

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2023
Rough Draft

DeBOER: Good afternoon, everyone. Welcome to the Judiciary Committee. My name is Senator Wendy DeBoer and I represent Legislative District 10 in northwest Omaha. I am the Vice Chair of this Judiciary Committee. We will start off today by having members of the committee introduce themselves starting on my right with Senator McKinney.

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

GEIST: Suzanne Geist, District 25, the southeast corner of Lincoln and Lancaster County.

MEGAN KIELTY: Megan Kielty, legal counsel.

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

BLOOD: Senator Carol Blood, representing District 3, which is western Bellevue and eastern Papillion.

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

DeBOER: And also assisting us today, we have some pages, Trent Kadavy from UNL-- oh, from Lincoln, who is a political science major at UNL, and John Vannes--

JOHN VANNES: Close enough.

DeBOER: --close enough, who is from Pennsylvania and is studying criminal justice at UNL. So we thank them for their service here today. This afternoon, we're going to be hearing five bills. We'll be taking them up in the order listed outside of the room. On the tables in the back side of the room, you will find blue testifier sheets. If you're planning to testify today, please fill one out and hand it to the pages when you come up. This will help us keep an accurate record of the hearing. If you do not wish to testify but would still like to have your presence recorded at the hearing, please fill out the gold sheet in the back of the room and you can mark whether you are in favor or against a bill there. Also, I would like to note the Legislature's policy is that all letters for the record must be received by the committee by noon the day prior to the hearing. Many handouts submitted by testifiers will also be included as part of the record as exhibits. We would ask if you have any handouts that you please bring ten copies and give them to the pages. But if you need additional copies, the pages will be happy to help you provide those. Testimony for each bill will begin with the introducer's opening

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statement. After the opening statement, we will hear from any supporter of the bills, then from those in opposition, followed by those speaking in the neutral capacity. The introducer of the bill will then be given the opportunity to make any closing statements that they would like to make. We ask that you begin your testimony, this is very important, by first giving us your first and last name and spelling them for the record. Today, 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'll ask you to wrap up your final thoughts. And by that I mean the sentence you're on, because we're going to be real strict today about getting through and when we see the red light, please cut off your testimony. Thank you. Because it makes my job easier if I don't have to interrupt you, which I don't like to do. I'd like to remind everyone, including senators, to please turn off your cell phones or put them on vibrate. And with that, we will begin today's hearing with LB549 and Senator Ballard. Welcome, Senator Ballard, to your Judiciary Committee.

BALLARD: This is my first time. It's exciting.

DeBOER: We're excited to have you.

BALLARD: Thank you. Thank you, Vice Chair DeBoer and members of the Judiciary Committee. My name is Beau Ballard. For the record, that is B-e-a-u B-a-l-l-a-r-d. I represent Legislative District 21, which is in northwest Lincoln and northern Lancaster County. I'm here today to introduce LB549, which would authorize an 18-year-old to establish a trust or execute a power of attorney or power of attorney for healthcare. I've introduced this legislation at the request of the Nebraska Bar Association and the attorneys who practice in this area of law. Nebraska law presently authorizes an 18-year-old to establish a will. However, the statutes that deal with other important estate planning mechanisms, like trusts and powers of attorney, reference the need for a person to have capacity to execute those documents. This causes practitioners some issues as they advise clients that who may be leaving home to attend college or out of, out of state for some other reason. LB549 seeks to ensure consistency in how we handle these type of documents for individuals who are 18 years old. There will be a member of the Bar Association to follow me to answer any technical questions, but I would be happy to answer the committee's questions if they have any.

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DeBOER: Are there any questions from the committee? Senator Ballard, I'll ask you, are there any constitutional concerns?

BALLARD: I don't believe so. I don't think this is special legislation in any way.

DeBOER: All right. Thank you, Senator Ballard.

BALLARD: Thank you.

DeBOER: Are you gonna stick around for closing?

BALLARD: I probably will.

DeBOER: OK. Let's have our first proponent testifier. Welcome.

