

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee January 28, 2022

LATHROP: Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop. I represent Legislative District 12 in Omaha and I also Chair the Judiciary Committee. Committee hearings are an important part of the legislative process and provide an important opportunity for the legislators to receive input from Nebraskans. If you plan to testify today, you will find yellow testifier sheets on the table inside the doors. Fill out a yellow 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 is also a white sheet on the table if you do not wish to testify but would like to record your position on a bill, this sheet will be included as an exhibit 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 Standard Time, the last workday before the hearing. Please note that there is a change this year and 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 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, 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 a 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 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, spell them for the record. If you have copies of your testimony, please bring up at least ten copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but will not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning, and when the red light comes on, we ask that 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 everyone to look at their cell phones and make sure they're in the silent mode. As a reminder, verbal outbursts and applause are not permitted in the hearing room. Since

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we've gone paperless in the 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 how they regard the importance of the bill under consideration. But senators may have bills to introduce in other committees or other meetings to attend to. And with that, I'll have the committee introduce themselves, beginning with Senator DeBoer.

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

PANSING BROOKS: Good afternoon, I'm Patty Pansing Brooks representing Legislative District 28 right here in the heart of Lincoln.

GEIST: Oh. Hello, I am Suzanne Geist, District 25, which is the southeast corner of Lincoln and Lancaster County.

LATHROP: Assisting the committee today are Laurie Vollertsen, who's the best committee counsel-- or committee clerk in the building,--

PANSING BROOKS: She is.

LATHROP: --and Josh Henningsen and Neal Erickson will be along after a bit, our two legal counsel. The committee pages are Logan Brtek and Grace Kane, both UNL students. We appreciate them being here today. And with that, we will begin our hearing with Senator Friesen's LB748. Welcome Senator Friesen to the Judiciary Committee.

FRIESEN: Thank you, Chairman Lathrop and members of the Judiciary Committee. I'm Curt Friesen, C-u-r-t F-r-i-e-s-e-n, represent District 34, and I appear today to present LB748. LB748 was introduced on behalf of the Nebraska Association of County Officials to make a correction in Nebraska law. Nebraska Revised Statute 28-431 directs the county clerk to issue a title to the purchaser of a motor vehicle that is seized under the provisions of the act. However, in 2009, the Legislature transferred the responsibility of issuing motor vehicle titles to the County Treasurer, thus, the need for LB748 to correct this very technical error. A representative of NACO is here today to answer any questions you might have. And I think this would be a good bill for consent calendar, so I would appreciate it if you would move it out. Again, it's a very technical bill that changes one word.

LATHROP: Was this mistake made in Transportation Committee or in the Judiciary Committee or somewhere else?

FRIESEN: Pretty sure it was Judiciary.

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MORFELD: [INAUDIBLE] consent calendar.

LATHROP: I might have been here then too. It's Ashford. All right. I don't see any questions, Senator Friesen. I assume you'll waive close?

FRIESEN: I'll waive close.

LATHROP: All right. Have a great afternoon and a good weekend. We will take proponent testimony at this time.

ELAINE MENZEL: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Elaine Menzel. It's E-l-a-i-n-e M-e-n-z-e-l, here on behalf of the Nebraska Association of County Officials, as Senator Friesen indicated, and we do appreciate his assistance in bringing this legislation for-- to your committee. We presumed perhaps that it would go to Transportation, but here we are. We would just ask you to please advance this to General File. This is essentially related to when the Legislature was transferring functions from the clerk to the Treasurer. So it's now what we call one stop. So if you have any questions, I would gladly attempt to answer them.

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

ELAINE MENZEL: Thank you.

LATHROP: Any other proponent testimony? Anyone here in opposition? Anyone here to speak in a neutral capacity? Seeing none, Senator Friesen has waived closing. I just want to make sure we don't have any position letters. If you have them, they're up front. Oh, no position letters have been received on LB748. That'll close our hearing on LB748 and bring us to our second bill of this Friday afternoon, LB878 and Senator John Cavanaugh, who is on his way. You're up. Welcome, Senator Cavanaugh, to your Friday afternoon version of the Judiciary Committee.

J. CAVANAUGH: It's my favorite time. Good afternoon.

LATHROP: That's the day we ask the fewest questions.

J. CAVANAUGH: We'll see. 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 LB878, which provides automatic bail review after 14 days for misdemeanor and city ordinance violations. Article I, Section 9 of the Nebraska Constitution says,

"All persons shall be bailable by sufficient sureties," then lists exceptions. The question is what is bailable? If the court sets a dollar amount and the individual cannot post that amount, are they bailable? LB878 says that when a court sets conditions of bail for defendants on low-level offenses and that person is unable to meet those conditions within two weeks and the court has to hold a hearing and determine if those same conditions should still apply, and in light of the fact the defendant could not post bail whether the person is still considered bailable. LB878 would make review of a defendant's bail conditions for misdemeanor offenses routine rather than something extraordinary. It does not in any way eliminate a judge's ability to impose the same conditions, but makes the process of getting in front of a judge automatic. Consider what would happen if you did not show up to work for two, two consecutive weeks. You would likely lose your job, and that is a result, results in the system in which pretrial release is primarily based on the defendant's ability to pay cash bonds. In my experience, I've seen people lose their job, their house, their doctor's appointments, and the progress that they've made in getting their life back together when they are detained for even a few days. I understand the concerns that this would put greater strain on the courts. But in the fiscal note, Lancaster County estimates that they average about five hear-- they would average about five hearings a day. I want to thank the committee for your time and ask you to advance LB878, and I'd be happy to answer any questions.

LATHROP: If they-- I appreciate you bringing the bill here and I understand why you are. If someone has their bail set, they don't meet it, they come back 14 days later and the judge says, well, I had it set at \$500, I'll make it \$250 and they can't meet it, when do they next come before the judge? Every day until they get it to a number they like or every 14 days? What, what would be the--

J. CAVANAUGH: Right. The, the intention of the statute, whether-- I'd have to confirm whether that would actually be effective, but the intention, and, and I think as it's written, would be every 14 days.

LATHROP: OK.

J. CAVANAUGH: And to be clear, most-- a county court case is going to come to trial shortly after that second 14 days, probably sometime around 30 days.

LATHROP: OK. And the reality is, most of the people who would fall into this category probably aren't going to get 14 days in jail for whatever they did.

J. CAVANAUGH: Most are not. Yeah.

LATHROP: OK. Any questions for Senator Cavanaugh? I see none. Are you going to stay to close?

J. CAVANAUGH: I will stick around--

LATHROP: OK. Very good.

J. CAVANAUGH: --unless they call me to another hearing.

LATHROP: Any proponents of LB878? Good afternoon.

ELAINE MENZEL: Good afternoon. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. Again, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials. We appreciate Senator Cavanaugh for bringing this to your attention. Unfortunately, did not have the opportunity to speak to him beforehand, and I do have a suggestion that we would ask you to potentially consider amending and perhaps that will take care of some of the transportation concerns that were expressed within the fiscal note from Lancaster County. But that would be that they could-- these reviews could be potentially heard via audio visual means, and we'd be glad to work with the senator to hopefully address that issue. The reason we are supportive of this when our legislative committee considered it, they ultimately thought that perhaps this would-- the reviews would allow the inmates to be released at a sooner time frame. So with that, I'll-- I'm available for any questions if you happen to have those at this time.

LATHROP: So you're a proponent of the bill, but you'd like to see it done by video conferencing?

ELAINE MENZEL: Permissible. Yes.

LATHROP: OK. I think I understand your position. I don't see any other questions. Thank you for being here.

ELAINE MENZEL: Thank you, Senator.

LATHROP: Next proponent.

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

positions are consistent. We do support this bill. I'm not going to be duplicative, at least I hope not in my testimony, but as Senator John Cavanaugh explained and as Ms. Menzel testified to, this will hopefully accelerate the release of people whose bonds are set initially too high. That can happen in a couple of situations, even though I think last session, the Legislature tried to limit the judge's ability. In a criminal case, you have a right to have an attorney appointed in any kind of case if you're looking at a jail sentence. What would happen at least and still continues to happen sometimes is the judge would determine from the prosecutor saying they're not going to seek jail, not appoint a lawyer, but then sometimes the judges will still set a money bond that the person could not post. And what would happen, you'd have somebody who couldn't post that money bond be sitting in jail without counsel. In Lancaster County, they can send what they call a "kite," an informal request to the jail administration saying, I'd like to have a bond review. I want to be able to go back in front of the judge and talk about my bond because the law already allows somebody after 24 hours to request a review of their bond. But if you don't have a lawyer and you're sitting there and you don't have the ability or the smarts, if you will, to bootstrap that claim yourself, you're going to sit there indefinitely. And we heard testimony from earlier bills about people sitting in jail for weeks and then finally going to court on their trial date and just pleading or working out a deal and getting a very minimal sentence, which is probably why I'm going to speculate NACO may be in support of that concept because there are people sitting in jail perhaps longer than necessary. It would also target those people who when they first appear in front of a judge, they say, Judge, I think I'm going to hire a lawyer. Don't give me one yet because they're optimistic the family is going to help them out. And when they get back in jail, they realize that family is not going to help them out so they're sitting in jail without a lawyer. This at least has an automatic opportunity for them to be in front of the judge. With respect to the concern that NACO had about video conferencing as an option, I would respectfully suggest you don't need to do anything to the statute about that. Section 24-704 is a general court jurisdiction that allows for telephonic virtual-type hearings and other kinds of things besides in any kind of case, either by arrangement and agreement of the parties or at the discretion of the judge. I will tell you that in Lancaster County, and I know in Douglas County, a lot of these types of hearings are done video conferencing. You could, as a litigant, you could insist on your client being transported as a practical matter. You're not going to because it's just an inconvenience, and the judges generally would prefer to do something

like this virtually. So with that, I would encourage the committee to advance the bill.

LATHROP: So does the fiscal note suggest that that's an expense that will happen on account of the bill and you're saying that's not accurate?

SPIKE EICKHOLT: I think if you look at the fiscal note from Lancaster County, they kind of qualify it. They have a number amount that's assumed on transporting people for every 14-day hearing. And then they explain that if it could be done virtually, it would be significantly less. It may have to have more staff time to move inmates within the jail from their little-- their, their barracks, if you will, their, their units to the Zoom room, so to speak. I'll tell you in Lancaster County, every 10:00, every 9:30 and 10:00 and 1:30 sessions, they have Zoom because they have jail out there on West O, so they typically have people sort of cycle through the room. So I-- and that's generally when you do the bond reviews at that time, too. I suppose if they looked at the four corners of the document-- I mean, this is the current law of the bond review process and these are done virtually now. So adding the every 14-day requirement does not-- at least the way I look at it, does not require it to be done live.

LATHROP: Well, when it says, "shall be brought before the judge," do we need to change that to shall be presented to the court or--

SPIKE EICKHOLT: Or appear before the court or appear--

LATHROP: So it doesn't necessarily have to be in person. Is that as a practical matter, if I've been in there on a misdemeanor for 14 days, that's probably more time than most misdemeanors are going to get, right? So isn't that an opportunity for them to talk to the judge and get the whole thing disposed of?

SPIKE EICKHOLT: Sometimes. I mean, if it's a serious misdemeanor like a misdemeanor domestic assault, a misdemeanor concealed weapon type charge, something like that, that's your top level, you might be there for more than 14 days.

LATHROP: OK.

SPIKE EICKHOLT: The domestic cases, in my opinion, are probably going to be the ones that are going to get you up there on a high bond for a lengthy period of time. But if it's any kind of city ordinance, trespass, disturbing the peace, failure to appear on a misdemeanor

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fine, you're not going to be there for that length of time, in my opinion.

LATHROP: OK. Any other questions for Mr. Eickholt? I see none, thanks for being here.

SPIKE EICKHOLT: And just-- I'm sorry, the "shall be brought before the judge", that phraseology is already used in the current statute. So that's maybe why that was copied on pages 13 and 14-- or lines 13 and 14.

LATHROP: OK, very well. Thank you for your testimony. Anyone else here in support of LB878? Welcome back.

JASMINE HARRIS: Thank you.

LATHROP: Good afternoon.

JASMINE HARRIS: Good afternoon. Sorry about that. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s. I am the director of Public Policy and Advocacy with RISE. We are the largest nonprofit organization in Nebraska working on reentry efforts here and I'll skip all that reentry as you all know that. According to the Prison Policy Initiative, Nebraska's incarceration rate is 577 per 100,000 people, which includes prisons, jails, immigration detention, and youth facilities. This rate is higher than the countries like U.K., Canada, and Italy. The average daily jail population statewide is 3,489 people, and although that number sounds low, we must consider the transient population that is going in and out of our jails. So the annual unique jail admissions is about 30,000, with over 70,000 people being released each year. We continue to ask for alternatives that help alleviate overcrowding as we see our county jails are dealing with this as well, and the solution must be a proactive approach. At RISE, we believe that alleviation can happen on the front end by addressing county jails and the pretrial system. As RISE's policy and advocacy work, we are interested in identifying and addressing gaps and opportunities related to the pretrial justice system in Nebraska. We conducted an assessment on the pretrial system by way of survey in September of 2020. One of the questions we asked received a 78 percent response that people disagreed with the statement that no one is detained due to the inability to pay a financial condition for release. According to the Board of Governors of the Federal Reserve System's economic well-being of U.S. households in 2020, they reported that 35 percent of adults faced with an unexpected \$400 expense would

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have difficulty completely covering that expense. We have people currently sitting in our Nebraska jails with a \$5,000 bond, meaning they need \$500 for release and cannot afford it. This continues to perpetuate cycles of poverty and incarceration. It results in people who do not have disposable income spending days to months in jail that further impacts their livelihood. It takes, on average, about three days before someone who is in jail cannot afford, who cannot afford their cash bail to potentially lose their employment, housing, and custody to their children. LB878 would ensure that individuals who are languishing in jail have a process in place to automatically review their circumstances to identify the reasons why they're not able to meet those conditions. According to a Columbia Law Review article, best practice would be to have these reviews in a shorter period of time, preferably within a maximum of 48 hours. We don't have a process in place, so this 14-day review would be a step in the right direction. So with our vision that all people will find freedom from cycles of incarceration, we support LB878 and ask that you all advance it out of committee to General File.

LATHROP: Very well. I don't see any questions for you.

