception, that it coerced a confession. The, the bill defines deception as knowingly presenting false facts, which does not allow for officers to use techniques that have been proven admissible in court in attempts to corroborate facts known to them, or to learn facts that they were unaware of. An example of this technique includes implying fingerprints or DNA evidence were located at the scene, but to talk about Senator McKinney, many crimes are done without any video evidence or witnesses at the scene. And if you had four juveniles who committed a shooting today, you don't know which one of the juveniles in that car specifically did that shooting. You might use deception to say one talked against the other because they're the only ones that know what happened. To suggest this evidence exists allows the suspect the opportunity to deny his or her presence, or explain why such evidence would be at the location for legitimate reasons. Additionally, this bill does not provide for any exceptions regarding severity of the crime, age or experience of the juvenile. For instance, some juveniles have been consistently involved in criminal activity from the age of 14 and, by the time they are 17, they could be committing robberies, sexual assault, and even homicide, but this bill would require us to treat the 17-year-old the same way as a 13-year-old. The other thing is, just quickly, is talking about the best-thing-you-can-do statement or I'll talk to the county attorney. I do have the decision when I am arresting a juvenile, whether to ask for it to be in the juvenile court or the adult court. And it's my understanding that the juvenile court is there to help the child to get rehabilitation and get the best services possible. I currently am in the Special Investigations Section, which investigates

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sexual assault of juveniles, and some of them committed by juveniles, and we consistently look at whether services are needed rather than just straight out treating them like the average criminal. And to not be able to talk to them about what happened or why that happened, I do think that it is an important thing to be able to have that to talk to these juveniles. Thank you for your time.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Captain Scherer. You are a subject matter expert on this. So in your experience-- and you said 27 years?

TRACY SCHERER: Twenty-seven years as a police officer, yes.

BRANDT: And I would assume you started as a, a foot soldier and worked your way up?

TRACY SCHERER: Yes.

BRANDT: In these interrogations over the years, and just in your experience, 'cause there's no way to scientifically measure this, what, what percent of the time with juveniles does a police officer use what we're defining as deception today?

TRACY SCHERER: Well, there's a problem with that statement. To be honest with you, I'm a terrible liar. So as a younger officer, when I was told to go in and make up, make up things, like tell them that DNA is there or their fingerprints are there, I don't think I could pull it off. So it's totally a subjective thing as to whether somebody wants to use deception or not. I think that we are always under the-- we work under the rules that what we do in that room-- and I hate the word interrogation-- but what we do in that interview room is subject to scrutiny by defense attorneys, by the judge, by the defense attorneys and all of that type of stuff. So to make an outlandish lie or deceive, we have to weigh that against what is going on. Has the juvenile been sitting there for six, seven, eight hours and now we're throwing in deception? To bring back-- I don't, I know you didn't ask this question--

BRANDT: Go ahead.

TRACY SCHERER: --but another thing, I, I, too, support the Innocence Project and I agree, but some of the statements I've heard here, there's advances in DNA and I'm aware that or I believe that a lot of the exonerations are from DNA evidence. So there's no way to know if,

had we had those practices back in, in that, during those times when those convictions were done, would we have had to rely solely on a confession?

BRANDT: So during an interview with a juvenile, is it usually just a lone police officer? Is there somebody watching a camera in the room from a terminal at a computer? Is it, is it usually more than one police officer that's aware of what's going on in the interview room, and then you, you collaborate on maybe how to get, get to the truth?

TRACY SCHERER: Yeah, so I can only speak anecdotally.

BRANDT: Sure.

TRACY SCHERER: I don't have any statistics on this, but normally our investigations are done with a lone police officer in the room, and there may be another police officer who's monitoring or a supervisor who's monitoring and asking them, go back in and ask this question. They're not-- we don't-- I-- it would be very, very rare that we would have multiple officers in a room doing an interrogation.

BRANDT: And all that evidence is recorded and made available to both the prosecution and the defense?

TRACY SCHERER: Yes. I was thinking about that, and the only times that I can think of that it hasn't been recorded is sometimes there's equipment failure.

BRANDT: OK. Thank you.

LATHROP: Did you have your hand up?

McKINNEY: Yeah.

LATHROP: Senator McKinney.

McKINNEY: Thank you. I've got a few questions. So is a 13-year-old a juvenile?

TRACY SCHERER: Yes.

McKINNEY: Is, is a 17-year-old a juvenile?

TRACY SCHERER: Yes.

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McKINNEY: OK. Also is it common practice for superiors to suggest to lower-ranking law enforcement officers to go into interrogations for-- interrogation rooms and deceive and lie to juveniles?

TRACY SCHERER: I don't know that I can say that that's common practice, no.

McKINNEY: But you mentioned it in your statements that you were told that at a time.

TRACY SCHERER: I am specifically thinking of a burglary suspect that was brought in off the street, who was an adult. And it was, you needed a confession, and go ahead and say that there's DNA or a fingerprint. And a lot of times, when-- what we're going to is, we're taking something that's a reasonable suspicion and we're trying to bump it up to probable cause. So there are things there that we believe that this person, we're not just snatching somebody off the street and lying to them and badgering them until the point that they confess to a crime, and we're especially not doing that with juveniles.

McKINNEY: I know you're saying that, but I am aware of situations where that's happened. So are you OK with the action, action or practice of deceiving someone by concealing and misrepresenting the truth? You're okay with them to be used against a juvenile?

TRACY SCHERER: I am OK with that in certain circumstances, yes.

McKINNEY: Thank you.

LATHROP: Senator DeBoer.

DeBOER: I want to make sure I understood what you were saying. You commented that you're not great at lying, and so that hasn't been one of the, the tools in your toolbox. Is that correct? Have you, have you ever used deception as a investigative tool?

TRACY SCHERER: Probably. I can't remember specifically, but probably given the example of you have four people in a car and you don't know which of the four have done it. I probably have told somebody that somebody else made a confession, that this person did it, to get that statement. I generally, in my experience-- just this is solely me-- I don't try or I, I would have a hard time lying about physical evidence. So stating that we have DNA evidence or that we have fingerprints, for me, that's a difficult thing. I do know that there are officers that will do it.