KARA BROSTROM: Thank you. Good afternoon, my name is Kara Brostrom, K-a-r-a B-r-o-s-t-r-o-m. I'm a partner at the law firm of Ball, Loudon, Ebert, & Brostrom. We have law offices in Lincoln, Omaha, and Grand Island, and we are a boutique law firm that specializes in estate planning, estate administration, and business succession planning. I'm also a member of the Legislation Committee of the Nebraska State Bar Association. LB549 would allow an 18-year-old to execute a trust, a power of attorney, and a power of attorney for healthcare. As you know, the age of majority in the state of Nebraska is currently 19. However, Nebraska statute allows for 18-year-olds to do certain things, such as execute a will, buy and sell real estate, enter into binding contracts or leases, execute financing statements, promissory notes, mortgages, trust deeds, and other security instruments, and consent to mental health services. In other words, an 18-year-old can execute a will but cannot execute a trust, can buy and sell real estate, enter into contracts and execute promissory notes and mortgages such that he or she is legally responsible to third parties for those debts, but cannot designate an agent to make decisions and act on their behalf concerning that same property and can consent to mental health services, but cannot designate another person to make healthcare related decisions on their behalf. This mismatch is not without issues and creates issues and headaches for us practitioners to adequately serve 18-year-olds needs, especially those moving off to college and for those with job opportunities, whether that be in a different city or a new state. For example, as practitioners and to assist families and our clients, we often have 18-year-olds sign power of attorneys before they head off to college, as that power of attorney will likely be valid in that state. And then

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we have them visit, a fun 19, 19-year-old birthday present, visit our office to re-execute those documents so they're valid here in the state of Nebraska. This bill has long been on the wish lists of practitioners in the real estate, probate, and trust section to bring conformity to the law of Nebraska. LB549 provides additional flexibility to 18-year-olds already existing authority under Nebraska statute with respect to managing their property, their obligations, and their healthcare. I'm more than happy to answer any questions.

DeBOER: Thank you very much. Let's see if there are any. Senator Blood.

BLOOD: Thank you, Vice Chair DeBoer. Just a quick question.

KARA BROSTROM: Yes.

BLOOD: If it's been a long time on the wish list, why are, are we just now hearing about it?

KARA BROSTROM: There was-- I've been very active in the real estate probate and trust section of the Bar Association. This is, I guess, our first attempt. I think there's a lot of other issues regarding the age of majority that affect other areas of law, such as juvenile law. And so instead of going after that type of change and statutory, you know, overhaul, this is just an opportunity to allow additional state planning tools specific to 18-year-olds instead of addressing the larger issue of the age being 19 for majority.

BLOOD: Fair enough. Thank you.

KARA BROSTROM: You're welcome.

DeBOER: Other questions from the committee? I don't see any. Thank you so much for being here.

KARA BROSTROM: Thank you for your time.

DeBOER: Next proponent. Anyone else like to testify in favor of this bill? Are there any opponents? Is there anyone here in the neutral capacity? All right. Senator Ballard waives closing-- closing.

GEIST: Clothing. [LAUGHTER]

DeBOER: Every time. Waives closing. And we will note for the record that there were no letters. That will end our hearing on LB549 and

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bring us to LB167. Every time. Welcome, Senator Slama, back to your Judiciary Committee.

SLAMA: I know it feels so good to be back on a temporary basis. Good afternoon, Vice Chairwoman DeBoer and members of the Judiciary Committee. My name is Julie Slama, J-u-l-i-e S-l-a-m-a, and I represent District 1 in southeast Nebraska. I'm here today to introduce LB167, a bill intended to offer better protection for children in our state who have been a victim or witness to crimes. LB167 requires the agreement of the parties or the approval of the court in order to depose a child victim or child witness who is 18 or younger in both adult and juvenile courts when a video recorded forensic interview of the child has been conducted at a Child Advocacy Center. If a deposition is granted, LB167 creates a process for the court to consider specific protections for the child that may need to be included in a protective order during the deposition of the child witness or child victim to protect the child from emotional harm or harassment, undue influence, or intimidation. We owe a duty to minimize the trauma to kids who have already endured a distressing event. Currently, children can be interviewed by a neutral, trained forensic interviewer at a Child Advocacy Center or CAC. And the interview is video recorded and shared with the parties to the case. CACs were created to offer an opportunity for the child to tell their story one time using best practices that are designed to uncover the unbiased truth in the interview process. While our CAC process is first rate, we fall short in Nebraska by not offering sufficient protections for these children following that CAC interview. We allow for these children to be "retraumatized" by further depositions without sufficient limits. This is not the standard in other jurisdictions. In fact, under federal law, criminal procedure, there is generally no allowance for depositions. The vast majority of states allow criminal depositions for minors only when a judge has concluded that there's a good chance that an important witness will be unable to testify at trial. When additional depositions are conducted in addition to the forensic interview, the child is much more susceptible to experiencing traumatic revictimization, especially since it is not uncommon for the deposition to occur several months after the victimization. Deposition can present a significant setback following a case. My bill would not be an outright bar to further depositions, but it would offer a process whereby the court could approve a deposition for a specific purpose. The bill leaves discretion to the trial court to grant a deposition if the court finds the deposition will aid in the disclosure of evidence that's not reasonably