JASMINE HARRIS: Thank you.

LATHROP: Thank you for being here today. Next proponent. Anyone here in opposition to LB878? Anyone here in the neutral capacity? Seeing none, Senator Cavanaugh, you may close. We do have one position letter and that is in opposition from the County Attorneys Association.

J. CAVANAUGH: Shocked. Thank you, Chairman Lathrop. Just to kind of clarify and Mr. Eickholt gave some perspective on how Lancaster County does it. In Douglas County, they have been doing these remote bail setting hearings basically since COVID started [INAUDIBLE]. Although, certainly we try, try to work with people to make sure that this is actually implementable. I appreciate Miss Harris putting some context to it. But what happens, you know, in Douglas County, which is where I practice and what I'm familiar with, people come through county court and get appointed, get appointed a lawyer, but their bond gets set without a lawyer being present. And then you have the opportunity to request a hearing to come in front of a judge and review that bond. That is often very perfunctory, even though you now have a lawyer, because the judge says, well, no circumstances have changed. One of the intentions of this bill is to say in these situations where people are not bailing out that, that is essentially is, is a change in circumstances after 14 days. We, we are saying it's a presumption that they are not able to post that bond, and that is a condition that

needs to be considered under the constitution and under the statute. And so as to make sure that people get a fair hearing on these bonds, the 14-day limit, I spoke with some prosecutors in Douglas County, though I know the county attorneys are against it, and that was a number that settled on that date because it was far enough out that it wasn't going to be happening all the time and become so administratively burdensome. But soon enough that it would still actually catch people who are awaiting their trial. It's essentially the halfway point between a misdemeanor, misdemeanor trial with the exception of a Class I misdemeanor in Douglas County. Between when you come to the courthouse and your, your misdemeanor trial. So it's just another opportunity to make sure that we are actually meeting our burden to the people that we're detaining pretrial. And with that, I'd take any questions.

LATHROP: So they still retain the right to request one within 24 hours?

J. CAVANAUGH: Right, and every 24 hours.

LATHROP: But this would just be automatically you're going to bring them in front of the judge after 14 days.

J. CAVANAUGH: Right, which has, in my experience, the request for a bond review can often be perceived as acrimonious work and start out on a contentious footing from the judge when a defendant asks for a bond review. So this is to take it out of the hands of the defendant even and put it on the state.

LATHROP: OK. Great. We appreciate you being here.

J. CAVANAUGH: Thank you.

LATHROP: That will close our hearing. I don't see any questions. That will close our hearing on LB878. Thank you, Senator Cavanaugh, have a great weekend. And bring us to LB808 and Senator Morfeld. Good afternoon, Senator Morfeld.

MORFELD: Good afternoon, Chairman Lathrop, members of the committee. For the record, my name is Adam Morfeld, A-d-a-m M-o-r-f as in Frank-e-l-d, here today to rep-- to introduce LB808, a bill that updates the Nebraska Uniform Controlled Substances Act to conform with the state Controlled Substances Act schedule to the federal Controlled Substances Act schedule. That's a mouthful, and as you'll see that a lot of the terms in the legislation are also a mouthful. But in any case, the following is a general description of each schedule

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contained within the federal Controlled Substances Act. I just want to get a few things in the record that won't take long here. Schedule I's controlled substances. Substances in this schedule have no current accepted use in the United States, a lack of accepted safety for use under medical supervision, and a high potential for abuse. Schedule II controlled substances. Substances in this schedule have a high potential for abuse which may lead to severe psychological or physical dependence. Schedule III's controlled substances. Substances in this schedule have a lesser potential than one or two for abuse but may lead to moderate or low physical dependence or high psychological dependence. Then we have Schedule IV and Schedule V substances as well. I'm going to skip a little bit to some of the changes here. LB808 makes the following updates to the schedules. For Schedule I, new items, line [SIC] (74) to (94) are synthetic fentanyl, none of which are FDA approved and commonly referred to as street drugs. New item (5) is a stimulant and hallucinogen that's commonly referred to as a street drug. And then there's a third item is page 16, which is an amphetamine. And then there's a new item, number (9) is a psycho stimulant and street designer drug. And then on Schedule II, item (13) is currently used in clandestine laboratory operators to create fentanyl. And then on Schedule IV, the FDA approved drugs. New item number (60) is used for treatment of ADHD and is similar to the FDA approved Ritalin that many of us know about. As some of you may or may not know, we do this every two years to update these because as these designer drugs come out, it's hard to be able to go after some of the folks that, that produce them in many cases, and they're fairly dangerous to the public. I thank you for your favorable consideration of LB808. There will be somebody from the Nebraska Pharmacy [SIC] Association here today to answer any of your questions, but I'm happy to answer any that I may try. Thank you.

LATHROP: OK. This literally is a routine that we go through every--

MORFELD: Every two years.

LATHROP: OK. [INAUDIBLE]

MORFELD: I picked the short, short straw this year, I guess.

LATHROP: OK. Thank you, Senator Morfeld.

MORFELD: Thank you.

LATHROP: I don't see any questions. We will take proponent testimony on LB808. Good afternoon. Welcome.

MARCIA MUETING: Good afternoon, Senator Lathrop, members of the committee. My name is Marcia Mueting, it's M-a-r-c-i-a M-u-e-t-i-n-g. I am a pharmacist and I am the CEO of the Nebraska Pharmacists Association and a registered lobbyist, and I'm here to talk to you in support of LB808. As Senator Morfeld-- thank you for introducing this bill-- mentioned, this bill will update our Nebraska controlled substances schedules to mirror those of the federal law. There is one FDA approved medication, as Senator Morfeld noted, the rest of the medications that are listed are considered street drugs. Senator Morfeld's opening comments included the details that's in my written testimony as far as what pages and which drugs are being updated. And I'm here to answer any questions if there are.

LATHROP: Are you done?

MARCIA MUETING: I'm done.

LATHROP: OK. I have a question for you. Is there a simple way to describe fentanyl?

MARCIA MUETING: It's a synthetic opioid, so it's, it's always made in a lab, it's-- there's no natural source. You know, morphine comes from poppy seeds, right? Opium. Fentanyl is made in a lab.

LATHROP: Are there other things that would fall within that description or would that just be fentanyl? I'm asking for another bill, actually.

MARCIA MUETING: Oh, OK, asking for a friend?

LATHROP: If we're, if we're going to exclude, if we're going to exclude fentanyl, that street drug that, that is so dangerous, how would we-- how would one describe that accurately?

MARCIA MUETING: Well, the, the fentanyl-type substances that are listed in this bill are illegal substances. Fentanyl itself is a legal substance and is found in FDA approved medications. And they're all-- they're-- those are in Class II-- Schedule II.

LATHROP: OK.

MARCIA MUETING: So we have, we have good fentanyl and we have bad fentanyl, I guess.

LATHROP: OK. So to describe it, we could just refer to this page, I suppose.

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MARCIA MUETING: Or, you know, exclude FDA approved products that have fentanyl in them.

LATHROP: OK.

MARCIA MUETING: Does that make sense?

LATHROP: It does to me if you tell me that's how we can describe it.

MARCIA MUETING: I'm, I'm a pharmacist, not an attorney, but--

LATHROP: OK.

MARCIA MUETING: --I think that's what we've done--

LATHROP: Well, I'm actually not a pharmacist which is why I'm asking.

MARCIA MUETING: Any other questions?

LATHROP: OK. I appreciate you, you--

MARCIA MUETING: Of course.

LATHROP: --trying to answer my questions as inartfully as I might have presented them, and I don't see any other questions, but thanks for being here.

MARCIA MUETING: My pleasure.

LATHROP: Yeah, and have a good weekend.

MARCIA MUETING: Thank you. You too.

LATHROP: Next proponent.

JIM MAGUIRE: Chairman Lathrop, senators of the Judiciary Committee, good afternoon. My name is Jim Maguire, J-i-m M-a-g-u-i-r-e. I'm president of the Nebraska Fraternal Order of Police. We're here supporting this bill, and we just essentially just want to be on record saying that we're supporting it. Thank you very much.

LATHROP: Short and simple for a Friday,--

JIM MAGUIRE: Exactly.

LATHROP: --and you barely made it in time. Thanks, Mr. Maguire. We appreciate your testimony and you coming down here to put it on the

record. Any other proponents of LB808? Seeing none, is anyone here in opposition? Anyone here in a neutral capacity? Seeing none, Senator Morfeld, do you wish to close? He waives closing. We do have one proponent position letter for the record, which will be made part of the record. And that will close our hearing on LB808, and bring us to Senator McKinney and LB816. Good afternoon, Senator McKinney.

McKINNEY: Good afternoon, Chair Lathrop and members of the Judiciary Committee. Today we're here to discuss LB816, which would require collection of data upon commitment to the Department of Correctional Services. Under this bill, the department would be required to include an incarcerated individual's last known address, as well as the legislative district at the time of admission in an inmate's individual file. I brought this bill because, as you all know, 95 percent of the individuals currently incarcerated have an anticipated release date. And it behooves us as their elected representatives to ensure that that release date is their last. This bill acknowledges that reducing recidivism and reducing the number of individuals entering the criminal justice system is paramount to the progress of our state. Additionally, ensuring each legislative district has an accurate percentage of individuals incarcerated whom-- who are from their district, would go a long way, long way in equipping senators to be able to address this issue. A way to meet this goal is to track each incarcerated individual's pre-incarceration address and note the legislative district in which it sits. This will ultimately help senators representing various districts work to reduce constituents who enter the criminal justice system, as well as offer proper services within their districts to reduce recidivism. What we should also note is that by not properly tracking addresses of incarcerated individuals, we undermine our democracy in several significant ways: (1) By not having this information, we present a warped snapshot of the general population and misrepresent incarcerated, incarcerated people's relationship to their representatives. (2) Black and Latino communities are deprived of representation since they make up a large part of the Nebraska prison population. This also hinders the districts that they are right-- rightfully from, from receiving accurate population counts for census purposes. (3) As a, as a result of the foregoing communities that have larger white populations and lower incarceration rates and that receive a represent-- a representation windfall in comparison to the other districts merely because of a lack of the data. These factors end up serving as a catalyst that compounds other forms of discrimination. Generally, the Census Bureau generally deems people's home where they live and sleep most of the time. For people in prison, this means the site of their

incarceration rather than their home communities, even though in most cases they have no meaningful connection to that area. The policy wrongfully suggests that people in prison are at home where they're incarcerated. It ignores that most people's stay in prison is far shorter than the decade for which the maps will be in effect with the census, and that many states consider incarcerated peoples legally residents in their home communities for purposes other than redistricting. The impact is that this would be true for time even after their release. In closing, by providing accurate residency data for incarcerated individuals, the senators of this body can respond effectively to policy-making decisions and services for our districts to reduce harm that our high incarceration rates have on our state. I ask, I ask for your support of LB816 and I'm open to any questions. Thank you.

LATHROP: OK. Senator Geist.

GEIST: I do have a quick question. I noticed in the, not only in the fiscal note, but also in a response letter to-- from the director that, that they can, they can ask for this, but that the accuracy can't be determined by what is given. Is that of any concern to you?

McKINNEY: No, because we put in here last known address. Like, so for example, say someone commits an offense and the county or the police put out a warrant, they'll go search the last known address.

GEIST: OK.

McKINNEY: Most people, I won't say all, but majority of people have a last known address or some type of identification that says where they were living prior to incarceration. So I'm not really hung up on the accuracy because I, I think, you know, as long as we track last known address, that's fair.

GEIST: OK. All right. Thank you.

McKINNEY: No problem.

LATHROP: OK, well, apparently it costs \$81,000 to ask people what their last known address is.

McKINNEY: I mean, they-- their, their budget gets, you know, you know, increased pretty much every year. And currently we have federal funds that you can use for crime and crime intervention. So the money is there to pay.

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LATHROP: I know the FOP got a raise, Senator McKinney. But--

McKINNEY: Yeah.

LATHROP: --that seems like pretty high compensation to ask a--

McKINNEY: Yeah, and--

LATHROP: --bunch of guys where they last lived.

McKINNEY: --and last I knew, I think I saw something in the newspaper and I've heard recently that they're-- they've been getting a bunch of applicants since they put out the new raises. So I don't think-- I hope if they're getting as much applicants that they're saying, staffing shouldn't be an issue either.

LATHROP: Right. Yeah. I appreciate you bringing the bill to the committee. I understand the purpose. We talked about that during redistricting.

McKINNEY: Yeah.

LATHROP: Thank you for bringing the bill. I don't see any questions. We'll take proponent testimony at this time.

McKINNEY: Thank you.

SPIKE EICKHOLT: Good afternoon, 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 of Nebraska as their registered lobbyist in support of LB816. We want to thank Senator McKinney for introducing this bill. This bill addresses something that, that Senator McKinney alluded to and that is this concept of what's called prison gerrymandering. And that is, the Census Bureau will generally include people and sort of locate where they live, where they sort of live and spend most of their time. And for people who are in prison, the sort of the default location that the Census Bureau considers those people is where they are housed in a prison. And what happens is, and you can kind of see this for this last redistricting that we had in this state, is that if you have 1,500 people in a prison in a certain district or if you have a 1,200 or 1,300 people in a prison in a county that's relatively small, that can have an impact, if you will, when you count the total residents of the county. Even though, as Senator McKinney indicated, every 10 years the state's redistricted, the average stay for people in prison in the state is about 30 months. So you've got people sort of coming in and out, and it's not necessarily an accurate, we would submit, label to

call those people residents of that county for purposes of the census, for purposes of the census. And Senator McKinney actually introduced a bill during the special session for redistricting to sort of address this issue or delineate those numbers. And at the time, I can't remember if Senator McKinney withdrew it or just asked the committee to hold it, the special committee, because at the time it was learned the Department of Corrections didn't have an accurate way to really identify the home districts from the people who are in prison. And so what this bill does, I suspect, is try to address that issue so that perhaps the next time we'll redistrict, we can get an accurate count on this, in addition to the other reasons that Senator McKinney has introduced the bill. I did distribute a chart that I left upstairs that was helping me earlier, and that is like a breakdown of what other states have done with respect to this and a growing number of states are trying to address this issue. And we encourage the committee to advance this. If anything, to accurately track. Aside from the redistricting issue, at least adequately, accurately track where people are coming from who end up in our prison system.