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DeBOER: So it's not your customary practice, anyway, to use deception or lying in your investigations?

TRACY SCHERER: It's not my customary practice. However, I will say that I have talked to, and I do not-- this is where I come into-- we talk about gray area. I have told suspects that I will talk to the county attorney, and I don't believe that's a lie because I have talked to the county attorney. I haven't offered, I haven't made any pleas, I have not made any promises other than to talk to the county attorney. And then I have gone and talked to the county attorney. And in my unit, we constantly talk with the county attorneys about whether we're looking at juvenile charges, whether we're looking at adult charges, what the severity of the crime is, that type of stuff. So I don't believe that's a deception, and I have a hard time with the fact that this is so broad that even here, we can't all agree on what the deception is.

DeBOER: So you would say that, more or less, to the best of your ability to characterize 70-- 27 years-- sorry, 72, I had it reversed in my head, that would have been a while.-- 27 years. To the best of your ability to characterize it over 27 years, you would say it is not customary for you to use deception, although we're having some difficulty defining that here?

TRACY SCHERER: Yes.

DeBOER: Do you think there's something that makes you a better investigator than other police investigators in terms of your ability? Go ahead. Do you think you're, like, more innately gifted at investigation than others?

TRACY SCHERER: No, no, I don't think that that would be a fair assumption.

DeBOER: OK.

TRACY SCHERER: There are some people that are more drawn to it--

DeBOER: OK.

TRACY SCHERER: --or are better at questioning--

DeBOER: OK.

TRACY SCHERER: --but I don't-- there are very good investigators out there.

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DeBOER: So then, I guess where I'm sort of going with this is, if you haven't had to use it, if you haven't had to rely on it, do you think that it is a critical or crucial tool in the investigative toolbox?

TRACY SCHERER: Yes, I can't-- so I have never investigated homicides.

DeBOER: OK, there we go.

TRACY SCHERER: I have been a robbery detective. There are crimes that are out of my scope of a subject matter expert, expert. However, as a captain, as a supervisor in the Special Investigations Section-- and this is adults-- I can't say that it's happened with a juvenile offender, but we have had baby deaths where we use deception to find out what happened. And specifically, what I'm talking about is one person against another. This person told us something. We're talking about very serious crimes here. We're not talking about shopliftings, and there are serious crimes that are committed by juveniles that do put them away. But I'm very much against what is happening in our juvenile justice system, that they're allowed to keep committing offenses without getting the help that they need, and sometimes figuring out what's really going on is necessary.

DeBOER: That's helpful. I, I appreciate that. I wasn't trying to trap you, but I just-- it was interesting. I was trying to sort of figure out the dissonance between you saying that you didn't use it and, at the same time, saying it was an important investigative tool. Thank you. That was, that was helpful to clarify.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. One quick question. Earlier we discussed the statement, "It's in your best interest to tell us what happened." Is that a deceptive statement?

TRACY SCHERER: So honestly?

BRANDT: Yes.

TRACY SCHERER: I don't believe that that's a deceptive statement, especially when we're talking about juveniles. If I have a mountain of evidence against a juvenile, but they're willing to talk to me about what happened, there may be other things. There may be something that was going on in their mind. There might be something that has happened to them that has a trauma base or something like that. And that gives them the ability to talk about that, and that gives me the ability to talk with the juvenile prosecutor about what is the best course of

action. So I can't always say that it's not in the best course of action. Of course, I'm not a defense attorney, attorney, and I know that every defense attorney would say, don't talk to the police. However, we're talking about juveniles and we're talking about getting them help when-- there are so many bills that are discussed today that I see unintended consequences for, and one of these is the ability to provide juveniles with help when they really need it.

BRANDT: All right. Thank you.

LATHROP: I don't see any of the questions. Thanks for being here, Captain. We appreciate you, your patience and waiting. Anyone else here to testify in opposition to LB732? Anyone here in a neutral capacity?

TIM HRUZA: Chairman Lathrop, members of the Judiciary Committee, my name is Tim Hruza, last name spelled H-r-u-z-a, appearing today in a neutral capacity on LB732, on behalf of the Nebraska State Bar Association. I appeared earlier today and I kind of mentioned that the Bar Association has not finalized all its positions. I want to take a quick moment to tell you, sort of, how we work through our process so that you understand why I'm sitting here and the reason I'm here. The Bar Association has several meetings throughout the bill introduction. All of our positions are taken through a committee process that works its way up to the House of Delegates, which is approximately 100 attorneys or just shy of that who reveal, review bills and provide feedback. I'm here in a neutral capacity after some discussion, as we're in the middle of that process. Our legislation committee met and discussed this bill. There was a vigorous debate, as you've sort of seen played out here so far this afternoon about the bill, and in the end, the Bar Association considered opposing the bill, based on one particular position. That position was not taken. We considered supporting the bill at the urging of other attorneys that practice in this area. We ultimately took a neutral position, and I'm here to provide you some technical feedback about the discussion among attorneys and sort of why this bill has been so challenging for us to wrap our heads around, in terms of what the best policy approach might be. I've had some good conversations with Senator Cavanaugh, and I appreciate his willingness to have a discussion, but the key sticking point for attorneys who have looked at this on both sides, both from prosecutors and defense attorneys, is in subsection-- I guess it'd be Section [SIC] (3) (a) (ii). So we're looking at the definition of what deception means, intentionally and knowingly representing or communicating facts. And I'll stop there and I'll cut to regarding leniency. So the discussion revolves around a situation in which an

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officer is-- generally lawyers don't have, didn't have any problems or concerns about the general, the concept that a law enforcement officer should probably not lie to a juvenile, right? That was, there was pretty broad consensus among prosecuting attorneys and defense attorneys who spoke up during our conversation. The real question came down to situations in which a prosecuting attorney had authorized a law enforcement officer to basically make a plea offer or to tell a juvenile, Hey, if you tell us the truth now, you know, you're looking at a misdemeanor charge or a misdemeanor allegation as opposed to a felony-level offense, something along those lines that can be done early on in that interrogation process. Ultimately, we took no position. I do believe that there's a letter from you-- or for you-- from the County Attorney's Association. I don't know for certain exactly what's in that, but I have had discussions with them and the prosecutors that spoke up on this. I think generally the juvenile judges, the defense attorneys, and the prosecutors understand that there's some conversation or maybe some potential language that would help with that sticking point about the ability to maybe allow law, law enforcement when they're authorized to provide a statement about leniency or about how a case will be prosecuted, even though they might not be the individuals who ultimately make that decision. So with that, I'm happy to answer any questions that you might have. I appreciate the discussion here today, and I thank you for your time.