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attainable by other means and is essential in preparing the dependent-- defendant for trial. In other words, the bill seeks to protect children but still allows depositions when considered necessary. If a deposition is granted, LB167 creates a process for the court to consider specific protections for the child that may need to be included in a protective order during the deposition of a child witness or a child victim to shield the child from emotional harm or harassment, undue influence, or intimidation. The court, on its own motion or the motion of a party, shall make any protective order that justice requires to protect the child from the negative effects of victimization. Such protective orders may include specified items and conditions such as the designation of the time and place of the deposition, limiting the scope of the deposition to certain matters that a victim advocate, guardian ad litem, or other support person, not a witness to the proceedings, be present or that the defendant be physically excluded from the deposition but may attend via electronic means. LB167 will ensure that some of our most vulnerable children who have been victims of rape, human trafficking, molestation, and other unimaginable crimes are protected without affecting the integrity of our legal system. Thank you and I'd be happy to answer any questions you have regarding LB167, though there are some experts behind me who may be better suited to answer. Thank you very much.

DeBOER: Thank you for your opening, Senator Slama.

SLAMA: Thank you.

DeBOER: So are there questions? Senator Blood.

BLOOD: Thank you, Senator DeBoer. Senator Slama, I have four questions.

SLAMA: Yes, ma'am.

BLOOD: I read the bill on the floor today and I wrote out my questions.

SLAMA: Thank you.

BLOOD: So I'm just going to warn you in advance. All right?

SLAMA: Sounds good.

BLOOD: So when I read this bill, to me it seems like it creates, like, an additional statutory hurdle for, like, a litigant to depose or take

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a deposition of a witness. Am I reading that right because I see an additional hurdle?

SLAMA: It does introduce an additional hurdle. I consider it an additional protection for the child that is common in several other states and the federal rules to ensure that children aren't being revictimized. And I was happy to see-- Senator Crawford brought this bill in 2018, and you actually signed on board so I, I appreciate your work in this area, Senator Blood.

BLOOD: I do remember but it was written a little bit differently, if I remember correctly.

SLAMA: It, it's about the same.

BLOOD: So why would you support a bill that provides for this type of process or forcing someone to go before a judge, get a court date, argue for depositions, or get permission from the other opposing counsel to take a deposition of somebody? And why are we trying to generate this frustration for someone using the court system to vindicate themselves?

SLAMA: Right now, we're seeing a misuse of this deposition process in some areas of our cases involving minors. You see-- and again, those experts behind me can speak to specific examples, but examples that I've heard of in the state of Nebraska or like the 16-year-old runaways who have been sex trafficked and defense counsel throws them in a deposition full day, going through all of the awful things they've been through, going through all of their sexual experiences prior to that, going through the most traumatizing things that have ever happened in their lives, completely in contrast to the trauma-informed treatment we give minors in every other area of our court system. So the reasoning behind this bill in LB167 is the same reasoning behind LB589 in 2018, which is to harmonize our provisions to protect our child victims and our child witnesses from revictimization with frameworks we already have in place to ensure that these kids aren't being revictimized again just by coming forward.

BLOOD: So I'm curious that why is there such a broad range in the ages in here? Like, I totally understand a grade schooler going, going through these circumstances, I don't understand, like, a 17- or 18-year-old. Why did you decide to go with such a broad range?

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SLAMA: I decided to go that range because as you approach majority you find that the cases with younger victims you see more one-off occurrences. With older victims, you see longer patterns of abuse, repeated histories of abuse. They are still minors, they are still considered kids under Nebraska state laws and entitled to the same protections we should-- we do grant minors at every other level of the justice system. And those 17- and 18-year-olds are subject to the worst of the worst when it comes to depositions. And that is my reasoning for including all minors under this just because you see that escalating scale of seriousness in a deposition and the pressure put on these victims in depositions is increased the older that they are when they come forward.

BLOOD: Do you know we had a bill right before you asking us to consider 18-year-olds adults for certain purposes?

SLAMA: Sure. Yep.

BLOOD: Just want to make sure that you're aware of that.

SLAMA: Yeah.