LATHROP: OK. Any questions for Mr. Eickholt? I'm just going to ask this question, on page 2, where it says, "including his or her last known address." So do we need to clarify that as a residential address or what if they say the Department of Corrections in Douglas County?

SPIKE EICKHOLT: Yeah, that might want to identify that. I think that may want to be clarified. I would just say that--

LATHROP: But because before somebody ends up at the Department of Corrections, their last stop might have been Douglas County Jail, a homeless shelter, the mission, a home.

SPIKE EICKHOLT: That's right.

LATHROP: And the point is try to find out what legislative or congressional district they might have been in.

SPIKE EICKHOLT: That's right.

LATHROP: I don't know if that needs to be clarified in some respect or whether, whether the last known address does it.

SPIKE EICKHOLT: It might need to be clarified. If I could just suggest is that most people that end up in prison probably almost all of them have had a presentence investigation report done, and that's pretty comprehensive. That's a report the Probation Office does. They do it for every felony case. It collects a lot of biographical information

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about the defendant, information related to the case, juvenile history, everything. It's actually presumed confidential, but the department has an opportunity to review, I think, most of that for purposes of classification. So if somebody has had a mental health history, when they're doing that 30- to 90-day evaluation at D&E, they have access to that. Perhaps somehow allowing access to that might identify accurately where they're from and where they're likely to go back to as opposed to, like you say, they're dropped off with 15 other inmates from Douglas County Jail.

LATHROP: So not to belabor this point, but their, their jacket or their file doesn't actually get to D&E the same time the person does, does it?

SPIKE EICKHOLT: That's right.

LATHROP: It takes a few days?

SPIKE EICKHOLT: Generally, yes.

LATHROP: Would it make more sense to say the department shall secure from the presentence investigation or documents that accompany a prisoner a last known address?

SPIKE EICKHOLT: Yeah, that'd be good. That'd be helpful.

LATHROP: Then we may not need a whole full-time FOP employee secure this information. Thank you. You've helped--

SPIKE EICKHOLT: Thank you.

LATHROP: --answer my question. Any other proponent testimony?

GAVIN GEIS: Senator Lathrop, members of the committee, my name is Gavin Geis. That is spelled G-a-v-i-n G-e-i-s, and I'm the executive director for Common Cause Nebraska. We are here in support of LB816. We believe it supports and furthers the goal of a fairer, more representative redistricting process. At the end of the day, we think that's what this bill comes down to and would help us the most is just creating a better redistricting process ten years from now. As was mentioned, since 1790, the census has counted prisoners as residents, as residents of where they're incarcerated. What we've learned in the 200 years since then is that this leads to overrepresentation in the districts containing prisons. That means that voters in those districts have greater political power than Nebraskans residing in districts without prisons. In effect, their votes carry more weight.

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This is possible because many incarcerated individuals are unable to vote, yet they're treated the same as eligible voters when it comes to the process of redistricting. And this is made all the worse by the fact that minority communities are overrepresented in our prison system. This effectively shifts political power from those communities to the districts containing prisons. We support LB816 because it would start the process at least of collecting the data we need to properly distribute prison populations into their home communities during the redistricting process. It's important that we take this issue seriously and that we take action today if we want to protect the right of one person, one vote for every Nebraska, not just for those incarcerated or those in minority communities, but every Nebraskan is affected by this process. When your neighbors have greater political power simply because they live in a district that contains a prison, that is a distortion of the voting systems, and we think that LB816 should be advanced. We encourage you to do so. It will help us make redistricting just fairer and more representative. Thank you.

LATHROP: OK. Appreciate you being here.

GAVIN GEIS: Appreciate it.

LATHROP: Any other proponent testimony? Anyone here in opposition to LB816 or in the neutral capacity? Seeing none, Senator McKinney, you may close.

McKINNEY: Thank you, everyone, that, you know, spoke up and for the conversation on this bill. I think it's really important to make sure that all Nebraskans get proper representation no matter what, no matter if you're incarcerated or not. I think we need to make sure that we, we ensure that everyone is represented properly. To your question, Senator Lathrop, I'm open to adding residential address, or even if it's just a simple fix to saying the department shall secure from the presentence investigation to probably eliminate the \$80,000 fiscal note. So I'm, I'm open to that as well.

LATHROP: OK, anything we can do to knock that down.

McKINNEY: Right.

LATHROP: OK, \$61,000 [SIC] for somebody to collect that information seems a little high. Thank you. I don't see any questions, Senator McKinney. We do have three [SIC] position letters for the record; three are proponents, one is neutral. And that neutral came from Director Frakes himself. That will close our hearing on LB816. Thank

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you, Senator McKinney. And bring us to our own Senator Geist and LB1010. Good afternoon, Senator Geist.

GEIST: Well, good afternoon. It's still bright and early. This is awesome.

LATHROP: We don't have time for these pleasantries.

GEIST: Speed it up, it's Friday, OK.

LATHROP: Welcome to the Judiciary Committee.

GEIST: Thank you, Chairman Lathrop, and good afternoon, members of the Judiciary Committee. For the record, my name is Suzanne Geist. That's S-u-z-a-n-n-e G-e-i-s-t. I represent District 25, which consists of the southeast part of Lincoln and Lancaster County. This past fall, I held a roundtable with many juvenile justice stakeholders in the state. During this roundtable, it was mentioned that there was a reinterpretation of the law regarding adult and juvenile offenders on probation. So I introduced LB1010 to clarify in statute that it is OK for law enforcement to have access to infor-- information regarding why an offender may be on parole or probation. This information would be kept in the Nebraska Criminal Justice Information Service. This information is important for the safety of law enforcement and the public. Another benefit of this information in NCJIS is that the law enforcement-- is that law enforcement would be able to provide the probation or parole officer any violation and assist in getting the offender back into compliance. LB1010 also provides access for the law enforcement to see the GPS history of a youth off-- youth offender's electronic monitoring device. Electronic monitoring devices are an alternative to placing a youth offender in detention. This information allows law enforcement to know the whereabouts of the youth being monitored. The law enforcement professional is obligated to keep the information confidential. I do have an amendment for this bill. It's mostly clean-up language, and the last change on page 12 is just-- is to strike the "probation" reference and insert "parole." This statute is specifically for parole and should not reference probation. Thank you for your time and attention, and I'd be happy to take any questions.

LATHROP: So walk me through that change you just described.

GEIST: OK.

LATHROP: On page 12, Senator Geist, there is, on lines 4-7 changes to existing law. What--

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GEIST: And it's-- what it will do is strike the occurrences of "probation" and insert "parole" on line 7 on page 12. There are two occur-- two-- here.

LATHROP: OK. No, I think I see it.

GEIST: You see that?

LATHROP: There's two references on line 7 and--

GEIST: Yeah.

LATHROP: --instead of saying conditions of-- or instead of saying "probation officer," it would say "parole officer."

GEIST: It should say "parole officer."

LATHROP: Instead of saying "conditions of probation," it would say--

GEIST: Correct.

LATHROP: --conditions of parole.

GEIST: Correct.

LATHROP: OK. Any other questions for Senator Geist? Senator McKinney.

GEIST: Yes.

McKINNEY: Thank you. Thank you, Senator Geist. What do you say to the opposition that says this information is already available to law enforcement for prob-- probable cause and a warrant?

GEIST: It is available if they go-- OK, let me-- it used to be available and then there was a reinterpretation of the statute. There was not a statutory change. It was just reinterpreted by, I believe, by the-- the Supreme Court administrators that they could no longer use it. And so in our roundtable there was discussion of why it was no longer used, and it was because there was a reinterpretation, and they suggested we clarify it in statute in order for them to use it the way they used to.

McKINNEY: OK.

GEIST: So-- so it's not necessarily that anything has changed other than the interpretation of the statute.

McKINNEY: OK.

GEIST: Does that make sense?

McKINNEY: Yes.

GEIST: Does that answer your question?

McKINNEY: Yes.

GEIST: OK.

McKINNEY: Thank you.

LATHROP: I don't-- oh, Senator DeBoer.

GEIST: Yes, ma'am.

DeBOER: I have a related, but perhaps not identical, question.

GEIST: OK.

DeBOER: What is the protocol right now with respect to if law enforcement wants to know about-- offenders' probation status and conditions of status and all of that?

GEIST: They actually have to get a warrant for that information. I believe that's the case. Why don't you ask that question--

DeBOER: I-- I'll do that. I'll do that.

GEIST: --to the people behind me?

DeBOER: Yep. I'll ask the next person.

GEIST: OK.

DeBOER: Thank you.

LATHROP: OK, I don't see any of the questions. Thank, Senator

GEIST: Great. Thank you.

LATHROP: We will take proponent testimony at this time.

TYLER STRICKER: Bear with me, I was notified a couple days ago to do this. This is my first time here, so.

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LATHROP: Oh, hey, listen, we don't try to hassle people when they testify, so you're going to be fine. Welcome.

TYLER STRICKER: Thank you for having me. Good afternoon, Senators, my name is Tyler Stricker; that's S-t-r-i-c-k-e-r. I am here on behalf of the Omaha Police Department in favor of LB1010. I have worked for the Omaha Police Department for just under 17 years. The majority of my career has been dedicated to working in different investigative units, both as a detective and as a sergeant. I'm currently assigned as a sergeant in one of our afternoon gang-suppression unit crews. We believe this bill will simply return us back to previous practice. There are two important revisions in this bill, and I'd like to address each one of those revisions individually, first the release of certain probation information. In the past, probation officers, or POs, name and contact information-- probationer's name and some of the conditions of their probation were readily available on the Nebraska Criminal Justice Information System, also known as NCJIS. Around late 2020, this information was abruptly, without notice, removed from NCJIS. This is-- this is what we believe to be also an officer safety concern. Without this information quickly and readily available, as it used to be on NCJIS, officers will be contacting individuals who may be on terms of probation for crimes of violence or weapons charges and not know it. Furthermore, there are probationers that judges have specifically ordered to have law enforcement search clauses. We are blind to this information. Second is a revision to provide a probationer's electronic monitoring data to law enforcement immediately upon request. Again, this change was abrupt and, to my knowledge, started around the end of 2019, specifically with juvenile probation. Initially, we were advised by juvenile probation that we would have to seek a warrant for this information to be released and, to my understanding, it is now a court order. Massachusetts Supreme Judicial Court recently ruled on this topic in Commonwealth v. Johnson, which I can summarize if requested, and Nebraska will not be the only statute to have this type of language in-- in-- this type of language in a statute. So why would this information be beneficial to law enforcement? Most often during an investigation, we are interested whether a probationer was in a particular time and place during an incident. This could immediately help in identifying any witnesses, additional victims, or suspects. This revision could also immediately help investigators eliminate a probationer as a possible suspect. This has now been restricted specifically by juvenile probation, at least in the Omaha area. Requiring either a court order or a warrant for this information is time-consuming, difficult, if not impossible, during off hours to accomplish and, as previously stated, we believe

to be unnecessary. Immediately acting on investigative leads that this information can provide is crucial to the solvability of crimes. We believe that passing this bill would continue to improve our working relationship with Probation. Not every probationer is assigned an electronic monitoring device, only those who a judge or Probation has determined should have one, most often those individuals who may require extra supervision to keep a community safe. Probation is an alternative to detention that creates an opportunity for someone convicted of a crime to avoid incarceration, but without proper implementation-- but, with proper implementation, still provides safeguards for the community. We should not diminish its effectiveness by restricting this information or making it so difficult for law enforcement to have access to.

LATHROP: You did fine.

TYLER STRICKER: Perfect. Thank you.

LATHROP: OK. Senator Morfeld.

MORFELD: Thank you for coming today. Can you give us some examples of how you use this GPS information, just very practical?

TYLER STRICKER: Yeah, I have a--

MORFELD: I can kind of guess in my head, but--

TYLER STRICKER: Yeah. No, sure. Here's one that I had. I redacted some of the information just so it wouldn't be personal to anybody. On Tuesday, the 18th of August, 2020, at 0411 a.m., a ShotSpotter activation indicated 11 rounds in an address near 41st and Fort Street. Patrol officers arrived and located gunfire damage to two separate homes. One of these homes had been targeted two-- two-- in two prior incidents. Through investigation, north investigation suppression detectives had developed a suspect. Through NCJIS, it was determined he was on probation with a search clause. As a result of a probation search, the gun used in this incident was recovered. After the arrest of the probationer, there were no more incidents, likely preventing a shooting or homicide.

MORFELD: So you can use this information then to place people at certain locations when--

TYLER STRICKER: So it's kind of-- it's kind of two prong here. We used to be able to have a tab on NCJIS that would say "probation." We still have U.S. Probation for federal probation.

MORFELD: OK.

TYLER STRICKER: The state was taken out.

LATHROP: We-- pardon me. We still have what?

TYLER STRICKER: We still have federal-- access to federal U.S. Probation and NCJIS, so we can look up somebody who's on U.S. Probation. But the tab for State Probation is completely gone. It was taken down, I think, like, in a day. We lost all that information. I've been told that we can scroll through some of the documents and try to find what the sentencing was and some of the court documents to figure out that they were on patrol [SIC]. But we used to be able to click on that tab, immediately show whether they're, yes, actively on probation or not, and what some of their-- if they have a search and seizure clause, who their probationer is, and their email address so that we could immediately reach out to that specific probation officer.

MORFELD: OK.

TYLER STRICKER: I've been told they were trying to re-add it back on, for whatever reason. I don't want to speak for Probation or NCJIS administrators, but that hasn't been done and it's-- it's been quite some time now.

MORFELD: OK, thank you.

LATHROP: Senator McKinney.

McKINNEY: Thank you, and thank you for your testimony. Got a few questions.

TYLER STRICKER: Sure.

McKINNEY: How would we be able to track that you-- that the police isn't abusing this? Because that's my fear, is that you're allowed to do this and this gets abused and you're just running into people's houses just without any kind of process about going into those houses because currently you need a warrant or probable cause. But without that, I fear, just-- just me, that it could be abused, and I don't think that's out the realm of thinking.

TYLER STRICKER: Obviously, there has to have some self-discipline there. With that being said, we can't just run into somebody's house even if they're on probation. We used to-- and-- and this is something

that we're still doing with adults. I actually have a website that they gave us access to that we can immediately look up an adult probationer's GPS ankle monitor at any time and see where they're at. What we're being restricted from is juvenile information. Even when we do probation checks, we used to every month go out with probation officers. We were their security for their probation check. If that probationer refused or their parents refused to allow us to search, we did not search. The probation officer then went back through their court process with whatever violations that they did for not complying with that particular procedure.