LATHROP: OK. Any questions for Mr. Hruza? I don't see any. Thanks for being here.

TIM HRUZA: Thank you.

LATHROP: Anyone else here to testify? Was he neutral? He was neutral. Anybody else here to testify in a neutral capacity? Seeing none, Senator Cavanaugh, you may close. Oh, I should-- I haven't been doing this, and Laurie is-- pointed out that I need to, for the record, indicate there were three letters from proponents, no opponent letters, and one neutral. Did I do that right?

LAURIE VOLLERTSEN: Yes.

LATHROP: OK. You may close.

J. CAVANAUGH: Thank you, Chairman.

LATHROP: We're just ironing out the new process.

J. CAVANAUGH: Yeah, I'm happy to be here for the growing pains. Thank you, Chairman Lathrop and members of the Judiciary Committee, and I

appreciate everybody's thoughtful consideration of this bill today, and I appreciate everyone coming to testify. I think-- I really appreciate, actually, Officer Maguire and Captain Scherer being here and bringing the law enforcement's perspective. I, I sincerely think it does take a lot of courage to come and stand here and say, we need to lie to kids. So I just kind of wanted to answer some of these questions have been brought up over time. Between the two officers we heard, this is not necessary because it doesn't happen, and this is so broad that it would prevent us from interviewing kids at all. And so somewhere in between is where the reality is, right? But we heard that they're not in the business of obtaining false confessions. We don't use this in every interrogation. They do use it in some interrogations, we heard, and they use it sometimes with-- not with the intention of getting a false confession. And that is not the point of this legislation. It's not to prevent officers from their duty of pursuing investigations and discovering evidence. It is merely saying that children are more susceptible to giving a false confession when they are presented with deception or false facts. And what the officers are kind of missing-- and I think actually Miss Roberts, who I actually-- I really appreciate also her being here, from the Innocence Project. She actually came from New York, not from Missouri, so she came a long way to come. But she mentioned the amplification of tunnel vision, and we heard a couple of mentions of exactly what that is, right? We heard saying we're just trying to get them to admit the thing they did. They're coming in from a perspective where they've already assumed-- they are, their assumption is that this kid is guilty and, therefore, they're just getting to that truth. The problem is, when you're lying to kids, your presumption, their presumption, their assumption is affecting the outcome and get, going to draw a false confession, which has the effect of harming the kid and preventing them from getting to the ultimate truth, which is what really happened here. And so what this bill is saying is that we should not be undertaking that particular method of seeking the truth and that, because officers, not from any detriment to-- no, no problem with them, but it is, is a byproduct of the business that they are in, that they see kids, anyone who's accused, and they, they kind of automatically see the worst in it, right? We heard Captain Stacy [SIC] talk about that we are constantly seeing these kids in trouble, which is the assumption that, when we get this kid back, they are guilty because we've seen them before or that they've been in the system all these times. They-- we are operating from a presumption that they did something wrong and, therefore, we are shoehorning or bootstrapping them into a confession because we feel like it's the right thing to do, we feel like we are getting the truth. But that is not what the

data shows. The data shows, when we deceive kids, we are more likely to get a false confession than when we deceive adults. And I just kind of want to go through some of the answers. Senator DeBoer mentioned potentiality of guardrails. I would say there are guardrails on this bill. It limits it to anybody under the age of 18. We actually define juveniles in Nebraska as under the age of 19. There is data to show this sort of coercion and deception leads to false confessions across the board. We're limiting it only to adults because of the disproportionate impact. That is the guardrail that we put on this. I wanted to kind of hit on the fact, so there's this question about whether or not you could show that video and use it for evidence for the trier of fact to the jury or, if you're doing a bench trial, to undermine or to say that the confession was not, is not reliable. That is a reliability question to the trier of fact. It is not a voluntariness question which goes to whether or not it is admissible at all. So we have a motion to suppress. The question before the judge, then, is whether the confession was freely and voluntarily given. And so those are two different standards, and they're determined at two different stages. What we're saying, what I'm saying in this bill and what we're asking is to say that, if a confession or statement is elicited from a child, from a juvenile, as a result of deception, it is not pre, it is presumptively not voluntarily given. However, this bill, as some of you said and that Senator Lathrop has pointed out, there is some gray area that would allow for the trier of fact or the judge, finder of fact, to make the determination about whether or not the particular argument that Senator DeBoer and Senator Lathrop and Mr. Nigro were having about that particular phrase, if that actually would constitute that kind of deception and coercion. And that, admittedly, that determination could come out differently in different courtrooms. But-- and it would depend on a lot of other circumstances. But it is not-- I think the objective here is to set the principle and to set a strong legislative framework that would allow for, would no longer allow for these sort of false statements and deceptions to be used against children. And then that would be on the defense attorney, the judge and everybody, through that litigated process, to put some more meat on the bones in that kind of capacity. I did-- there was the case of that Johnny Lee Wilson that was brought up by, by Miss Roberts. And just-- I think it bears mentioning, you-- if you all recall those facts that he gave-- a lower-functioning young man, who gave a confession after being deceived and was convicted, the only evidence at his trial was his testimony, and they did attempt to suppress it. You heard the officers, both of them testified to the fact that the current law, state of the law, is under the United States Supreme Court, which is, I believe, *Fromm v. Cupp* [SIC-Frazier