BLOOD: It was bad time on scheduling. I think I'm gonna hold off on my, my next question because I may hear it through the witnesses. Thank you, Senator Slama.

SLAMA: Thank you, Senator Blood.

DeBOER: Thank you, Senators Slama and Blood. All right. Next question. Senator Slama, I have a couple for you and maybe you don't know these and you can ask, but--

SLAMA: Sounds great.

DeBOER: A couple of years ago, you remember we passed a sexual assault victims Bill of Rights, do you remember that?

SLAMA: Yep.

DeBOER: And I thought in that one we had done the you are always allowed to have an advocate with you. Do you remember that?

SLAMA: I, I do remember that Bill of Rights. Yes.

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DeBOER: And I think that means you can always have an advocate. Does that apply to kids, do you know?

SLAMA: I don't know, and again--

DeBOER: I'll ask--

SLAMA: --the people behind me might know better, but--

DeBOER: --I'll ask them.

SLAMA: --it's not my understanding that that extends to victims during depositions.

DeBOER: OK. I'll ask them.

SLAMA: And again--

DeBOER: Yeah, I'll ask them.

SLAMA: --they're probably going to--

DeBOER: Perfect.

SLAMA: Yeah.

DeBOER: No problem. And then some of these-- I just don't know enough about this area. With the protections that you're requesting that can happen by judicial order, can we not do those now with judicial order?

SLAMA: We really can't--

DeBOER: We can't?

SLAMA: --without an additional statutory framework.

DeBOER: OK.

SLAMA: And again, this isn't about going after all defense attorneys or all depositions regarding minors. I absolutely see that those are necessary. But what we're seeing, especially over the last decade or so, is an escalating pattern of behaviors among some, very small number of defense attorneys, that are not trauma informed and they are revictimizing victims of really horrific acts and their kids. So that really inspired me to bring this bill.

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DeBOER: I'll ask the others, too, because there ought to be some mechanism for, for asking a judge to put limitations on things when things get out of hand.

SLAMA: I completely agree.

DeBOER: And, and your bill has those protections in place only by judicial order. Could we just statutorily say you can have someone with you if you're a child?

SLAMA: I, I think that we could but then we're missing another part of the bill, which is that you can limit the scope of these depositions to certain things.

DeBOER: But we could do that piece and then still talk about your piece. But could we at least just-- would you be willing to amend to say as a matter of course a child can have a guardian ad litem, an advocate, whoever they want with them?

SLAMA: I'm always open to having discussions if it'll make steps in the right direction and make positive change for these kids.

DeBOER: Yeah, because I think we should just as a matter of course let them have that.

SLAMA: Fair enough. OK.

DeBOER: Thank you. Questions? I don't see any. Thank you, Senator Slama.

SLAMA: Thank you.

DeBOER: Are you going to stick around for closing?

SLAMA: Absolutely. Yes.

DeBOER: All right. Thank you. Let's have our first proponent. Welcome.

DON KLEINE: Good afternoon, Senators. My name is Don Kleine, K-l-e-i-n-e. I'm the Douglas County Attorney, but I'm here as a Douglas County Attorney and as a representative of the Nebraska County Attorneys Association in favor of this bill. This bill does not take away the power to have a deposition of a young person, but it does give the ability for a judge to say, OK, you're not going to depose this 10-year-old or 12-year-old or 13-year-old for eight and a half

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hours or a day and a half or an afternoon, maybe the judge would say I'm going to give you an hour to ask the questions you need-- you think you need to ask, particularly maybe and particularize what subject matter you're going to get to ask. These are, these are young people that have gone through some of the most unbelievable trauma that you can imagine, so traumatic that sometimes they take their own lives. And we've seen that many times. So there's, there's the-- we're an open book discovery which means that we give the defense all the reports that we have, all the interviews we have, the forensic interviews that occur at the Child Advocacy Center. And it doesn't take away the right of confrontation because the defense is still going to get to interview and cross-examine this person when they take the witness stand if it goes to trial. But to subject them in between to a very traumatic experience that doesn't-- isn't really necessary, we feel, from a discovery standpoint is wrong. The federal system-- I talked to the U.S. Attorney in this district and their chief deputy today, they said in their 40 years of practice they've never had that, had a deposition, was, was exercised. And there's a Rule 15 in federal court that does allow a deposition in the criminal system, but only when there's a material witness who is detained or it was for exceptional circumstances where the witness might not be around and they can preserve their testimony in that manner. So I think it's, it's, it's just a limiting process that says we're not going to allow this to be just a, a situation where we can harass a young person, confuse them, and we're going to have the judge, if possible, limit this to what even a court feels is necessary for defense counsel to meet. And your question, we do allow a victim advocate can sit, but they can't do anything. They're there, though, and, and just like a therapy dog, you can have-- we could have-- our victim when issued can have a therapy dog and that dog can sit in the room with the child during the course of that deposition. But obviously they don't have any impact on any of the questions or can't object or, or those kinds of things. So I see my time's up, so I'm happy to answer any questions.