McKINNEY: See, that's my fear, is you said juveniles. And I'm just thinking, what if you guys want to search a juvenile, his parent's not around? And me, being a juvenile in those type of situations before, it's not the friendliest situation and it's usually, "stop what you're doing, we need to search you." It's-- it's not that smooth of a process. So how can we track that is my-- my concern. I understand like if somebody is on probation and you guys may suspect them of something, but also need-- believe there needs to be some type of-- some type of checks and balances, and I fear this change wouldn't allow for any checks and balances.

TYLER STRICKER: So I'm trying to see how this bill would change that in relation to your question. Maybe I'm misunderstanding, but even--

McKINNEY: I guess--

TYLER STRICKER: Yeah, go ahead.

McKINNEY: --can you clarify how this would help you, and then I could better respond to you.

TYLER STRICKER: So oftentimes, let's say we have a shooting at 30th and Vinton Street.

McKINNEY: OK.

TYLER STRICKER: OK. So we'll have a shooting-- when I worked in the assault unit, we'd have a shooting at 30th and Vinton Street. I could immediately get on with juvenile probation, adult probation, and say, hey, did any of your individuals that are on ankle monitors at this specific time/place, were they in that area? They could then give me that information right away so we could either start following up on leads before evidence can get destroyed, or we can immediately try to eliminate them as a potential suspect and move on.

McKINNEY: OK, so I guess I'm confused a little bit.

TYLER STRICKER: Yeah.

McKINNEY: How would it help you though? So if this-- if this change happens, how will you still be able to see if you send-- can't see the tab?

TYLER STRICKER: There's-- there's two changes. One is to put probation information just so that we can actually see the persons on probation--

McKINNEY: OK.

TYLER STRICKER: --which that can help patrol officers that do a traffic stop. And they may not know that John Doe is on probation for a violent offense or a weapons charge. They won't have that information. They'd have to physically try to get a hold of a probation officer to get that information. So that's one aspect of this revision of this bill, I believe. The second aspect is to add GPS monitor location information, to be able to give that immediately to law enforcement, as we have had it and we still have with adults, without going through what is a needless court process.

McKINNEY: See, that's-- that's where I'm hesitant, when you say "needless." I-- I don't know. I just--

TYLER STRICKER: It's very cumbersome.

McKINNEY: No, no, I understand like the process and [INAUDIBLE]

TYLER STRICKER: I can give you an example that I just had with an adult. On Christmas night--

McKINNEY: Yeah.

TYLER STRICKER: --we had a shots fired. Hour or two later, we have an individual who's shot, goes to the hospital. He's on an ankle monitor. We don't believe he's fully being cooperative with us. We're not sure what the details of what happened to him were. But there was some concern at one point that that individual may have been a retaliatory shooting for the shots fired that occurred the hour or two prior. He's on parole. I call Parole, their emergency line, and I'm told that I need to either get a subpoena to send to the Attorney General's Office or we need a search warrant. Even if I take the time to go to a judge and try to draft a search warrant for that information, trying to find

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a parole officer who can then get that information to me in a timely manner so we can immediately remove, whether this individual was a suspect or a victim of that prior shooting, is very cumbersome, and I--

McKINNEY: I-- I understand it's cumbersome.

TYLER STRICKER: Yes.

McKINNEY: But I'm comfortable with that process because you've id-- already have identified a potential victim or suspect and now you've just got to go through the process. And I think once you decrease the amount of steps you've got to go to, that's my fear, is some things aren't done the best. And I'm not saying you have any ill intentions.

TYLER STRICKER: Yes, sir.

McKINNEY: I just know, just from experience, that there-- there's been situations where steps were crossed and lines were crossed. And I think, once you start decreasing the steps in which you have to take to maybe arrest somebody are eliminated, that's my fear.

TYLER STRICKER: Well, I think the urgency is important--

McKINNEY: I understand the urgency--

TYLER STRICKER: --because if we do--

McKINNEY: --but if the person you, using your example, is in the hospital, shot--

TYLER STRICKER: OK.

McKINNEY: --I don't-- maybe we just got two different perspectives.

TYLER STRICKER: There is--

McKINNEY: I don't necessarily see it as a direct threat if the person's in a hospital, so I'm not--

TYLER STRICKER: There's many different answers if-- scenarios. If we have an individual that, same scenario, we have an individual who's shot at 30th and Vinton Street, we don't know who the suspect is. OK? I try to call probation, if I can get a hold of them, and they tell me I need to go get a search warrant. If I even try to argue that there's exigency there, OK, that this person go-- could go shoot another person or it could go-- an-- an ongoing situation that we have, we're

at the mercy of Probation to determine whether that's exigent or not, OK? in my opinion, that's not constitutionally protected information of a government-ordered monitoring device for an adjudicated individual. There's no reasonable expectation of privacy of that information. Why delay that when we can immediately get the information that we need to either rule them out or include them--

McKINNEY: I guess just because--

TYLER STRICKER: --so that we can find witnesses, victims, suspects?

McKINNEY: I guess we just have a difference of opinion. Just because somebody is on parole or probation, they've been adjudicated, I just don't think we still take away their-- their-- their rights through the process, and I think eliminating some of the steps in the process takes that away. I understand--

TYLER STRICKER: Yes.

McKINNEY: --you may think it's a serious situation, but I just think that's where I'm at with it. If we erode some of these things, there will be lines crossed. And you could tell me it won't--

TYLER STRICKER: Sure.

McKINNEY: --but I just fear it and I'm almost sure it's gonna happen. And that's all. And I--

TYLER STRICKER: Sure.

McKINNEY: --I appreciate where you're coming from.

TYLER STRICKER: No, I appreciate--

McKINNEY: That's--

TYLER STRICKER: And I don't know if this will change the situation or try to clarify some of this, but I can assure you, we don't have the staffing to sit here and just consistently watch people's GPS information. This is usually very specific to an incident that-- that we're trying to follow. And I don't think it's necessarily taking somebody's rights away because-- I'm not an attorney, but I-- I-- again, I don't believe that that is a reasonable expectation of privacy of that information. Massachusetts ruled on it. They have a statute that's-- that's got verbiage in line with this. I haven't even

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checked any other states. I just happen to know that Massachusetts had a case that was on point with this particular situation, so.

McKINNEY: OK.

TYLER STRICKER: I hope I answered those as clearly as I can.

McKINNEY: Thank you.

LATHROP: Senator Pansing Brooks--

TYLER STRICKER: Yes.

LATHROP: --has some questions for you.

PANSING BROOKS: Thank you for coming, Sergeant Stricker.

TYLER STRICKER: Yes.

PANSING BROOKS: I was-- my only thought would be that in law school, one of the most important things I learned in constitutional law was don't be in the wrong place at the wrong time. And this, in my opinion, sets kids up to possibly being in the wrong place. How long would the reach of the law go, ten miles because they might have a car, 30 miles because they might have a car or might be able to get away? I mean, every child could be suspect. Correct?

TYLER STRICKER: No. I mean, typically, you know, again, to go to an example, if we have a shooting at 30th and Vinton, this information is, in my experience, very accurate where their GPS is. We're asking for that specific moment in time at that location, and that doesn't automatically make them a suspect. It can make them a witness, it can make them a victim, an additional victim or, yes, it could make them a suspect that we need to do follow-up on.

PANSING BROOKS: And the other idea is, what about limiting that to certain felonies?

TYLER STRICKER: You mean limiting us to be able to have this information just for particular felonies?

PANSING BROOKS: Yeah. Yes.

TYLER STRICKER: Again, I think there's-- are you going to ask-- are you asking about the GPS information or the proba-- probation information on NCJIS?

PANSING BROOKS: The GPS information.

TYLER STRICKER: Again, I just--

PANSING BROOKS: I mean, so--

TYLER STRICKER: It's-- it's my understanding that this is--

PANSING BROOKS: --if somebody stole something, a bag of potato-- I don't know, 100 bucks or something, you get involved or, I don't know \$300 from a gro-- liquor store or something. Every single thing, we're going to be able to look at that and determine if there was a child in that area that could have done it.

TYLER STRICKER: Yeah, I-- I don't foresee us, but again--

PANSING BROOKS: I know, but not in a-- maybe not in a big city, but maybe in a smaller city.

TYLER STRICKER: Understand. I would probably go back to, again, that not everybody's on an ankle monitor. Not all these juveniles are on an ankle monitor.

PANSING BROOKS: That's true.

TYLER STRICKER: It's specific individuals who have shown a pattern of violence or are a concern to the community, and this is their alternative to incarceration. I don't think we should diminish that ability so that there's essentially almost-- some of these individuals have a complete lack of respect for probation and its terms, and I think it's important that-- that we work hand in hand with Probation to make sure that they're in compliance.

PANSING BROOKS: Some have complete respect for it, as well, of course.

TYLER STRICKER: Yes, they do.

PANSING BROOKS: So we're looping everybody into the--

TYLER STRICKER: No, I'm not.

PANSING BROOKS: --nonrespectful grouping.

TYLER STRICKER: I-- I said-- I said some.

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PANSING BROOKS: Right, but-- but by this bill, we'll be looping all the young kids into a category of the disrespectful ones. Well, thank you so much.

TYLER STRICKER: I don't-- I don't think that's necessarily the case, but I respectfully disagree.

PANSING BROOKS: OK, thank you so much for coming today, Sergeant Stricker.

LATHROP: Senator McKinney has some more questions--

TYLER STRICKER: Yes.

LATHROP: --for you.

McKINNEY: To-- to follow up on your hypothetical, hypothetically, say I'm on an ankle monitor.

TYLER STRICKER: Yes.

McKINNEY: I didn't commit a violent crime, but I'm on an ankle monitor for-- for something, and I'm just at the wrong place at the wrong time and I'm on probation or parole. Is it true that police conduct could trigger a violation?

TYLER STRICKER: What do you mean?

McKINNEY: Like if-- if I'm on probation or parole and I have any interaction with police, could that potentially get me violated?

TYLER STRICKER: I don't believe so. We've had even instances like if we have this information put back on NCJIS where we've had contacts with somebody who's on probation or parole and they're nervous about it and we've emailed their probation officer to say, hey, there was--

McKINNEY: But even though you may not have seen it happen, is it possible to get violated just from having an interaction about--

TYLER STRICKER: With-- with--

McKINNEY: Let's say, for example, a shooting happens.

TYLER STRICKER: OK.

McKINNEY: I didn't do the shooting, but I just happened to be in the wrong spot at the wrong time, but I'm-- but I'm questioned about a shooting. That could be a violation. Is that-- is that true?

TYLER STRICKER: I'm not aware of what the violation would be.

McKINNEY: It-- just police conduct in general-- contact in general.

TYLER STRICKER: I don't-- I don't think having contact with police justifies a viol-- I don't know the stipulations of probation. I'm not on that side of it, but I don't believe that that would in any way be a violation. I don't see how it would.

McKINNEY: All right, because that's-- that's the thing. It's, yeah, you want to catch the serious offender. But in trying to do so, you may corral more than what you actually are looking for. And police con-- contact with black individuals and brown individuals is not always the best.

TYLER STRICKER: OK.

McKINNEY: And we could go back to the stuff that's been happening all over the country for-- for those examples. So that's my fear is that, yes, you're trying to target a specific population, but in doing so, you've corralled a whole population, which increases police contact with my community, for example, and that's not always the best situation.

TYLER STRICKER: I--

McKINNEY: Thank you.

TYLER STRICKER: OK.

LATHROP: I'd like to ask a couple questions--

TYLER STRICKER: Yes.

LATHROP: --just generally so I understand what this looks like.

TYLER STRICKER: Yes.

LATHROP: If you're in your cruiser, there's a shooting at 30th and Vinton, before there was this change in interpretation and this button disappeared that you guys used to touch, you roll up to 30th and Vinton. You see bullet holes in the side of a house or the side of a car or someone has been shot. Is there-- is there something in your

cruiser or in your-- that you have access to that you push it and go, who had an ankle monitor that was within two blocks of this at-- in the last half-hour?

TYLER STRICKER: No, if I understand your question correctly. So we arrive at a shooting--

LATHROP: Yeah, I'm just wondering. You-- you talked about this like we used to have a button--

TYLER STRICKER: Yes--

LATHROP: --that we could touch.

TYLER STRICKER: Yes.

LATHROP: Or I assume you have a laptop in your cruiser.

TYLER STRICKER: Yes.

LATHROP: And if you roll up to 30th and Vinton because the ShotSpotter went off and now you're down there trying to figure out if somebody got shot at, what is it-- how do you access who was there in the last-- in the circle of--

TYLER STRICKER: We-- we don't. That's a-- so part of the bill is adding probation information back to NCJIS, so theoretically they could show up if they had an individual that, for whatever reason, they wanted to look them up on NCJIS, they could click the tab and show that they were on probation.

LATHROP: So you gotta have somebody in mind, like--

TYLER STRICKER: You have to have somebody in mind.

LATHROP: --I'm at 30th and Vinton, so I'm thinking that it's Josh Henningsen that probably did it, let me check. Yes.

TYLER STRICKER: So we have to have somebody in mind to click up and look up their NCJIS information. We don't-- I recently got-- I think they gave us access to adult probation for our particular unit to look at GPS information for adults. Previously, the way that we would do that in your scenario is we'd have to call probation because that information is not on NCJIS, it would just show that they're on probation. We said, hey, we show that this individual is on probation.

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Can you tell us if their ankle monitor puts them in that particular area at that time? They could then tell us. That's now--

LATHROP: But you don't have access to anything that will tell you who was in the area in the last 30 minutes if you're--

TYLER STRICKER: With adults now, we do have-- they've given us some access to that. Juveniles is completely no. We have to get a hold of juvenile probation and say, hey, we suspect this individual. Are they on probation, because we don't have it on NCJIS anymore. They would say yes or no. And then unless there's some sort of exigency, they would tell us, you need to go get a search warrant or a court order for this information.

LATHROP: I'll give you a different scenario.

TYLER STRICKER: OK.

LATHROP: ShotSpotter goes off and there is a bunch of young people at 30th and Vinton. I don't-- I'm not familiar with that, so I'm just going to put a gas station there.