v. Cupp] from 1969, where the Supreme Court has said deception is, in fact, an admissible tactic for eliciting testimony, and it does not undermine the voluntariness of that testimony. It, of course, goes to reliability, as was brought up before. And so I think there is some questions from the committee that, that I think are well-intentioned about exactly how the mechanics of this would work. The fundamental question is, we have a criminal justice system, we have a law enforcement system that is in the interest and the pursuit of truth, justice, and, and getting to what happened. And we find, we now know that we are more likely to get a false confession from a child, juvenile, when we deceive them. And so it undermines that objective. But it also is a bad look; we should not be lying to kids. I was driving my kids to school this morning-- I have an eight-year-old and she asked me what I was doing today. And I said, Well, I'm going to introduce a bill that says law enforcement can't lie to kids. And my eight-year-old says, They can do that? I said, Unfortunately, yes, and so out of the mouths of babes, as it were. But from another perspective, we have a United States congressman in this state who just shockingly found out that law enforcement can lie to adults. And so if you think that it is unlikely or trying to contemplate situations under which somebody would give a false confession, there are adults in the United States Congress who think that they, that they can be deceived into giving a false confession. So that is, I think, the crux of it here, that children are different and they should not be lied to, and that we do not get the outcomes that we seek when we lie to children. And so I'd ask for your favorable consideration, and I would take any other questions.

LATHROP: All right. Let's start with Senator DeBoer.

DeBOER: Actually, you know what, start with Brandt and then come back to me.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Cavanaugh. I've got a couple of questions here. We have heard that quoted several times today about the percentage of higher false statements, false confessions from children if they've been lied to. Can you send me the statistical evidence on that, also versus non-lying, and so I can, I can make my own assumptions on this? Because what-- the testimony that I've read today doesn't give me enough supporting evidence statistically to see if there's really much of a difference, because I, I would guess if you're making that statement-- and you can confirm

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this-- that if the officer wasn't lying, there are times when the child, child still makes a false statement. Is that true?

J. CAVANAUGH: I'm sure that is true.

BRANDT: Yeah. And so I'd sort of like to know what that is. You, you said that the police are biased and had tunnel vision and accused them of being guilty before the fact. But you're a defense attorney, so therefore aren't you biased the other way and assume he is innocent before the fact?

J. CAVANAUGH: Well, my--I suppose I would, I would confess to my bias for the presumption of innocence, yes. I think I'm fairly strong on the record in the fact that I believe strongly in that. And I don't want to-- I'm not maligning the police and law enforcement by saying that they have that kind of, that they look at things that way. I'm just saying that that is a, an occupational hazard. When you are arresting people, you, you think you've got the right guy; and sometimes they don't. But their perspective of-- I believe Captain Scherer said, when we have reasonable suspicion, but we're looking, we're trying to bump it up to probable cause, meaning they suspect this guy, but they don't really have enough to arrest him. That-- I think that tells you what it is right there, is that they have already made their decision. They're just looking for the support.

BRANDT: But isn't that your job, as a defense attorney, to turn that on its head?

J. CAVANAUGH: Well, if it gets to that point, but our system should be set up where we are not arresting people just because we, we suspect them. We should actually have evidence of a crime.

BRANDT: All right. Thank you,

LATHROP: Senator DeBoer.

DeBOER: OK, now I'll ask you my questions. Is it your intention to create fruit-of-the-poisonous-tree exclusions with this bill?

J. CAVANAUGH: No, that's not my intention. My intention is to prevent law enforcement from lying to kids in the first place so that they don't have to exclude any evidence that they would collect after the fact. I don't think that the burden-- I, I think if they don't, if they adhere to this law, if we were to enact this law--

DeBOER: Sure.

J. CAVANAUGH: --then there wouldn't be any problems with the fruit of the poisonous tree. However, if they did that, then they would have some problems. There are other situations where, I mean, you can correct or they can derive evidence from other sources. This is purely seeking to discourage lying to children and exclude any statements that are made as, as a result of that.

DeBOER: I simply wanted to know if you wanted to do that. And then the-- so you've said you want to create a disincentive to lie, which I think is what the, the bill is structured to do in terms of, of what we're trying to do with making it inadmissible. But if that's the case, if our, if our intention is to make a disincentive to deception and lying, it seems to me that it ought to be clear to an officer what constitutes deception and lying. And I'm not sure, based on our conversation earlier, that it would be clear what is deception and lying.

J. CAVANAUGH: Communicating false facts about the evidence in a case.

DeBOER: Well, I mean, there are some of these things that are clear, but I think it's the, the breadth of the-- I mean, this is one of the things you heard us talking about. Is it or is it not a false statement to say it's in your best interest to come in there? And, and the reason I ask is not for whether or not the trier of fact can then go through it and make a determination, and it changes from court to court, based on the totality of the circumstances. But I'm saying as a police officer, if I'm conducting an investigation and I want to be OK with respect to this, do I know? Do I have in my head a script of the things that are OK for me to say and the script of things that are not OK for me to say? And I'm not sure I do.

J. CAVANAUGH: You're-- well, I appreciate that question because I did miss that point. So-- and thanks to Mr. Hruza for coming to testify about, kind of, the broader work we've been doing. I've been working with the Bar on some of their concerns. So there are, as it pertains to the purpose of the section, the deception means intentionally, knowingly. And it probably could use some cleaning up because representing or communicating facts, information or statements to a juvenile regarding leniency or arrest is probably not a deception, right? But it is an overrepresentation of their ability to execute, right? And so the, the question here is not whether or not they truly mean I'll talk to the prosecutor for you about getting it transferred. What the intention here is to say you can't do that because they don't actually have the authority. So that is not a, that is not necessarily a deception, you're right. But it is, it does have the effect of-- it

does affect how the, the child, the juvenile will speak with them because they have a false sense that this person has more authority to dispose of the case than they do. And so that is the reason, I think, for the exclusion of that point. So it's not, that is not explicitly deception, but it is, it is-- as Senator Lathrop talked about, it does fall under, kind of, a category of puffery where they're overreaching their hand in their ability to dis, to change, to effect leniency. All the officers have the ability to do is they can talk to the prosecutor and they can make a recommendation. As Officer Maguire said, we don't have the authority to make offers about a plea.

DeBOER: And I think, when you were saying that, I think several of us here were thinking, yes, but does the child know that?