DeBOER: OK. Thank you.

DON KLEINE: Sure.

DeBOER: Thank you for your testimony. Senator Blood.

BLOOD: Thank you, Chair DeBoer. Thanks for coming in today.

DON KLEINE: Sure.

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BLOOD: It's good to see you again. Hey, I'm going to say something and before I say the sentence, I've been fighting for victims rights probably 40 years, ran a crisis center for abused women and children. I have complete empathy for victims and survivors. But with that said, the thing that I keep bumping into on this bill that really concerns me is that right now you have the ability to ask for a deposition in a quick and effective manner. I feel like we're creating additional hurdles and isn't it our job to make sure that whatever happens in court is fair for all parties involved? Do you honestly believe that this doesn't create an additional hurdle for the person who is trying to defend themselves?

DON KLEINE: No, I don't think it creates a hurdle. It makes it a, a process where the neutral party, a judge can look at things to say, yeah, you know what I don't think you should have to allow this ten-year-old to be deposed for eight hours or all day long. I think if you need to talk to them or ask them questions from a discovery standpoint, I'm going to limit you to an hour and a half, two hours. That doesn't limit cross-examination at trial either. That, that person--

BLOOD: And I'm clear on that part. Yes.

DON KLEINE: Right. So, I mean, I, I don't see where it's going to hinder their ability to, to, to represent themselves.

BLOOD: So it leads up to that, you don't think it hinders them?

DON KLEINE: Pardon me?

BLOOD: Leading up to that, you don't think that this will hinder that?

DON KLEINE: Well, I, I don't understand how. They're having-- they have access if [INAUDIBLE].

BLOOD: So, so it's not a statutory hurdle then in any way?

DON KLEINE: No.

BLOOD: All right. Thank you.

DON KLEINE: Any other questions?

DeBOER: Are there any other questions from the committee? I don't see any. Thank you for being here.

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DON KLEINE: Thank you.

DeBOER: Let's have our next proponent. Is there anyone else who would like to testify in favor of this bill? We'll go to opponents then, can we have our first opponent.

SARAH NEWELL: Good afternoon, Senator DeBoer. My name is Sarah Newell, S-a-r-a-h N-e-w-e-l-l. I am testifying on behalf of the Berry Law Firm of which I am the head of the Criminal Practice Division and also on the Criminal Defense Attorneys Association, of which I am the past president and as myself. I've been practicing criminal law for the past almost 20 years, doing both murder cases and sex assault cases, kind of the whole gamut. I'm testifying in opposition today to explain to the, to the committee why that the-- why this bill paints with too broad a brush. Basically, by creating a presumption that there is no deposition in, in cases where witnesses, child witnesses are up to the age of 18, you're giving the state an unfair advantage by limiting cross-examination. I'll, I'll explain that in more detail here in a second. But the two basic constitutional rights at play here are the due process, the client's due process rights. Is the process fair? Do they get a fair shake? At the end of the day, can we be confident that their conviction was meritorious? And the other question is confrontation clause. You have a right to confront your accusers, to have them say it to your face, come in and tell you exactly what, what they're saying happened. The touchstone or cornerstone of the confrontation right is being able to confront and cross-examine those, those witnesses. In order to effectively cross-examine, defense attorneys have to have all of the information in front of them. The problem with limiting our access to, to depositions is that depositions are a discovery tool. We're not going in there and cross-examining the child, we're asking them questions. We have to build their trust to even get them to answer any kind of question. And there will be other witnesses that will or testifiers that will kind of elaborate on that process more. But in order-- if we limit the deposition process, then we don't have access to information like, you know, is the child credible? Are they going to come across credible? Because that's information we go back to our clients and say, hey, you need to be, you know, you need to have a, a come to Jesus talk with your client about how the kid is going to come across. Is this really going to be something that you want to go through? Is the judge going to punish you for traumatizing the child again? Also, questions of motive to fabricate. With Child Advocacy Center interviews, those interviews are being conducted purely by law enforcement in tandem with victim advocates and prosecutors. Defense attorneys are not any