TYLER STRICKER: Sure.

LATHROP: A convenience store, and a bunch of kids are running in every direction when you get there, but the ShotSpotter tells you that's probably where a shooting just happens. It can you access something in the GPS that says, who was there--

TYLER STRICKER: Adults.

LATHROP: --in the last 20 minutes?

TYLER STRICKER: Adults, not juveniles. Juveniles have been taken down from my understanding through some different interpretation of the statute.

LATHROP: Does that change with this bill?

TYLER STRICKER: Yes, it would. Absolutely. And the big point, if you don't mind, the big point of that, that is, is good that you brought up is if we were trying to do, let's say we want to do a search warrant, OK, or we're required to get a search warrant or court order. To me, the concern would be is, is yes, we could take that information, although time-consuming and, and to me, it's not a constitutionally protected information. But we go and we draft a

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search warrant for that information if we have a particular individual. My concern is, is we've been able to with adults and we can still do it with adults, but we can't put juveniles, is there is no drag search. So if I have to try to-- obviously I believe probation has that access. But if I want to write a search warrant for 30th and Vinton that a bunch of 16, 15, 16-year-olds ran from and we just had a shooting. Now I'm trying to get a search warrant with what specificity, that time, that location. But I don't have a specific individual, I don't know if that will be an issue or not. And again, I think we're going down this rabbit hole of this path that I think it falls back on, is this a reasonable expectation of privacy of information?

LATHROP: I get that. I get that, and all I'm trying to do is understand--

TYLER STRICKER: Yes, absolutely.

LATHROP: --the, the information we're talking about.

TYLER STRICKER: Yes.

LATHROP: So if this bill passed, is there some place where you could just go and look at which 15 and 16-year-olds were at 30th and Vinton an hour ago?

TYLER STRICKER: No, because we, we still would have to get ahold of juvenile probation and say, hey, we had a shooting here. Do you have any juveniles on an ankle monitor that were in this area--

LATHROP: Even if this bill passed?

TYLER STRICKER: Yes. It's not going to be put onto NC-- I don't ever recall GPS information being put onto NCJIS.

LATHROP: OK.

TYLER STRICKER: Typically, the way we would do this before it stopped and we do it with adults, is we can call them up and say, we had a shooting at 30th and Vinton, did you have anybody on an ankle monitor here? Adult will tell us, juvenile will not without a court order or a search warrant because of some interpretation of the statute.

LATHROP: OK. But you're still going to-- even with this bill, you're still going to have to call and say, do you have any juveniles at 30th at Vinton a half-hour ago?

TYLER STRICKER: For GPS information, yes.

LATHROP: OK.

TYLER STRICKER: To my knowledge, we would.

LATHROP: I got another question.

TYLER STRICKER: Yes.

LATHROP: You said that conditions of probation can include a search and seizure provision or clause.

TYLER STRICKER: Yes.

LATHROP: OK. And so that, I presume, means that somebody said, yeah, I'd rather be on probation than have some kind of detention. So I sign that form and, and agreed to what, that I, that somebody can search me or my car any time?

TYLER STRICKER: Yeah, I think typically the way it is, is it used to show us if they were under a search and seizure clause, if I recall correctly. And typically, what we would do is we would get a hold of probation, probation would go with us. We're not usually doing those searches ourselves unless we call probation and probation tells us, yes, go ahead.

LATHROP: OK.

TYLER STRICKER: And that person still has to be compliant with that search.

LATHROP: All right, now let me stop you there. If you're, you're driving down 30th and Vinton, there was a shooting somewhere and you see Josh Henningsen driving around and you remember him. He's like, I know that he's somebody that we're-- he's always in trouble and there he is. Can you pull him over? Like you pull-- you hit this button and you go, yep, he's got a search and seizure clause in his, in his probation order, I'm going to pull him over and then pull him out of the car and search him or his vehicle?

TYLER STRICKER: Again, I'm not an attorney, but I would think we'd still have to be able to establish probable cause before we conducted that particular search. So if he's leaving the area of a shooting, I'd have to be able to articulate my reasonable suspicion or probable cause to pull him over to begin with to then get to that point.

LATHROP: And that's, that's what I'm asking.

TYLER STRICKER: Yes.

LATHROP: Not because I'm arguing with you--

TYLER STRICKER: Yeah, no.

LATHROP: --just so that I can understand. If you have access to this, you hit the button and, by God, Josh has this search and seizure provision in his thing, you think you still, even though that's in there, you still need probable cause and you still need what?

TYLER STRICKER: I personally do. If he's leaving in a vehicle, I have to have some sort of articulable, reasonable suspicion--

LATHROP: So that--

TYLER STRICKER: --to make that initial contact.

LATHROP: --search and seizure provision isn't a green light to, to stop him on the street or stop him in a park or anywhere else you see him and pat him down?

TYLER STRICKER: In my experience--

LATHROP: Look in his pockets.

TYLER STRICKER: I guess I'm not sure. In my experience, we don't really do that.

LATHROP: OK.

TYLER STRICKER: Me, me personally, I would--

LATHROP: Not to be argumentative--

TYLER STRICKER: No.

LATHROP: --I'm asking you if you could, not do you.

TYLER STRICKER: Trying to think of other similar hypotheticals so I can answer appropriately.

LATHROP: And I'm just--

TYLER STRICKER: I guess--

LATHROP: --trying to get a fix on what we're talking about with one of these provisions and what you would then have access to.

TYLER STRICKER: I guess I sup--

LATHROP: And what you could do with it.

TYLER STRICKER: I guess I suppose it's plausible, because a lot of times when we'll go out with probation, it's their time to do their checks on these certain individuals and some of them they consider dangerous, so they like law enforcement to go with them. So we'll get an email saying, hey, I need to go check on John Doe. Can you come with me? We have a search and seizure-- he has a search and seizure clause. I'll send my officers with probation to go make that contact, whether it's at a house or wherever they come in contact with that individual with. And if that probation officer decides that they want to enforce that search and seizure, they will search it.

LATHROP: But if you're, let's say that you're just-- I'm just trying to understand--

TYLER STRICKER: Yes. No, totally. Go ahead.

LATHROP: --not arguing. So, so that I know really what we're talking about, because this is the-- the GPS is one thing, but this, this is the part that I want to better understand. You're sitting in your cruiser, you're in the gang unit, you're at 30th and Spencer and you see Josh Henningsen go by and you're like, he's on probation and he's got one of these search and seizure clauses. Let's pull him over. Do you still have to have probable cause if he has a search and seizure clause? Or is that your green light to stop him any time you want for any reason?

TYLER STRICKER: I don't think that's our green light to do that. We're not probation, we're law enforcement, so I think we would fall back to that we still have to have some articulable reason to do a traffic stop on this individual.

LATHROP: OK.

TYLER STRICKER: And then we won't search that individual without probation's approval.

LATHROP: And is that statutory, a constitutional provision or just practice? If you know.

TYLER STRICKER: I'm not certain--

LATHROP: OK.

TYLER STRICKER: --if it's statutory.

LATHROP: Well, I think I better understand it. And I see some other people behind you, so we may get a little more context for this. But yeah, I appreciate your testimony. Thanks for being here.

TYLER STRICKER: Yeah, thank you.

LATHROP: Next proponent. Good afternoon, welcome.

COLLEEN RICKARD: Good afternoon, my name is Colleen Rickard, it's C-o-l-l-e-e-n R-i-c-k-a-r-d. I'm a foster parent of over 35 years. I am very much for LB1010. Reason why, as a foster parent, I have seen both the officers not be able to get the correct information, one, on the juveniles when they've ran. As a foster parent, we have to report if a child has ran. Sorry.

LATHROP: Are you nervous?

COLLEEN RICKARD: Yes, I'm very nervous.

LATHROP: OK, let me, let me put you at ease. We're not going to interrogate you.

COLLEEN RICKARD: It's--

LATHROP: We're just here to listen to what you have to say, and you don't need to be nervous. OK?

COLLEEN RICKARD: I'm sorry.

LATHROP: No, you're fine. You're fine. Go ahead

COLLEEN RICKARD: With this juvenile, we've had guns pointed at us twice. My husband had a knife pointed at him. And unfortunately, the officers were not aware of what this child had done before. And that's one reason why I think that it's important that these officers are aware of what these kids are capable of doing. Don't get me wrong, we've had good kids, we've had bad kids. But this child needs major help. And I have seen, unfortunately, HHS take a, take this child. He was not in our care, he was in another home. This juvenile, I should say, he was on, on probation for stealing a car, methamphetamines, other things. He got on Facebook Live and literally well, had a gun

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and was threatening to kill myself, my husband and our foster daughter. And he-- they caught him. But unfortunately, he was only in jail for three days, then placed back in foster care in Lincoln here. I'm sorry.

LATHROP: No, you're fine. You're fine.

COLLEEN RICKARD: And he was on the run for three and a half weeks, and we had no way of knowing. We were in charge of a state ward, and we had no way of knowing that this child was on the run again. And if the officers would have known, we could have protected this child, unfortunately, the same thing happened all over again. It was on Facebook Live. And as the victim of this, the VINE program that used to be in effect as a victim, is no longer in effect and it is not in effect for juveniles. So as a victim, we have no rights when it is a juvenile criminal. We are not notified when the juvenile criminal is released or on the run. It had been three and a half weeks, and I think that the law needs to be changed, that the victims need to be able to be notified. Just by probation, HHS could contact us, send us a text, an email. I mean, we had one of the state wards in our care who was being threatened again. I just, I think that, that the officers have to have more abilities to be able to protect "We the People". And if we don't stand up and give our officers the tools to be able to protect us, you know, I just-- I could go on and on with, just with this child. I mean--

LATHROP: Sounds like you had a bad experience for sure.

COLLEEN RICKARD: Yeah. And the sad part is he took in, was released from our home, was in jail for like three or four days, then was placed in another home in this area, stabbed the foster family and was on the run for three and a half weeks before we were notified. And the only reason why we were notified was because he was on Facebook Live, threatening to kill us again.

LATHROP: OK. Well--

COLLEEN RICKARD: Any questions? Yes.

LATHROP: Senator McKinney.

McKINNEY: Thank you. I just want to, and I'm sorry about your situation. I just wanted to ask, did this individual that you're speaking of have any behavioral health or mental trauma issues.

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COLLEEN RICKARD: Drugs and issues. He's been picked up for methamphetamines--

McKINNEY: OK.

COLLEEN RICKARD: --more than once. We fought for getting mental health and stuff, but unfortunately, the HHS worker decided to ask the juvenile if he wanted to go to some place in Omaha to get counseling and stuff instead of just picking him up and taking him there at age 14. And so, needless to say, the juvenile said no, he did not want to go there, and it was delayed once again. And the juvenile was pushed back in the system and here we are today.

McKINNEY: Yeah, no. I ask that because it just seems as though it was a young individual that was--

COLLEEN RICKARD: Yes.

McKINNEY: --doing those type of issues. And I think that's important to point out, not to diminish the situation, but I think when we have young individuals that are dealing with those type of crises, we have to be careful. Not only--

COLLEEN RICKARD: I agree.

McKINNEY: Not only for you, but also for that individual because--

COLLEEN RICKARD: And that's why I think it's important that the victims, myself or anybody else that's a victim can be notified by law enforcement or by probation or HHS or all three, just so we can protect ourselves, as well as the juveniles that are within our care, as well as that juvenile that's on the run. This juvenile that I'm talking about has cut his ankle monitor off 13 times that I'm aware of.

McKINNEY: No, I understand, and I'm not trying to diminish your situation and I appreciate your testimony. Thank you.

COLLEEN RICKARD: Thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you so much for coming today. I think it's so important to hear your story, and it's heartrending for sure and scary. I'm sure it was very scary.

COLLEEN RICKARD: It was very scary. And the juvenile that was in our care, she cried almost for over a week and a half at night, having horrible nightmares, screaming out in the middle of the night and stuff. We finally get her calmed down, and then the criminal juvenile was out running again and contacted her again. And for her to find out, not HHS to contact us, not law enforcement, not probation. You know, that's what's frustrating. There is no reason why. I know for a fact that HHS, when a child is on the run, my job as a foster parent is to contact H-- HHS and let them know that that child is on the run. That HHS worker has to fill out a 105 questionnaires contacting the FBI, the sheriff's department, all age-- probation and everybody else. On that piece of paper, that one questionnaire, it could be added if for probation has all that information, it would not be that hard for them to say contact the victim. Let them know that this child is on the run, because all of that is done within the first hour. And if it is going to save a state ward's life or somebody else's life just to add one line and have a probation officer contact the victims, I don't see where the problem is.

PANSING BROOKS: OK, first off, I'm not sure that this gives law enforcement the ability to warn victims, which is a whole other issue.

COLLEEN RICKARD: There is a victim witness group--

PANSING BROOKS: Yes.

COLLEEN RICKARD: --that in Buffalo County, and I have worked with them before for other things, with the different children that we have had in our home. And unfortunately, because the criminal is a juvenile, we cannot be notified. The juvenile has more rights than the victims do at this point in time.

PANSING BROOKS: So--

COLLEEN RICKARD: And that's wrong.

PANSING BROOKS: I don't understand why he wasn't arrested, the juvenile.

COLLEEN RICKARD: Which time?

PANSING BROOKS: Any of them, what--

COLLEEN RICKARD: He was. But I just found--

PANSING BROOKS: If he's threatening with a knife, I'm just interested why--

COLLEEN RICKARD: He was.

PANSING BROOKS: And he was violent and should be off the streets.

COLLEEN RICKARD: I totally agree with you. I just found out Thursday that there was a court date. Mind you, he was charged within our case alone, three counts of terroristic threats, three counts. That's six counts of terroristic threats. He also stole the car. If he pleaded guilty to stealing the car, our counts don't count, what happened to us don't count. So now I have no rights whatsoever to be able to contact victim witness, probation or anybody else to find out when this child or juvenile is on the run.

PANSING BROOKS: Well, there's no question that we need to be protecting people who are at high risk like this. So I'm sorry that happened. I'll ask some of the people behind how this could address that issue, because that's concerning.

COLLEEN RICKARD: Yeah, I spoke with Senator John Lowe in regards to it, and he had no idea that, that this was even there. I, I just-- I don't know what to do. And as a mother and a grandmother and a foster care mom, it's my responsibility to take care of our children and to teach them right from wrong. And if I can't stand up and tell you guys this is wrong, something needs to be changed. And if you don't give our law enforcement the tools that they need to protect all of us, it's wrong.