J. CAVANAUGH: Exactly.

DeBOER: So that is a good point, but then it isn't quite the same thing as lying or deceiving, so some of the concerns that you have about lying or deceiving, maybe it's a little different. Maybe, maybe it's something more like if, if--

J. CAVANAUGH: A sin of omission, maybe?

DeBOER: Yeah. Maybe, maybe there needs to be like, you know, some-- you have to say, because I'm only the cop, I can't guarantee this but, right? Like maybe there's some kind of, like, prescriptive language or something that would--

J. CAVANAUGH: I mean, I personally would be hesitant to put the exact language of a conversation in it.

DeBOER: Well, sure.

J. CAVANAUGH: But I do think that, that there is a, maybe a more clear way to distinguish between deceptions and representations about disposition of the case. I do think that those are two separate categories, and that is part of what I've been working on with the Bar Association and Mr. Hruza and several other people that have, kind of, brought that, that issue to me. But the-- I don't want to get lost in the fact that that still is, I think, a fundamental point of the conversation that representations about the disposition of the case do similarly have the effect of changing how a child will speak to them or what they'll talk about.

DeBOER: Yeah, I mean, I think the most important thing for me would be to be able to understand, as a law enforcement officer, what

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techniques were allowed and what were not allowed. And I'm not sure that I get that from this.

J. CAVANAUGH: Well, I would probably disagree with you about that. I think it's pretty clear about what they can't do, especially if you're not looking for ways to skirt the law. I think if you're looking for a way to find a way to, to persuade a child to talk to you and you think, Well, I can't say that, but I can think I can say this, and then that is trying to find some way around this law, as opposed to trying to operate within the confines and the spirit of a law where we are saying we shouldn't purposely deceive children.

DeBOER: Well, we'll agree to disagree.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. I'm sorry, I had to be at a hearing earlier today and, and it took quite a while, but I just, I want to thank you. Juvenile justice has been my number one passion, and I am in my last term. And so I want to thank you, Senator Cavanaugh and Senator McKinney, for following up with this legislation. It's so important. And you know, we're sitting here, having this discussion about whether or not law enforcement can not tell the truth to children. And we've fought for years about whether or not they should have a lawyer. So they're supposed to go into this thing, in this very complicated system, and not have a lawyer, be-- not understand that they get to be lied, that they're going to have people lying to them with, with, with the legal authority behind that. It's just, it's mind-bending to me how important this work for juveniles is, and I hope that you both will continue to do this work. It's, it's clearly what I'm most passionate about since I've been in here, and I have, I just want to thank you so much. It's-- really, we know that these kids are vulnerable, and I really appreciate this effort. So thank you.

LATHROP: OK. Anybody else? I think that's it. That'll close our hearing on LB732. Thank you, Senator Cavanaugh.

J. CAVANAUGH: Thank you, everybody.

LATHROP: Our last bill of the day is LB883 and our own Senator McKinney. Why don't you wait just a second till the room clears or we-- I think there's a few people that need to leave. I want to make sure it's quiet before you introduce your bill. OK. Senator McKinney, you may open on LB883, and welcome to the Judiciary Committee.

McKINNEY: Thank you, Chairman Lathrop and members of the Judiciary Committee. LB883 acknowledges that minors are vulnerable or a vulnerable class and should be treated as such in the criminal justice system. Additionally, this bill asserts that work should be done to decrease harm perpetuated by the proverbial court of public opinion as not to interfere with the child or adolescent's ability to be rehabilitated and reintegrated into society. Under this bill, the identity of minors who are accused or charged with criminal offenses cannot be made public, and requires that a special Miranda rights be offered to them. I decided to bring this bill because it's important to me that precautions be put in place for minors who make mistakes in their youth, and be provided with safeguards and the opportunity to be adequately rehabilitated. What happens far too often is that negative-- is that the negative connotation of a mere charge, without an ultimate conviction, follows a minor throughout adulthood. This kind of pigeonhole can be difficult to overcome. It can have lifelong implications. Some will argue that, that if anyone is charged with a crime, they are due whatever publicity comes about. To this I assert that a mere charge to a minor doesn't mean we should be plastering their identities on local news stations and in the newspaper. We should allow the judicial process to run its course. Then, if a minor is convicted and it's deemed necessary, the release of their identity is valid. We have age limits in criminal law for a reason. But for decades, it has been applied to the criminal justice-- it hasn't necessarily been applied to the criminal justice system like it should be. The, the judicial process can be, can still be adequately applied without causing unnecessary damage to a minor and his or her family if they are not ultimately convicted. According to the National Juvenile Justice Network, the negative impacts of "adultification" of youth in the justice system are substantial and often lifelong, affecting individuals, youths, their families and communities. I understand that keeping a minor's identity from the media doesn't institute an absolute bar or anyone finding out they have been charged with a crime. Court hearings are public. There are other defendants present. There are, there are other people present in a courtroom on any given day. I assert here, however, that keeping their identity out of media outlets can go a long way in alleviating harm to their reputation and future, in the absence of a conviction. Moreover, it is important that minors who are brought up on criminal charges be able to maintain their faith in the criminal justice system, and it can run its natural course without undue influence. In addition to putting safeguards around their identity, the Miranda rights provided to youth should be stated with specificity, and clarified for understanding so that minors are clear as to what they are entitled, and entitled to other

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consequences there, too. For example, instead of saying, You have the right to remain silent, an officer would say, You have the right to remain silent, which means you don't have to talk to me; it, it's your choice. In all, this bill is attempting to require law enforcement to properly notify juveniles of their rights and also allow the judicial process to run its course, only release an identity of a minor if a conviction is imposed. Thank you for your attention, and I'm open to any questions.

LATHROP: Very good. Thank you, Senator McKinney, for that introduction. Senator Brandt.

BRANDT: Thank you, Senator Lathrop. Thank you, Senator McKinney, for bringing this. So on page 4 of the bill, where you give all these examples of Miranda, are you saying that would be in place of their Miranda?

McKINNEY: Yes, it would only be used for minors, juveniles.

BRANDT: So then would-- a police officer could choose from a smorgasbord here, of which one they want to use? Or--

McKINNEY: No, they would go through what's, what's a--

BRANDT: Or would they tell them every one of these?