part of that process. So they're only asking questions that get to those issues. They don't present any information that relates to those motive to fabricate or other things that we want to do. I won't-- I see I'm close to out of time. I've provided a lot of specific reasons in my outline here. One of the things that I would specifically tell you is the problem about this is that it requires-- by, by making a presumption of not doing a deposition requires the defense to disclose their trial strategy to the prosecutor to explain why you need to ask the, the witness various questions. So that's a real problem, because the prosecutor is never in a position that they have to disclose their trial strategy to us. In a civil context that would be protected work product. Also, we are-- we're in a position that we have to demonstrate that it is essential to prepare for trial and not reasonably available by other means. There is no other means-- I apologize. May I finish this thought?

DeBOER: Yes.

SARAH NEWELL: There is no other means for us to access that information. We can't just call a witness and ask them to give, you know, to answer questions. I mean, we certainly can, but they can tell us, no, I'm not going to answer those questions. And to give you a, a poignant example of why, realistically-- I'm sorry.

DeBOER: OK. I think we'll, we'll wait and see--

SARAH NEWELL: OK.

DeBOER: --if there are any questions now. That was more than a sentence.

SARAH NEWELL: I get it from the Supreme Court all the time.

DeBOER: Senator Blood has a question.

BLOOD: Thank you,--

SARAH NEWELL: Thank you, Senators.

BLOOD: --Vice Chair DeBoer. That was a good try, though, trying to squeeze that in. I, I give you snaps for that. I'm curious, do, do you think that depositions resolve cases?

SARAH NEWELL: Absolutely.

BLOOD: Can you give me a brief reason why?

SARAH NEWELL: Oh, brief is tricky. So a lot of-- when I talk about that come to Jesus talk, that is, that is how a lot of cases are resolved. You, you talk to the victim or the, the child witness and you see, like, if your client has a different view of how the facts occurred. And then you talk to the client or the victim and they come across as credible, then you go back to talk to your client and say, hey, this is, you know, this kid comes across really well. The judge and the jury is not going to like it if we, you know, are calling them a liar. And oftentimes you can avoid having to go to trial because they're having a real hard look at the evidence and whether they want to put the, the child through that process. Also, in, in child sex assault cases where parents are the, you know, the defendants, it often is very helpful for them to, to put that in context and see that they don't want to traumatize the child any further either so oftentimes cases are resolved. On the flip side, prosecutors oftentimes will realize that there are significant motives to fabricate and, and credibility issues and sometimes they'll dismiss the case or resolve it in a way that avoids having to go to trial.

BLOOD: That part makes me sad because, you know, often-- sometimes it's just because it's such an uncomfortable position for the victim, but. So-- but don't you get that-- the CAC recorded interviews already? And, and if you get that, why isn't that sufficient?

SARAH NEWELL: Well, kind of like what I was saying before, the Child Advocacy Center interviews are conducted with only prosecutorial mindsets. So they're only asking questions to get at what they're-- like what-- the specific actions, what happened. You know, they're not asking why the child might be fabricating, you know, or why they might not have seen what they're saying they saw. I can tell you that there are other times also where-- I mean, prosecutors and, and law enforcement are involved in these cases from the second that the interview is occurring. But they're not trained to think about things from a defense perspective. I mean, if you look at-- I mean, one of the citations I provided talks about implicit bias and why oftentimes cases get reversed because prosecutors are not used to thinking about a case in the same way that a defense attorney does. There are certain things that we're looking at that they're not thinking about. And if they're not thinking about those things, they're not asking those questions. Those questions aren't getting asked. And then if they never get asked but we find out later, then we have to file a motion for a new trial alleging, you know, newly discovered evidence or

there's a Brady violation. There's-- those are the kind of things that, that end up getting revealed later that leads to new trials and ultimately "retraumatizing" the victim if we have to go through it again.

BLOOD: I, I liked all of that, except for where you kept saying that the child may be fabricating. I just want to, I just want to put that out there. I'm not trying to school you, this is your job and I hear that clearly. But it's really unfortunate that we have to say those things out loud, I think sometimes.