PANSING BROOKS: Thank you.

COLLEEN RICKARD: I just--

PANSING BROOKS: Thank you for coming, I appreciate your story.

COLLEEN RICKARD: Thank you.

LATHROP: You came all the way from Kearney?

COLLEEN RICKARD: We came from Gibbon.

LATHROP: Yeah, well, thanks for making the trip.

COLLEEN RICKARD: I got the call from Pat, from John Lowe's office yesterday at a little after 4:00. And he goes, Colleen, this doesn't

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have anything to do with that bill, but it does have to do with that bill. Could you please show up?

LATHROP: OK.

COLLEEN RICKARD: And so that's why I'm here, and it really wouldn't take that much, guys. I mean, just to put that on that, that bill.

LATHROP: Well, we'll ask one of the guys coming up right behind you how that works.

COLLEEN RICKARD: I hope so.

LATHROP: OK, thank you.

COLLEEN RICKARD: Thank you, guys.

LATHROP: Have a good trip back. Good afternoon and welcome.

JASON WESCH: Good afternoon, sir. My name is Jason Wesch, it's J-a-s-o-n W-e-s-c-h, and I'm here on behalf of the men and women of the Lincoln Police Union in support of LB1010, a bill that we see as a valuable investigative tool for law enforcement and a benefit to adults and juveniles on probation and their families. Having access to immediate or, I'm sorry, having immediate access to information about who is on probation or parole will aid law enforcement in any number of circumstances, and allow us to work seamlessly with probation and parole officers. It would help us build upon already established working relationships with local probation officers that have been earned over a period of time. Working together on such projects as Safe Neighborhoods, which is a grant-funded effort that pairs law enforcement and probation officers together to check on adults on probation and help employees from both offices learn about each other's jobs. The sharing of information is a key component to our continued working relationship with probation. I personally don't see any drawbacks from LB1010, as it would work to the advantage of persons on probation or parole, youth on probation, parents and law enforcement. Some of this information currently requires legal process of some form before law enforcement can have access, which works to the detriment of the investigation. The ability to access GPS locations of a juvenile and electronic monitoring would increase safety for all involved. While I think this would come into play only in limited circumstances, it could be vital to the safety of the troubled youth in a bad situation. If there are concerns about confidentiality, our agents-- our agency already has policies in place to protect confidential information, and only certified employees have

access to such information. The state monitors information obtained by individuals through NCJIS and carefully screens inquiries for potential misuse. With the access to information provided by LB1010, law enforcement would have an extension-- would be an extension of probation, increasing the effectiveness of the program. Having knowledge of probation and being able to work with a person's probation officer in a timely manner increases the available resources, which works to create a safe outcome for all involved. And if I could go back a little bit to some previous testimony and just try to quickly clear up some questions that were asked, just based on my experience. I've been an officer and then a sergeant for 19 years here in Lincoln, and we work very well with probation. I think even a person on probation deserves all the, all the respect and rights that other citizen has. Just because there's a search clause doesn't mean that we can walk up to them and search them. Yes, if I contact a person on probation and I know there's a search clause, I'm going to point that out to them. But if they say no, then that's no, there is no search. It's done. Does that violate their probation? That isn't up to me. That's up to the probation officer. You asked earlier, sir, if I saw a per-- or the other officer, if he saw someone on probation driving down the street, can you stop them? Absolutely not. Definitely, no. And I just think with juveniles and the GPS tracking, it was mentioned about software, will we have access to a map that shows them? No, we won't have that. We'll have to call probation, they'll have to tell us this person was in the area, depending on the circumstances. Really, it just-- yes, sir?

LATHROP: If you have, just to follow up on my questions that I had before, if you have access to this and you see Josh Henningsen and you know Josh Henningsen is somebody that gets in trouble a lot, or maybe is gang-involved and he's driving down the street and you, you type his name and and you now hit that button and it says, you're not to hang around with Lathrop or that's a violation of your probation, can you stop him for that?

JASON WESCH: No, I'm not a probation officer. If I made that observation and I was sure that those two people were together, maybe I would call his probation officer and just say, hey, I want to work with you guys. I saw these two together. I can do a report about it, if you wish, but I cannot stop them. I cannot.

LATHROP: You can't-- there's nothing-- I'm, I'm not familiar with this screen that everybody wants access to.

JASON WESCH: Absolutely.

LATHROP: So if you pull up Henningsen, can you see where he's at?

JASON WESCH: No.

LATHROP: And like you can't see from GPS that he's--

JASON WESCH: No.

LATHROP: --that he's actually at 30th and Vinton?

JASON WESCH: No.

LATHROP: OK. That answers my question. Senator DeBoer.

DeBOER: So let me give you another hypothetical, and you kind of talk me through it--

LATHROP: Sure.

DeBOER: --if that's all right. So if I get a call from somebody, they saw Lathrop hanging around with Henningsen. And you're looking for Lathrop, but Henningsen has an ankle monitor on him, can you call a Henningsen's probation officer and ask, hey, where's, where-- they got in a car together, where's Henningsen?

JASON WESCH: Yes.

DeBOER: OK. And then the next thing would be to say that, you know, they're driving some direction. Could you continue to talk to that person until you could get, you know, find out where they were and sort of chase Henningsen that way?

JASON WESCH: Yes.

DeBOER: And then you would whenever you got there, you know, presumably be able to find Lathrop because he was with Henningsen?

JASON WESCH: Yes.

DeBOER: OK, thank you.

LATHROP: Senator Morfeld.

MORFELD: Thank you for coming, Sergeant Wesch. This is helpful. So just going back to the screen, this is getting into the weeds a little bit. So the screen just basically says that that person is on

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probation, who to contact, so you don't have to go and call the, the hotline and, you know, spend 15 minutes on that. And is that--

JASON WESCH: Right.

MORFELD: --correct?

JASON WESCH: It just makes it easier.

MORFELD: Just makes it easier.

JASON WESCH: Helps us work with probation and just makes it easier, yes.

MORFELD: OK. OK, got it. Thank you.

LATHROP: Otherwise, if you want to know where somebody was, then you got to go through the process of getting a judge to sign a warrant to tell you where Henningsen was when the shooting happened at 30th and Vinton.

JASON WESCH: Yes. Well, and correct me if I'm wrong, but LB1010 doesn't cover GPS info for adults, only juveniles.

LATHROP: It doesn't cover what?

JASON WESCH: The GPS tracking information for adults. It only talks about for juveniles with GPS.

LATHROP: I understood from the previous testifier that they already have access to that for adults. We're only talking about juveniles today?

JASON WESCH: Right. That's all I was trying to clarify. Yes.

LATHROP: OK. Senator McKinney.

McKINNEY: Thank you. What's the role of a law enforcement officer in the state, in, in Lancaster County?

JASON WESCH: What is the role?

McKINNEY: Yeah.

JASON WESCH: Just in general to enforce the laws, keep the peace, serve, serve the public.

McKINNEY: What's the role of a probation officer?

JASON WESCH: The same or similar.

McKINNEY: Do you not see there maybe being some type of potential conflict having such a close relationship between law enforcement and probation, where the rules and the lines can get skewed a little bit? Because when you say you can't just walk up on somebody, I won't say it happens in Lincoln, but I've seen firsthand multiple occasions officers knowing the individual has a search clause in their probation file and they search them. And if they refuse, they get arrested on the spot. And that's troubling for me in a lot of ways. And but I also think we have to be careful not to compare juveniles to adults.

JASON WESCH: I agree.

McKINNEY: There is a reason why there are adults and there's juveniles. And just trying to have a cookie-cutter standard for both juveniles and adults can be problematic. And we have to be careful in doing so.

JASON WESCH: OK.

McKINNEY: Thank you.

LATHROP: I have one more question. So Ms. Rickard came from Buffalo County to tell us her concern about law enforcement not letting her know that a juvenile was on the run, who, who may or may not pose a threat to Ms. Rickard or her family. Does this have anything to do with notifying the victim's family?

JASON WESCH: No.

LATHROP: OK. I just wanted to make sure I didn't miss something. I appreciate your testimony, and thanks for being here today.

JASON WESCH: Thank you, sir.

LATHROP: Welcome back. Good afternoon.

JIM MAGUIRE: Good afternoon, Chairman Lathrop, senators of the Judiciary Committee. Good afternoon. My name is Jim McGuire, J-i-m M-a-g-u-i-r-e, I'm president of the Nebraska Fraternal Order of Police and I'm also here in kind of a dual capacity representing the Omaha Police Officers Association. So when we're talking about LB1010, and we are here to support that bill enthusiastically. I know a lot of

previous testimony has, has already touched this, so I'm not going to kind of repeat myself too much. But just to clarify, we used to be able to have access to this information. And all we're asking is that we can have this information again when it comes to the NCJIS part. I have talked to numerous chiefs and sheriffs throughout every corner of this state, and they all agree that we need to have this information. It's about-- a lot of it has to do with the safety of the street cop. So if we make a traffic stop, before we would know, hey, this person is on, on probation and they're out with, with, you know, certain people. They may be going down a path to where they may start getting in trouble. Well, if we can intervene and stop that before it happens, let's do that. So that part right there would be very beneficial so that we know, OK, this person is on, on probation, so we may have to type up a little report that says, OK, on such and such time, the person wasn't doing anything wrong. This is-- but we did have contact with them. Now regarding the GPS, it talks about an alternate form of detention, which, which is basically incarceration. And this is, this, this ankle monitor that we're talking about is a form of incarceration, and we should have access to, to the GPS portion to show, OK, if, God forbid, that we have a shooting. And what-- even if it's in western Nebraska and there's, we know that there's going to be retaliatory shootings, if we can, if we can stop that as soon as we can, good for us, good for the community, good for the victims. That way, we can get that person behind bars as, as, as soon as we can. So like I said, a lot of the other testimony has already, has already been, has already been brought up, so I'm not going to continue to speak so. If you have any questions.

LATHROP: Jim, at the risk of having you repeat something that somebody else has talked about, this sounds like something you used to have access to in your cruiser.

JIM MAGUIRE: Yeah.

LATHROP: You're a cruiser officer at Douglas County.

JIM MAGUIRE: Yeah.

LATHROP: And so tell me how that works. You have a laptop and you pull over Henningsen.

JIM MAGUIRE: If you have-- yeah, first, you have to have NCJIS access. That's not for everybody.

LATHROP: But you want it in this case.

JIM MAGUIRE: But you want it. You want it in this case.

LATHROP: So if you have it, what, what are you going to be able to know about him before you go up to his car door?

JIM MAGUIRE: It will, it will show me why he's on probation, what the terms are, and who his probation officer is. And now we don't have any of that information. So I could, I could pull over-- let's say you've got--

LATHROP: Those pieces of information are important to you if you're approaching this car?

JIM MAGUIRE: All of it is. All-- the most important part is, is that juvenile, are they on probation? And why are they on probation? If it's, if they're on probation because they, they got an MIP, OK. But if they're on probation because they're out-- because they were involved in a shooting, that's, I'm going to treat that a heck of a lot differently.

LATHROP: Talk to me about the GPS. If you're in your cruiser and you run down to 30th and Vinton because the shot thing goes off.

JIM MAGUIRE: Right.

LATHROP: And you have a pretty good idea that that's an indication somebody just shot a, a firearm at 30th and Vinton, what's the GPS doing for you that you want access to without going through the warrant process?

JIM MAGUIRE: Right. For the, for the street cop, we're not going to get that information. For the investigator that comes out, they're going to call probation and probation is going to get that information to share with us.

LATHROP: What will they share with you?

JIM MAGUIRE: They'll, they'll share, OK, so-and-so is on an ankle monitor. It shows on this time, at this date, if you're asking were they at 30th and Vinton? Yes, they were, they were there at that time.

LATHROP: Can probation look at a map that includes 30th and Vinton at a particular time and say, it looks like we had seven ankle monitors down at 30th and Vinton--

JIM MAGUIRE: Yes.

LATHROP: --and here's who they belong to?

JIM MAGUIRE: Yes.

LATHROP: OK. And that's what you want to be able to get without doing a warrant?

JIM MAGUIRE: Yeah.

LATHROP: OK. I think I now understand the bill. Senator McKinney.

McKINNEY: Quick question. Who, who change-- was it the courts that changed the interpretation of, of this statute or law?

JIM MAGUIRE: Yes, it was, it was somebody within, I believe it was the Supreme Court Administrator's Office, somebody in there.

McKINNEY: Do you recall the reasoning?

JIM MAGUIRE: They just said what you were doing before, you can no longer do.

McKINNEY: OK. So do you trust the courts?

JIM MAGUIRE: Of course.

McKINNEY: Because earlier today, not in this hearing, we've, we've-- and throughout this week-- we've been told to trust the courts because the courts, we need to stop trying to infringe on the courts. So if you trust the courts, why can't you trust the courts made the right decision?

JIM MAGUIRE: We aren't saying that we don't trust the courts in this instance. What we're saying is that you should put a little faith in law enforcement to go out and, and as aggressively as we can stop violent crimes.

McKINNEY: What about faith in the courts to make a decision and make sure law enforcement isn't overstepping their boundaries?

JIM MAGUIRE: Well, I think that would, that would play out-- let's, let's just say hypothetically this goes to a suppression motion saying that they never should have had this. But with this change in the law, now it does. So in the-- that's all we're trying to change is just to give us that information before.

McKINNEY: Here's my response. Say you get this information, you find whoever you're looking for, and the person isn't the person that you really should be looking for. But because you-- hold up, because your account of this person, the situation got escalated and this individual is killed and there is no suppression motion because he's killed because you misidentified the individual?

JIM MAGUIRE: Two parts to that. The first part is, the whole goal was to-- if we, if we misidentified somebody, good for us because we can stop wasting our time with this person, since they were never there.

McKINNEY: How is it good if they're dead?

JIM MAGUIRE: Well, now that's going into a whole different situation because I can say hypothetically--

McKINNEY: But what I'm saying--

JIM MAGUIRE: --why was this person a felon and [INAUDIBLE]?

McKINNEY: What I'm saying is interactions with law enforcement from my community have-- across this country and in this state haven't been the best. And we-- and I'm for-- I understand you guys want to decrease-- protect public safety and all that. But what I'm saying is, if this is an opportunity to open up more contact, that is what I'm fearful of, because I know what those situations are like.