McKINNEY: They would go through every one.

BRANDT: OK. So then, what you're asking then is, is that they would have to go one through six.

McKINNEY: Definitely, to simplify. Yeah.

BRANDT: OK. And then the other part of the bill is, is basically about disclosure to the media, it looks like.

McKINNEY: Yes.

BRANDT: Is that a problem today?

McKINNEY: Yes, it's a problem. I've seen many juveniles in my community be charged as adults, and their names and faces are plastered across the media without a conviction. Now, if they're convicted, I understand if the release of their identity is used, but until they're convicted, unless they're convicted, I don't think their name should be used. If they're a juvenile, they're a juvenile.

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BRANDT: But if they're charged as an adult, doesn't that take some of the juvenile protections away?

McKINNEY: But they haven't been convicted as an adult yet.

BRANDT: OK. Thank you.

McKINNEY: No problem.

LATHROP: I don't see any other questions. Thanks, Senator McKinney.

McKINNEY: No problem.

LATHROP: We will take proponent testimony.

JOE NIGRO: Good afternoon.

LATHROP: Good afternoon once again.

JOE NIGRO: Senator 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 our office and the Nebraska Criminal Defense Attorneys Association, in support of LB883. I want to thank Senator McKinney for introducing this bill. LB883 protects children, and we keep children's identities private when charged with the crime. We protect the identities of people such as sexual assault victims. We should protect the identities of children in the system. Having your identity revealed can be devastating, especially in an era when everything can be quickly spread online. LB883 also protects children by trying to make sure children's rights are protected. The bill requires that the parent, guardian or custodian be notified before the child enters a plea in court. Law enforcement would be required to advise children of their Miranda rights in easily understandable language. We must be careful about that particular provision. I wouldn't just approve this language as a substitute for the Miranda warnings. Every child is different. Police should really be asking children to repeat-- in the conversation, they should be asking children to repeat back their rights and, and be able to explain them, to be sure, they truly understand, because you have people who are very different intellectual levels, and you want to make sure that people do truly understand those rights. And so you may want to expand on that language in the bill. If a child asks to speak to a parent or guardian, the bill-- you know, according to the bill, the questioning would cease, the child would be allowed to talk with them in private. These changes would help protect the rights of children. It's the right thing to do, and I urge you to advance LB883. Thank you.

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LATHROP: OK. Thank you, Mr. Nigro. I do not see any questions.

JOE NIGRO: Thank you.

LATHROP: Next proponent.

SPIKE EICKHOLT: Good afternoon.

LATHROP: Good afternoon.

SPIKE EICKHOLT: My name is Spike Eickholt: S-p-i-k-e; last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU Nebraska as their registered lobbyist, in support of LB883. I want to thank Senator McKinney for introducing the bill. As Senator Pansing Brooks mentioned before when she was talking to Senator Cavanaugh on a previous bill, this bill sort of picks up on some of the themes and some of the issues that this committee has seen in previous, previous years. The confidentiality provisions of this bill are consistent with what Senator Pansing Brooks has done over the years, with respect to providing for an opportunity for a juvenile adjudication to be sealed if that child completes probation successfully. Because of the way that we have the option for prosecutors to charge a juvenile in adult court first, not filing-- juvenile filings are public as well but, at least in my experience, prosecutors are a little more conscientious what they put in pleadings and public documents when they charge a juvenile case. When they charge an adult case, it's just public; they're treated like an adult. What you have is a scenario which happens-- sometimes while the prosecutors even will agree to let that adult filing case go to juvenile court, the juvenile takes advantage of the provisions that are in the law for confidentiality sealing of records, but they still have the news story out there on Google. They still have the criminal court filing initially that can be found publicly. And this bill at least would speak to that and address that sort of dilemma that you see. With respect to the Miranda advisements, this is similar to a bill that Senator Matt Hansen did last year, LB445, that was actually advanced from the committee. I don't think that bill actually had the script that the officers are supposed to provide, but it did have a notice-to-parents provision in there. I mean, you may hear from your constituents, I hear from a practitioner. If you ask any parent on the street who've got teen kids, they may be surprised that law enforcement is under no obligation to contact them if they want to question their child. And that's sort of a respect or at least an acknowledgment of parental engagement and sort of the integrity of the family. And that's important, in our opinion, to have in the statutes. But this is similar to LB445 in the sense that the

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advisement that's tailored for officers to read to youth doesn't mention that they have the opportunity to have a parent there. I agree with what Mr. Nigro said. We don't want, necessarily, to have this script be sufficient enough to let law enforcement read it. But it's not unusual for law enforcement to read a script. If you go to any of the bigger police departments, maybe all the law enforcement agencies across the state, they usually have one-page Miranda advisement for them, the officers that are training, because the law basically provides, as long as you read that properly, the person freely and voluntarily weighs those rights. You can question in any fashion you want to, including using deception, as long as you have that Miranda advisement. So we would encourage this, the committee to consider the two concepts in this bill. And again, we thank Senator McKinney for introducing it. And I'll answer any questions if you have any.

LATHROP: I do have one. So it seems like we've had bills on interrogating minors and whether you got to call their parent ahead of time. This bill would say you have a right to-- let's see. Now I've, now I've lost the spot.

SPIKE EICKHOLT: Page 4, lines 14-- I think maybe we were talking about.

LATHROP: Page 4, line--

_____ : Yep.

LATHROP: Yeah. You have the right to have your parent or guardian, guardian with you while you talk to me. Did we pass that?

SPIKE EICKHOLT: No.

LATHROP: We don't, we don't recognize that as a right at this point in time. Is that true?

SPIKE EICKHOLT: That's, that's true, but at least what I--

LATHROP: So until we amend the law to provide for that protection, if you will, for the juvenile, that wouldn't be a true statement.