SARAH NEWELL: And unfortunately, and there will be other testifiers behind me-- I mean, I'm in a position and I understand I chose this job, but there are situations like child custody disputes where parents put their children up to saying things happened in order to, you know, if you want to stay with mom, you have to, you have to tell them the dad did this. I mean, there are cases that lead to acquittals where that happens and 12 jurors have agreed that that's what happened. It's really unfortunate, but it does happen. And particularly in a bill like this where you're, you're including that age range up to 18, you know, it may be happening a lot less with, with younger children, but the older you get, there are also situations where, you know, foster kids have, you know, wanted a different placement and have been exposed to manipulation before and they, they fall on those kind of patterns. So, I mean, it's, it's certainly not every case, but it happens enough that, I mean, in order to protect the least among us, we have to be able to ask those questions.

BLOOD: Fair enough. Thank you.

DeBOER: Thank you, Senator Blood. I have a-- are there other questions? I have a couple of questions for you. Some of these protections should probably just be a matter of course, right, like having a protection that says if you're going for seven hours, you get a break. I mean, like it should not be seven. That number should be much smaller than seven. Some of these should just be a matter of course, you wouldn't object-- would the defense attorneys object to having some protections in place for child depositions like you have to have breaks, you have to-- you can have a stuffed animal, you can-- all of these kinds of things?

SARAH NEWELL: Certainly not. And I would tell you that those kind of accommodations are already occurring. Judges routinely issue

protection orders. We, we are not-- there's routinely restrictions on a second deposition for example. There are times when I might be taking a case over from another attorney, and the other attorney had already done a deposition. I have to go then in and explain to the judge why there are certain questions that are absolutely necessary and ask to reopen that deposition, those, those are not always granted. I would also tell you that we don't want to beat up on children either. You know, it's, it's no fun to, to make a child cry.

DeBOER: So I guess my question is, would you object to putting those in, in a more statutory way? Because I understand that those accommodations are being made, but there probably are, like, there are bad-- of every kind of creature on this planet, there are probably some bad defense attorneys out there somewhere who are bad actors. And so having some of those protections in place just in case for the protection of the child, that I don't think that would get in the way of any sort-- of the sort of constitutional issues that you had. Is that right?

SARAH NEWELL: That's correct. I wouldn't see any problem with adding a requirement for breaks or, or anything like that.

DeBOER: OK. And then what other-- how would you suggest an alternative way to-- Senator Slama has brought up a good point. There's a problem where folks could be abusing the system, right, those few bad apples. So what, what would be the structure that would, that would get at that problem in a way that would be less objectionable to your constitutional concerns?

SARAH NEWELL: To start with, I don't see the need for a presumption of no deposition. It seems to me that you could follow the current procedure and basically the prosecutor can petition to the court and say, hey, these are the reasons why this, this interview is sufficient. But I don't think that-- shifting the burden to us basically just creates a protected class where only the prosecutors and law enforcement are in a position to be able to "retraumatize" the child because routinely there are, there are meetings with victim witness advocates within the prosecutor's office. And I can tell you a case right now where the prosecutor met with the, met with the child at the project-- at Project Harmony and they started interviewing that child on a regular basis. So, I mean, that kid had to relive over and over and over again this traumatic event, but only in a way that the prosecutor had access to that information. It's covered by work product so I can't get access to that information until the judge

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orders that it occur. So I think that-- I mean, the judges have plenary powers, they can affect all those things now.

DeBOER: OK. Any other questions? Thank you very much for being here.

SARAH NEWELL: Thank you, Senator.

DeBOER: Let's have our next opponent testifier. Welcome.

MALLORY HUGHES: Thank you. Good afternoon, my name is Mallory Hughes, M-a-l-l-o-r-y H-u-g-h-e-s. I am a defense attorney. I have been for 12 years. I'm here in opposition to LB167. I'm the vice president and testifying on behalf of the Nebraska Criminal Defense Attorneys Association. For the past six years, over 90 percent of my practice has been defending against allegations of sexual assault from Omaha to Scottsbluff. I've been involved in depositions and the cross-examination of child witnesses and victims in trials. And I want to talk about the difference between a deposition under 29-1917, which is a current applicable statute and what a trial looks like for a child witness, because I think one of the biggest unintended consequences of this bill, if it is passed, is that you will see an unprecedented amount of jury trials where victims are subject to cross-examination at trial. Currently, under 29-1917, we have to ask for a deposition. The judge does put parameters in place. The defendant is not present. Kids can draw pictures. There is always a-- I have not had a deposition since that statute went into place where there has not been a victim advocate in the room. Sarpy County has an emotional support dog. I know the case that Senator Slama is talking about, and that's not an accurate description of the eight-hour deposition. I was there. There were ten codefendants in that case and the prosecution asked that all the codefendant attorneys did the deposition on one day. So in six hours, ten attorneys were able to accomplish their respective deposition. So you're talking ten different depositions, that's less than an hour per attorney. This was not some-- and I can tell you that every defense attorney in that room, myself included, were respectful. You catch more flies with honey and that's the approach that many of us take in a deposition. This is a fact-finding situation as, as Ms. Newell said, that can ultimately lead to plea resolutions, because I have leverage with my client. I can say here's a transcript, she's credible, we got to take the best deal. On the flip side, there are people that fabricate, this is not narrowly tailored enough at all. I mean, if you want to say that you get a maximum of one hour for kids under 12, that's one thing. You know that a 16-year-old girl could accuse a 16-year-old