JIM MAGUIRE: I would say--

McKINNEY: And you could say, you can say that you guys try to do the best within those situations, but I, I--

JIM MAGUIRE: I would-- when you--

McKINNEY: --far too many.

JIM MAGUIRE: When you say that we're making all of these contacts, I would say the--

McKINNEY: Nebraska has--

JIM MAGUIRE: --vast majority of those contacts are positive. There is only a small portion of those contacts--

McKINNEY: So why does, so why does Nebraska have the eleventh highest black incarceration rate in the nation?

JIM MAGUIRE: Well, now we're going to start getting into a whole different conversation because we could start talking about why do we have a, an abundance on, let's say, minority-on-minority crime? And when are we going to talk about the victims of that?

McKINNEY: It's about-- but the majority of white individuals kill white individuals, am I correct? Majority of Latino individuals kill Latino individuals. Majority of-- so, so when you go to this framing of minority-on-minority crime, also speak to most people that commit a crime against a white individual was white. The percentage is high. So don't just go there.

JIM MAGUIRE: I-- if we're going to have a legitimate conversation on, on, on percentages and what, what do the, what do the facts show me--

McKINNEY: Disproportionate amount of minority contact.

JIM MAGUIRE: We have a disproportionate amount of minority victims.

McKINNEY: And minority contact.

JIM MAGUIRE: That's what we have. And we can go into where is the-- going to the home, but a lot of this, if we can, if we can end the context at the juvenile stage, let's do that. Let's get them-- if they are starting to trail off on, and, and they're on probation and we can, we can get them back on track, absolutely. Let's do that. And maybe this accomplishes that.

McKINNEY: We've had these type of policies for years that I'll just say, they haven't worked. And I'll just leave it at that and we can be done. Thank you.

JIM MAGUIRE: OK.

LATHROP: I will say the one, the one thing about having this conversation is I see Deb Minardi sitting in the back, and I'm sure she's going to be up here in the second to tell us why this change happened. And then you guys really don't have an opportunity to come back up and say, oh, now I understand why that policy change. Here's why I disagree with it. So I think it's been helpful to ask questions to fully understand what the purpose of this proposed policy change is. And then we're going to find out after you sit down--

JIM MAGUIRE: Will do

LATHROP: --why that ever happened in the first place.

JIM MAGUIRE: With that [INAUDIBLE].

LATHROP: With that, have a great weekend. Good to see you, and thanks for being here. Anyone else here as a proponent of LB1010. Seeing none, we will take opposition testimony next.

SPIKE EICKHOLT: Good afternoon, my name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to LB1010. I'll try to speak as quickly as I can. The bill has two general components, and you've heard them talk about changes to the statutes that relate to adults on probation and parole and then statutes that relate to juveniles on probation. The parts that we find perhaps not as objectionable, are Sections 1 and 4 of the bills, and those are the statutory changes to the adult statutes that relate to identifying-- letting law enforcement officer have easy access to the information on the NCJIS system relating to the-- whether the person is on probation, the name of the probation officer and the conditions of probation. It sounds like from what I heard before, they're not necessarily blocked from GPS information if they can learn the identity of the probation officer. I'm guessing that there might be some bug or feature of the system somehow, that doesn't let them easily, law enforcement officer easily in the field figure out who to call to find this information out. I'm speculating a bit. That's not so bad because admittedly, as somebody said earlier, adults who are on probation probably don't have any kind of expectation of privacy in there. The parts about the juvenile probation are more problematic for us. First, not-- every adult who's on probation has been found guilty of a crime. It's a consequence of a criminal sanction that they are serving. That's probation. Not every juvenile who's on probation has been convicted of a crime or adjudicated on a crime. You know from the debate earlier this week on the floor that many juveniles are on probation for non law violations, for things like truancy. And juveniles who have an electronic monitoring are not there, as somebody said earlier, as an alternative to incarceration, the judge in the juvenile court proceeding has determined that an electronic monitoring system is good to help better that juvenile, to help rehabilitate that juvenile. It's not a tool of investigation. It's not an opportunity for law enforcement to use that. In truancy cases many times, the judge will impose an electronic monitoring to make kids going to school, they're abiding by a curfew and that sort of thing. I suspect that, and maybe Ms. Minardi can speak to it later on, that the reason there has been a mis-- a reinterpretation of the statute is that if you look at the statute as amended by this bill, and that starts on page-- was it 43? Is 43-2,108, and I think it's amended by this bill. And if it's not,

that's a statute that's been amended a number of times and passed by the Legislature that generally provides that information related to a juvenile court proceeding, including the juvenile courts' orders, evaluations, treatment conditions, those kind of things that are statutorily confidential.

LATHROP: It's on page 8.

SPIKE EICKHOLT: On page 8. OK, I see you found it then. So that's what this bill seeking to amend, and I'm guessing that that's what probation is finally reinterpreted. We would encourage the committee to not make that distinction. I have some-- there are some juveniles who are released. One thing that's problematic about the bill and it's confusing, is that as somebody said earlier, you're going to provide a statutory right of access to law enforcement to have GPS data for juveniles who are wearing ankle monitors.

LATHROP: Let me ask a question.

SPIKE EICKHOLT: Sure.

LATHROP: Do you have a problem if the juvenile has been adjudicated? So let's say they stole a car. They're up in juvenile court, they've been adjudicated. They had their trial, they had their opportunity to say I didn't do it. And the juvenile court judge hears all the testimony and says, yeah, you did. And by the way, I'm going to place you on probation and here's the terms of the probation, as opposed to somebody that has not been adjudicated or somebody who is a status offender?

SPIKE EICKHOLT: Quick answer to your question, yes, I would. Because they are adjudicated in a juvenile court, The point of juvenile court is not to punish, it's to rehabilitate. It's a different purpose. It's a different North star. The-- everything the judge orders is in the best interest. Keep in mind, the prosecutors always have the opportunity of a certain crime, a certain age to charge it in criminal court, and that's a distinction. But they're adjudicated in juvenile court, the point of juvenile court is to rehabilitate the youth. They should be entitled to some statutory right of privacy because if they complete their probation successfully, you've got the sealing provisions and the other provisions of the statute.

LATHROP: OK. Let me ask the next question. If the reinterpretation has left law enforcement with the only avenue is to secure a search warrant in order to secure this information, what would that search

warrant-- what would, what would an affidavit in support of a search warrant look like? And are they ever going to have trouble doing it?

SPIKE EICKHOLT: I'd say no. I mean, one of my members--

LATHROP: Are we just creating a speed bump here to, to an order that gets signed?

SPIKE EICKHOLT: I don't think that when you talk about children's rights of privacy we should consider it needless. I don't think it's needless to have someone have the state have to show something to a judge of probable cause. I don't know that the technology exists for them just, even when they had access, to find out-- to enter a location, address and find out in a circle all GPS. I'm guessing they had the identity of somebody back then and they could follow up on that. In other words, they had information from somebody telling them, somebody seeing them, something they hear or learn in investigation that these juveniles were there. These juveniles are on probation, let's go and see what the GPS says at the time. And that last third step, that GPS access is now blocked unless they get a warrant. And I don't think that's a high hurdle. I'm told it can be done within an hour.

LATHROP: Would think so.

SPIKE EICKHOLT: It's probable cause.

LATHROP: I'm guessing that it's pretty, pretty routine and generally granted. Yes, there was a shooting at 30th and Vinton. We get there, nobody is around and there's bullet holes in the car. And judge, can we get access to the juvenile GPS information for that date and time? Yes.

SPIKE EICKHOLT: All right.

LATHROP: This is one of those things to me that strikes me as concerning and I would-- or complicated. And I appreciate, and we're pretty strong on protecting people's rights around here. But in my previous service, we looked into juvenile violence in Omaha, Senator Ashford took us on a journey through that. And we talked to a bunch of people who try to intervene before there's retaliatory shootings. So one gang member gets shot and a bunch of people show up at the hospital or pile into a car, and now they're over in somebody else's neighborhood looking for somebody in the rival gang to shoot. Isn't that a circumstance that we want law enforcement to know who was at 30th and Vinton when the, when the shots got fired so they can sort

that out and try to send somebody over there to go, wait a minute before you run over to the other neighborhood, let's talk?

SPIKE EICKHOLT: I think you do. That is a law enforcement responsibility and want law enforcement be able to do it. But probation is not law enforcement. They shouldn't co-op. A probationary sen-- is meant to rehabilitate you. One thing I wanted to say is that somebody talked earlier about detention. People have an ankle monitor because they have been detained and they've been released as an alternative to detention. In Douglas County at least, the probation department doesn't do the electronic monitoring, that's done by the Youth Service Center with a private contractor. In other words, I don't know that the bill would even speak to that. And when you're talking about somebody who's a juvenile who's been detained and arrested for a law violation and then sort of released with an ankle monitor, that is a criminal proceeding. This is going to impact all of those youth who are put on probation for, yes, admittedly some law violations, but for truancy and status offenses. And I don't think we should just have law enforcement round up the usual juvenile suspects and start going through GPS every time something happens. I think they should at least be expected to follow a normal investigative process. And if it leads them to somebody, they should follow the steps and that shouldn't be short-circuited for juveniles.

LATHROP: If I presented an affidavit to a judge and said there was a shooting at 30th and Vinton, ShotSpotter demonstrated or told us that there was a shooting at 30th and Vinton, we get down there and there's a bunch of bullet holes in the side of a car, can I get to the GPS tracking for that area at that time? Are they going to get it?

SPIKE EICKHOLT: I would think so. I mean, it's probable. It's, it's more likely than not. This has-- this is relevant information to learn.

LATHROP: OK, so why are we making them go to that process? And you may wonder why a lawyer is asking you that question, but I am curious if it, if it is just a speed bump in the process, delays the access to who was in the neighborhood so that these guys can do-- go catch the bad guy, go get the shooter or go, go over to the other neighborhood and try to intervene before there's another shooting, why, why, why go through that process if it is as simple as you've just described and, and as likely to be granted as you've just acknowledged?

SPIKE EICKHOLT: I suppose at some point we should at least honor the Fourth Amendment somehow and respect it exists in some form, that some

people are entitled to be left alone by the state to a certain extent. That we don't completely live in a, you know, a police-run society and in a government-dominated system. I suppose there's at least that point.

LATHROP: Not lost on me, by the way.

SPIKE EICKHOLT: I don't think that is-- we shouldn't separate, separate the means from the ends. I think that's just dangerous thinking. We should expect the state and law enforcement that has the ability to kill, that is allowed to lie and deceive juveniles when questioning, that they should be able just to sort of jump ahead in the process, particularly for juveniles who have never even been found guilty of a crime. Again, it looks like, and I don't want to say anything, that even for things like truancy cases that are going to be handled through the court system, kids can be on probation and at times they'll have an electronic monitoring. That's not because they've committed any law violation. They need help. And that's the purpose of the, of the court order with electronic monitoring. And I don't think that's a fair comparison to the adult who has an ankle monitor, who's serving a crime-- a punishment for a crime.

LATHROP: OK, Senator DeBoer.

DeBOER: Thank you Senator Lathrop. So pursuant to this conversation about whether or not the person has committed a law violation, I'm looking at the bottom of page 5, and the specific language of this statutory change is: If the juvenile court orders electronic monitoring as an alternative to detention or a probation officer determines that the electronic monitoring is appropriate as an alternative to detention. So it seems like those are-- so is that going to get the status offenses? Because it seems like a status offense, they wouldn't order wouldn't order detention for a status offense? Is that right or wrong? I may have missed that this morning.

SPIKE EICKHOLT: Yeah, for a status offense, you can't be detained.

DeBOER: OK.

SPIKE EICKHOLT: That's true.

DeBOER: So I don't think this statute would apply to those with status offenses, is that right?

SPIKE EICKHOLT: Well, and that's the reason I mentioned before, because if the probation officer sort of orders electronic monitoring,

and I don't know the probation officer would necessarily determine that that's an alternative detention, that's up to the court. That's the confusing part.

DeBOER: So maybe it's-- so maybe what we need to do is clean up the language here. Would that help?

SPIKE EICKHOLT: It might help the introducer. It wouldn't help the point that I made.

DeBOER: I mean, it would limit it to folks who had committed a law violation as opposed to those who were for some other reason at a point where they had an ankle monitor.

SPIKE EICKHOLT: Either had been adjudicated for a law violation or at least had been detained for a law violation, but yet not yet found guilty or adjudicated.

DeBOER: I mean, we could even specify having been adjudicated and in lieu of detention, right? I mean, we could get-- I think we could write that.

SPIKE EICKHOLT: You could. The consequence of that would be, would be that record component would no longer have that statutory protection of that statute I mentioned before, and I think that's an undoing of what the Legislature has done. And maybe-- that's obviously up to you. But, you know, we have made some gains, I would submit, in our juvenile justice system. We have fewer people, kids in detention. We have a lower recidivist rate. I know law enforcement officers may disagree, but that's one thing that is measurable, perhaps maybe the only positive, measurable outcome of our correctional system, adult or juvenile.

DeBOER: So you're saying-- sorry, I-- it went fast, so I missed it.

SPIKE EICKHOLT: Yeah.

DeBOER: The, this would-- so if I did it the way I was describing, we properly identified those youth that were wearing the ankle monitor, specifically because they had been adjudicated for law violations, you said that that would cause there to be a record?

SPIKE EICKHOLT: Well, I think so because if you look at that statute that starts on page 8, I'm guessing, and Ms. Minardi is here to explain, but I suspect when I read this statute and I read the bill and I saw the statute that was amended, I'm guessing that the

probation department has determined that this statute provides some sort of statutory confidentiality or limitation on the dissemination of records relating to juveniles, including their GPS history. I'm speculating, but that's what I would guess, and this bill would undo that.

DeBOER: By?

SPIKE EICKHOLT: By putting it in statute that law enforcement is entitled to it.

DeBOER: OK.

SPIKE EICKHOLT: They can get it now. They have to go through the inconvenience of the warrant.

DeBOER: But if they went through the inconvenience of a warrant, wouldn't there also be a record?

SPIKE EICKHOLT: Yeah, I mean, there would be at some point, yes.

DeBOER: OK.