SPIKE EICKHOLT: It might not be a true statement, but I think it's an important advisement to give because at least, you know, at least hopefully we'll sort of explain to the juvenile that this might be something they want to have their parents involved in. It may be a legally operative statement if you ever want to deal with trying to-- challenging the admissibility of a statement made, because it may be

one fact that the court considers is whether the juvenile's waiver was done voluntarily. In other words, did you tell-- officer, did you tell them whether they could contact their parents? And if so, what did they say? That sort of thing. But you're right, it's sort of-- and I think that bill was introduced even before last year that received opposition because of the concerns that notifying a parent couldn't be accommodated, it's going to circumvent that purpose of the questioning.

LATHROP: So at this point, that's not a true representation--

SPIKE EICKHOLT: That's, that's true.

LATHROP: --of what their rights are.

SPIKE EICKHOLT: That's true.

LATHROP: OK. I just want to make sure. I couldn't remember. I know we had a-- I think it was a Matt Hansen. I think we had a couple of those bills--

DeBOER: Yeah.

LATHROP: --over the last few years, about whether a juvenile should be able to call their mom and dad or have--

SPIKE EICKHOLT: Right.

LATHROP: --them present before the questioning begins.

SPIKE EICKHOLT: That's right. I mean, you see these things. Not only, admittedly, our association is advancing these concepts, but you see it come from senators getting calls from constituents, getting calls from people in their community. Cops questioned my kid at school today, the SRO did; no one told me. I had a case in my practice where a, a high school girl backed into a car in the parking lot at Lincoln High; she's 17, she drove off. SRO cited her the next morning for leaving the scene of an accident. It was-- the parents were outraged. It was, like, we bought that car. We're the registered owner. Why did no one contact us? So you see these things happen. It may not be a right. It may be right in the sense that the child may be found to be not competent, perhaps, and has a guardian in that sense. Then maybe it does have some legal significance there, but you're-- I think you're actually right.

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LATHROP: I mostly just wanted to have you help me remember whether we passed that bill or not.

SPIKE EICKHOLT: Oh, sorry, OK.

LATHROP: I just wanted to know. I couldn't remember. It seemed to me like it didn't pass, and, and that statement in here as one of the things they got to be advised--

SPIKE EICKHOLT: Yeah, one of the bills that I supported didn't pass, so that's right.

LATHROP: --is that it would not be accurate, at least under the current state of the law.

SPIKE EICKHOLT: That's correct.

LATHROP: OK. That's the only question I had, and I see no others. Thanks for being here. Any other proponent testimony? Anyone here to testify in opposition? Welcome back.

TRACY SCHERER: Thank you. I am Captain Tracy Sherer, T-r-a-c-y S-c-h-e-r-e-r, representing the Omaha Police Department. The OPD opposes this bill for numerous reasons, including the blanket protection of all juveniles under the age of 18, regardless of the crime committed, their intent or their experience in the juvenile justice system. Similar to Bill LB732, this bill does not provide for exceptions regarding juvenile offenders who have been involved in criminal activity, whether for a longevity of time or for escalating behaviors. For example, a juvenile who began shoplifting at the age of 13, committing auto thefts at the age of 14, robberies at 15, and homicide at the age of 17 would be sealed under this bill. Another consideration is that victims of these offenders are not offered the same protections. For example, a 16-year-old rape victim's information is considered public information, while his or her offender's information would be confidential. The rape, rape victim is set up to be contacted by the media, subject to retraumatization, possibly questioned regarding his or her involvement. The offender is protected from such criticism. This bill does not consider future criminal activity the offender may go on to commit as an adult, and whether or not proof of his or her activities as a juvenile should be considered. Sex offenders are the first things that come to my mind. Regarding the revised Miranda warnings, the U.S. Supreme Court has upheld the Miranda warnings and their language and does not delineate, delineate for juvenile offenders. The suspect's understanding of Miranda should

be the responsibility of the officer who is making the advisement. Otherwise, statements made by the suspect could be suppressed. Providing a statement of Miranda in statute would call into question any time an officer needs to further [INAUDIBLE], explain or misstates a word in the advisements. Also regarding Miranda, the need for officers to make exceptions and contacts with parents does nothing but handcuff officers in their abilities to gather the facts and evidence. The Supreme Court has not provided such exceptions. The bill also indicates the parent will be given private time to consult with their child, the only protections regarding such consultations to be limited to that of an attorney. Additionally, this type of protection serves to lengthen the amount of time officers may need to detain a juvenile should the parent need to be present during the interview, and the juvenile held until such time as the parent is located. Creating a statute for such a requirement does not account for any unforeseen circumstances in the world of missing juveniles and youth offenders. It appears there is a revolving door of juveniles who are learning from the circumstances that they are being objected [SIC] to. A street-released kiddo for shoplifting is allowed to commit other offenses, not realizing their consequences for their actions, while the juvenile justice system puts the prosecutions in place. Miranda issue, Miranda warnings are another issue that should be argued by defense counsel. The officers are aware that is their responsibility to make sure Miranda is given and understood. The statute that narrowly focuses on how they are given cannot account for every situation or the person's ability to understand them. Thank you. Do you have any questions?

LATHROP: Senator DeBoer.

DeBOER: Thank you, Senator Lathrop. Thank you for being here. I, I do have a question. I, I think you used a similar discussion in the last bill. So I'm wondering 'cause I just am not getting it. What, what is the distinction to be made between whether a juvenile has been involved with the system before or not? Because you said-- let me see if I get this right-- you said that one of your objections is that there is no distinction between types of juveniles, ones who've been involved with the system and ones who haven't. Is that correct?

TRACY SCHERER: Correct.

DeBOER: Can you explain that logic to me?

TRACY SCHERER: Yes. So I can actually give an example of a kiddo that, that I often think about. He is a-- he was 11 at the time he started

running away. He was 12 at the time he started shoplifting. And hoping that he would get some services at that point, I was happy that he got arrested for shoplifting, although I know that that is contradictory to what everybody says, but hoping that he would get some services. In the meantime, he starts to become part of a group that goes out and starts doing auto thefts. He becomes a juvenile that starts doing strong-arm robberies, all of that type of stuff. His behaviors escalate, and through all of that, he learns about the system. He learns about what can be done to keep furthering the criminal activity that is going on. That's not to assume that the next offense, that he's guilty of. However, I don't think that it's fair to the citizens of Omaha that we completely limit everything that can be done, either for this kid or for the public, recognizing that some of these kiddos are much more mature for their ages than some of the other kids. I know that Senator Cavanaugh up here was talking about his 8-year-old daughter, where I've also come across some 12-year-olds that have a vast knowledge of the world that a lot of people don't. I think to blanket these things is to assume that-- I, I think, to blanket these things, we have to take into account some of the seriousness of what is happening and what some of the history about what is going on with these kiddos.

DeBOER: So, so-- sorry. I'm having a little trouble here. You're-- you think that we should be able to distinguish with respect to what safeguards, rights, whatever we put in place for kids, based on whether we think they have been escalating their criminal behavior or not?

TRACY SCHERER: Well, I think that's why we can't put a blanket safeguard in place. So what you're asking is that-- so we have seen, over the years, that juveniles are ending up with guns, they're committing shootings and those type of serious offenses. And to say that they should be afforded the same protections as a 13-year-old shoplifter is, I think, too narrow; it's too constricting. And so why do we need to put those safeguards in place to-- you're-- I, I feel like you are protecting everybody for the sake of, of the younger one, the, the few.

DeBOER: But it-- I mean, isn't that how the system works, right? We have a presumption of innocence for everyone. We have a-- Miranda rights for everyone. You have to give Miranda rights to someone, whether they are-- well, this isn't a question, this is just an observation. So I'm going to-- we're getting towards the end of the evening, so I have to stop making observations. So I apologize to the

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committee, but I just-- I wanted to make sure I understood. So you really think that there should be a distinction? OK.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Captain. I'm a little disturbed by your opening statement, where a 16-year-old--

TRACY SCHERER: Rape victim?

BRANDT: --offender is, is-- can be, can be kept out of the press and yet a 16-year-old sexual assault victim, that's public knowledge? Is that a true statement?

TRACY SCHERER: It is for the Omaha Police Department, and I know that the Women's Fund has been trying to bring-- it's not in the victim's rights statements anywhere that their information be, can be kept confidential.

BRANDT: So really, any juvenile offender, any juvenile victims out there are public record?

TRACY SCHERER: Yes.

BRANDT: Not just sexual assault, but I mean, it could be a beating or something like that?

TRACY SCHERER: Yes. All victim information, to my knowledge, is considered public information.

BRANDT: That just sort of astounds me. I was, I was unaware of that. All right, thank you.

TRACY SCHERER: It's my understanding that there's being a, there's a bill being proposed to try and change that.

BRANDT: OK.

LATHROP: OK, And you guys--

DeBOER: I think--

LATHROP: --needing to question--

DeBOER: I think we are thinking about that bill. Sorry.

TRACY SCHERER: Sorry.

LATHROP: What's that?

DeBOER: Nothing.

LATHROP: OK. I just wanted to make sure I called on you if you had a question.

DeBOER: Yep.

LATHROP: I don't see any other questions. Thanks for being here and your patience--

TRACY SCHERER: Thank you.

LATHROP: --today, waiting around. Any other opponent testimony? Anyone here to testify in a neutral capacity on the bill? Seeing none, Senator McKinney, you may close. While we, while you approach, we do have two-- are these letters or emails or what are they?

LAURIE VOLLERTSEN: Position letters for the record.

LATHROP: Position letters. For the record, two, two proponents, no opponents, and one in the neutral capacity. Senator McKinney, you may close.

McKINNEY: Thank you. First, I would like to say I think we should always protect juveniles. I mean, I don't see why, especially when we have a system that think it's OK to lie to them and deceive them. To Mr. Nigro's comments, maybe that needs to be added to allow for juveniles to repeat back their rights to, to indicate that they fully understand their rights. To your concerns, was it page 4, lines 14 to 15, about whether the parents--?

LATHROP: You have the right to have your parents here?

McKINNEY: Yeah, if, if--

LATHROP: I just brought that up because I, I remembered that it was a bill. I didn't remember if we passed it or didn't pass it.

McKINNEY: If that needs to be fixed, I'm open to it. But if it could stay and basically change it, what that bill intended to do, I'm all for it, as well. To the comments from Ms. Scherer, just because a juvenile has a history doesn't mean they're guilty. And we can't just assume, because a juvenile has involvement with the system, that they're guilty and we should just disregard everything because they've

had history. That doesn't mean you're guilty. That's just like anyone in here. If you go steal a piece of candy, and then, five years later, you steal a piece of candy, should I assume you're guilty? That, that just doesn't make sense, regardless of the nature of the kid. The environ-- that, that-- to the comment about the [INAUDIBLE], the the confidentiality of youth that are sexually assaulted, I'm fully supportive of a bill to make that fix. If that needs that, I support that 100 percent. I just think the Omaha Police Department is inherently biased. You know, they show up to these bills, and I hope that you plan to support legislation that improves the environment in North Omaha, that improve the lives of these juveniles, like the North Omaha Recovery Plan. So I hope to see you or read the transcript and see the Omaha Police Department in support of the North Omaha Recovery Plan, since you have this bias towards these juveniles. This, and this is why safeguards are needed, because, in Senator Cavanaugh's-- [INAUDIBLE], what was it-- LB732-- they think it's OK to lie and deceive juveniles, which is why we should protect them and make sure that we do as best as possible to ensure that we're protecting them. Now. If they're convicted, they're convicted, and I won't have an argument against that. But until that happens, let's protect them because if they're not convicted and we plaster their face all over KETV, how do you get that face off of Google? How do you get that off the newspaper? How do you-- how does a kid go back to school that is charged with a murder, lives in, for example, goes to North High? A juvenile, 16 or 17, gets charged with a murder. Not convicted, not found guilty, shown not to even be around, but they got charged with the murder, plastered all over the TV. Now they're afraid to go to school because they don't want to get shot walking from school because somebody think the juvenile has something to do with it. Would OPD pay the funeral cost for that kid if he's killed? No, which is why we should protect him. Thank you.

LATHROP: Any other questions for Senator McKinney? I see none. Thank you, Senator, and thanks for bringing the bill to the committee today. That will close our hearing on LB883. We appreciate everyone's patience today. Yeah, we're adjourned