SPIKE EICKHOLT: But I don't think it would be a record that would be uploaded or included in NCJIS that's not necessarily related to the juvenile and the adjudication of the juvenile's offenses-- or status, whatever it may be. It is, that would be a record available related to whatever investigation they were pursuing. I mean, it would be somewhere, but it wouldn't be, at least I'm guessing again. I don't know, we haven't heard from Ms. Minardi, but I don't think it would be part of whatever comes up when you enter someone's name on the NCJIS system.

DeBOER: OK. All right. Well, thank you.

LATHROP: I do have one question I want to ask. And this goes back to, and I tried to ask, I think, a previous testifier. If, if I pull up Henningsen's name, he's a juvenile, he's been adjudicated and it has as a term of his probation a, what do they call them, a search and seizure provision, does that allow me as a law enforcement officer to just pull him up, pull him over and see what he's up to?

SPIKE EICKHOLT: And he's an adult?

LATHROP: No, juvenile.

SPIKE EICKHOLT: Juvenile. I would think that you can. I mean--

LATHROP: You can or cannot?

SPIKE EICKHOLT: I think you can, I think it would.

LATHROP: OK.

SPIKE EICKHOLT: I mean, as far as that, I--

LATHROP: I don't know anything about those things, so--

SPIKE EICKHOLT: I faced it, it's not always-- it's not common. I looked at some sample juvenile orders. I made copies and I thought when I read the statute, maybe I better not. I deleted the name and stuff, but I thought I better not do it. They didn't have that standard, and it was one of the juvenile orders, that standard search and seizure provision. It's typical-- it's, it's boilerplate in adult orders of probation that you'll be subject to a search and seizure with or without probable cause day or night by a law enforcement officer or your probation officer with or without a warrant or something like that. That's exactly how it reads. And I've lost [INAUDIBLE]--

LATHROP: So if I'm law-- if I'm an adult on probation with one of those clauses, can the law enforcement come over to my house and go through my house?

SPIKE EICKHOLT: Sure. They may not as a practice--

LATHROP: For any reason? No reason at all?

SPIKE EICKHOLT: Exactly. Any reason, no reason at all, just as a check. And they do that, they do these probation sweeps where they accompany probation officers and then just do the probation officer's caseload route. Basically go ahead. Now, as a practical matter, I think if somebody resists, they may not do that for officer safety purposes, but as far as they do have the legal authority to do that.

LATHROP: OK. And you don't know if they do in the case of a juvenile?

SPIKE EICKHOLT: I know on some juveniles they do. The ones I brought today were for non law violation adjudication--

LATHROP: OK.

SPIKE EICKHOLT: --is what they were.

LATHROP: OK. I think that's all the questions. Thanks for answering those and for your testimony and being here today. Anyone else here in opposition? Anyone here in a neutral capacity?

DEB MINARDI: Good afternoon, Chairman Lathrop.

LATHROP: I wish we could have started with you.

DEB MINARDI: And members of the Judiciary Committee. My name is Deb Minardi, M-i-n-a-r-d-i, I am the probation administrator for the Supreme Court Administrative Office of the Courts and Probation. I'm here to testify today in a neutral capacity. My hope is to maybe fill in some of the blanks. In particular, when we talk about the exchange of sharing data and information. And I'm kind of compartmentalizing, but also fill in some of the blanks around electronic monitoring. So to begin with, in relationship to the exchange of information, we have had a longstanding memorandum of understanding with the Crime Commission. As a matter of fact, this memorandum of understanding precedes myself and precedes court administrator Corey Steel. So the last time that the memorandum of understanding came up for review, we literally did an intensive review. And what we discovered as part of that review is that while we saw provisions that would allow probation to share certain information as it applied to adults, we could not find anything statutorily that allowed us to share information as it applies to juveniles. So we sat down to have a discussion about what that would look like futuristically and what information did we need to kind of change our practices in relationship to that. As we went down that process, part of that included a conversation with the Crime Commission, at which time we said we really need to see whether or not we're going to be able to share any information with you or not. And at that time, that's when the information kind of ceased until we could get those decisions made. We have since that time determined that, as I mentioned on the adult side, that there is information that we can share and that programming has occurred. We-- that computer programming. We have given that computer program to the Crime Commission and now they're in the process of programming on that site to kind of reinstate that information that can be shared, such as probation officer and so on. I do want to make one point, though, is that the conditions of probation have never gone away. You keep-- you keep hearing the reference to there is a tab that says probation and a tab that says court. The conditions of probation, both adult and juvenile, are available on that tab that references the court. But as law enforcement has said, that information is buried and can be very difficult to find. So we know that as well, but that information does still exist. On the adult side, as I mentioned since we could not find

any statutory authority, that's when the conversation started about it doesn't appear that we should be sharing much of anything. And it was mentioned earlier, the court is the owner of the information. And so unless the court directs us specifically to share information, we have always taken the position that probation doesn't own those records. Only the court owns those records and we can't share it. I'm going to shift really quickly over to electronic monitoring. You've heard a couple references today in relationship to adults and the sharing of electronic monitoring information. In those instances, the court order specifies that law enforcement may be notified. And when the court order does not specify, the officer cannot release that information and much-- must go to the court and ask the court, can I now release that information to law enforcement? So we do have those provisions that do allow us to have those conversations with law enforcement when it is part of the court order. From there, I'll stop and entertain any questions that might help.

LATHROP: Senator DeBoer.

DeBOER: So let me see if I understand the last part that you just said. The reason that you can share the ankle monitoring data is because the court order of-- that gave them the ankle monitor specifically says and can be shared with law enforcement?

DEB MINARDI: Yes. And I do want to also be clear that there are instances in which the court does not include that as part of the court order. But when it is automatically included than an officer could have that conversation on the spot with law enforcement. If it's not included, the officer would either have to go to the court and say law enforcement is asking for this or say, law enforcement officer, I can't give you this. You're going to have to ask the court in order to have, then have that conversation.

DeBOER: And is that subject of, or condition of the ankle monitor, something that just applies to adults, or does that also apply to juveniles?

DEB MINARDI: There are youth who are on probation and likewise have a condition of probation that includes an electronic monitoring ankle bracelet.

DeBOER: OK. Now I'm going to show my ignorance. So the way you said it, that there are youth who-- does that mean that they're not being adjudicated through the juvenile justice system and they're being adjudicated through the adult system?

DEB MINARDI: No, I want it to be clear about the fact that, you know, part of the conversation that was happening earlier was a conversation around detention. And, and there are programs where someone may be in attention-- in detention, and a youth is released from detention on an electronic monitor. That's different than a juvenile being on probation and having a condition of probation that's an electronic-- that includes an electronic monitor. So it's important that you-- that we have that distinction.

DeBOER: OK, so sorry, one more time. The youth who are released on the ankle from detention, would they have those conditions set with the, that the law enforcement are able to see whenever they want or they, can they have that?

DEB MINARDI: It, and I, and I hate to say it this way, but it depends. It depends upon as an example, you heard testimony earlier that it may be the youth center who's running the detention alternative and those conditions would be applied. It may be a judge who orders probation to have a preadjudicated supervision that might include a monitor. So that would be kind of a depends. And maybe where you're located.

DeBOER: OK. I think I got it. Thank you.

LATHROP: Is this not available to law enforcement because the statute needs to be amended? Is it a separation of powers? By the way, I'm just going to parenthetically say, like the fight we're having between the IG and the court, or is this a, a philosophical issue because they're juveniles?

DEB MINARDI: Think I'm going to answer that slightly different, Chairman, just by saying we're trying very hard to adhere to the letter of the law as it applies to what's in statute and what's not in statute. And if it's in statute, we're happy to comply. We don't see that it is in statute and so we don't feel that we have the authority to share that information.

LATHROP: Do you have a, a judgment, and I appreciate you came up in the neutral capacity. But there is-- it sounds like we have three, three classes of juveniles. One would be a status offender, right? Somebody who maybe they're, maybe they're runaways and the juvenile court put an ankle monitor on them, right? They haven't committed a law violation. Then we have somebody, and I'll use somebody who steals a car, before they're adjudicated. We're talking about an alternative to detention, and not somebody that has been adjudicated. And then the third class would be someone who's been to juvenile court equivalent

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of convicted, adjudicated, right? Is there a reason to treat any one of those three differently if this statute is to be amended?

DEB MINARDI: I would say that it is judicial discretion in relationship to any of those scenarios as to why a judge may feel like it is important to utilize a tool like that. And so it could be beneficial in any of those scenarios. Again, it would be judicial discretion and by court order.

LATHROP: OK, those are the reasons we put an ankle monitor on somebody, judicial discretion in any one of those three. But as they get the-- as they do the order, putting, putting an ankle monitor on somebody for any one of those three things, do they have other terms that affect when law enforcement should have access to the information?

DEB MINARDI: As I mentioned earlier, if it's not specified in the court order. So in other words, a judge could say, you're on, you know, you've been adjudicated. I'm putting you on electronic monitoring period. And in that particular case, we would not share that information with law enforcement.

LATHROP: Even if we amended this?

DEB MINARDI: Well unless it was amended and said that we must. Otherwise right now, if, if it says you're on electronic monitoring, we would not share that information with law enforcement. If it says you're on electronic monitoring and you may share this information with law enforcement, then we would.

LATHROP: OK. I want to go back to one more thing you said, just to get clarity. They pull over Henningsen. He's a juvenile, he's in the system and he's on probation. Are you telling me that on my laptop, if I'm a law enforcement officer, I can scroll through Henningsen's record and find this stuff, if I want to look at 28 pages of fine print on my laptop in the cruiser. Or is there something in there they want to see that that's not available to them?

DEB MINARDI: Well--

LATHROP: Is this just about make it more convenient for me?

DEB MINARDI: You're not going to know the probation officer, you're not going to have that contact information with the probation officer. And the only thing that you're seeing are the conditions of probation.

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LATHROP: OK. Clear as mud. I-- OK. So currently, if I'm a law enforcement officer and I want to get any of this information for any one of these three classes of juveniles, I can get a warrant, go to a judge, get the warrant signed just by saying he was in the neighborhood, there was a shots fired and we want to see what-- where he was at or if he was in the, in the neighborhood?

DEB MINARDI: I also want to make one clarification in relationship to that because I think this is, at least from my observation appears-- that may not be clear. What was referenced earlier is like a law enforcement with their laptop. A law enforcement officer, and I don't want to speak for law enforcement, but historically, what they're looking at is NCJIS. So they're looking to see, are they on probation or are they not on probation? That's different than when you heard them reference, I can get into the computer and look at whether somebody or not is, is on electronic monitoring. That's a whole different system. That's a whole different, you know, for lack of, for lack of a word, it's a whole different process. They're not interwoven. It's like, this is one app and this is the other app. And so you have to have permission to get into this electronic monitoring app by some of the ways that we've discussed.

LATHROP: The probation officer has that access?

DEB MINARDI: Correct.

LATHROP: And these guys want to just pick up the phone and say, who was at 30th and Vinton last night at nine o'clock.

DEB MINARDI: Or in some, as I said, in some instances, because you heard kind of two different versions. In some instances, when law enforcement engages in an, an agreement as well, they can have direct access into that app to look at that client.

LATHROP: In some circumstances?

DEB MINARDI: As, as I mentioned, if law enforcement, and I'm going to use Omaha in particular because--

LATHROP: OK.

DEB MINARDI: --this is where it's used the most. And Omaha in particular if law-- if the court has ordered that an individual is on electronic monitoring and law enforcement may have access to that live electronic monitoring, then law enforcement can have an agreement with probation that says, I'm only going to use it for this reason and I'm

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only going to look it up for this purpose, and they have to sign off on that. So that's kind of our own interlocal agreement. And then at that point in time, they have a trained person that can go directly into that computer--

LATHROP: But that has to be in the order--

DEB MINARDI: Correct.

LATHROP: --that law enforcement may have access to it.

DEB MINARDI: Correct.

LATHROP: Otherwise, if we do this bill, they'll, they'll be able to have it automatically.

DEB MINARDI: They would-- they would-- automatically, meaning they would call the office and say, are they on it? Or where were they?

LATHROP: OK, but it's not like Google Earth, where they can pull it up on their laptop and see where Josh is at.

DEB MINARDI: Right. That's why they wanted to make reference that it's a completely different app. They have to have permission, they have to be trained, and they have to sign off as a law enforcement agency that they're in this partnership with probation. And those are-- in Omaha we have that. That is not common across the state.

LATHROP: OK. Anybody else have questions? Well, I thought it was going to just-- we were just going to blow through the afternoon and be out of here by 3. And then along comes this thing. And anyway, thanks for being here.

DEB MINARDI: Thank you.

LATHROP: Anyone else here in a neutral capacity? Seeing none, Senator Geist, you may close. And as you approach, I have three letters: two are proponents and one opponent.

GEIST: OK, it's not so early. I did want to clarify a couple of things. One of those was in reference-- I, I believe that this was already asked, but I want to rephrase-- restate that for the woman who was here asking for notification, this bill does not speak to that. And I do also want to clarify that it's not our intention that truancy or status offenses, that that's what we're looking at here. So to-- if we need to clarify language in there to make sure that that's clear,

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we will do that. And I would say if there needs to be any other clarifying language to get to where we can get agreement on this in order, it's not just for law enforcement. This also helps keep youth safe. It keeps the victims safe. It keeps adults safer by people knowing where they are. And I'm just going to throw out, just so you all know, I have a number of families, and I referenced this on the floor the other day, who I've been working with. Their children are either on the run or their on-the-run-children are hanging out with children who have ankle monitors. If those parents who could have some sort of comfort knowing if something happens, someone can find my child, it gives great comfort to parents who find themselves in this situation with kids who are on an ankle monitor or are with kids who are. That is not the total focus of this bill. It's sort of a peripheral issue. But the lack of knowing where people are is a huge concern and one I think we need to address. So with that, I will close and take any questions.

LATHROP: Just one, I promise. All of this stuff that you want people to access, all the people you've described, is available if they go through the warrant process?

GEIST: Correct.

LATHROP: OK, so what we're doing is just avoiding the warrant process for whatever reason.

GEIST: We are trying to make it quicker in the interest of public safety.

LATHROP: OK, I get it. I do not see any other questions. So I guess that's it.

GEIST: Thank you.

LATHROP: We'll close our hearing on LB1010.

GEIST: It's still early, I mean.

LATHROP: Compared to our track record, I would agree.