boy, he could be charged as an adult and face 50 years in prison, lifetime sex offender registration. Gosh, I, I mean, if I were that child's parent, I would want him to have the ability and access to a deposition. These are serious consequences. And a ten-year-old is different than an 18-year-old. When two 16-year-olds engage in consensual sex and then one person is scared of getting caught by their parents and maybe fabricate something, we need to get to the bottom of that in a deposition. Forensic interviewers will tell you, they told me in their depositions, my job is not to assess credibility, and that's fine but our job is in these depositions. Stripping away these depositions will, I think, double the jury trials that we see, because we're going to be forced to take these cases to trial and that's far more traumatizing. The-- I'm sorry, if I can just finish my thought-- the, the child victim is in a box testifying, 12 strangers, defendant, defense attorney, the victim advocate, if they're in the room, is hidden behind prosecution, it's far more traumatizing and we're going to see way more trials. Thank you.

DeBOER: OK. Thank you. Are there questions? Senator McKinney.

McKINNEY: Thank you, Senator DeBoer. Thank you for your testimony. So this bill allows for depositions to be done by the agreement of the parties and this means that prosecutors have to agree to the deposition. Why would prosecutors control the defense pretrial strategy?

MALLORY HUGHES: Why would prosecutors control?

McKINNEY: Yeah.

MALLORY HUGHES: And I, I think that that's one of the biggest problems with this bill. It, it allows the prosecution to guide the entire case and it limits the defense to being able to explore all possible defenses, which under the Sixth Amendment-- in order to effectively defend a client, we have to explore all possible defenses. If the prosecutor objects to the deposition we're, we're required to display our entire case strategy by explaining the need for a deposition. That's effectively interfering with the Sixth Amendment right to effective counsel. In order to effectively cross-examine somebody, we need to know all the facts. There is-- the forensic interview process, as Ms. Newell said, is-- it, it's not getting at anything that a defense attorney would need to know in order to effectively cross-examine someone. So I think that's a good question that I, I don't think a prosecutor should be the one-- I mean, it's ultimately

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up to them, right? The defense attorneys are going to want to take these depositions every time. So it's ultimately going to be does the prosecutor want to let them in this case or not and that's not how this process should work under the constitution.

McKINNEY: All right. Thank you.

DeBOER: Other questions? So I have a question for you.

MALLORY HUGHES: Yeah.

DeBOER: I think Senator Slama or Mr. Kleine mentioned that most other states and the federal system-- I know Mr. Kleine was talking about the federal system, have the-- have this-- a similar structure to the, the bill that's before us. So can you tell me why Nebraska shouldn't adopt the same as what the federal system is doing--

MALLORY HUGHES: Yeah, absolutely.

DeBOER: --[INAUDIBLE]?

MALLORY HUGHES: Yep, so in federal court there are very few sex assault cases, first of all, and that's obviously what applies most often in these situations unless there's a sex assault on the reservation, those aren't being prosecuted by the feds. That's just-- it's all state cases. There's no mandatory minimum sentence in federal court for these types of charges. In the state of Nebraska, it's 20 years to life in prison for first-degree sex assault on a child. Additionally, there are procedural safeguards in federal court that the state of Nebraska does not have in place. You've got the FBI conducting the investigation, then they take it to the U.S. Attorney who has to present it to a grand jury. The grand jury then has to decide whether there's probable cause to indict somebody. In the state of Nebraska, one police officer can write down a half page probable cause affidavit and you can be charged. And again, we have to look at the situation of a 16-year-old accusing a 16-year-old because this covers-- again, I-- child is very broadly defined by this proposal. But going back to your question, I'm sorry, in federal court, I think there's more safeguards in place that eliminate or at least limit the need for depositions. We don't have those in state court in Nebraska so we need, we need those additional investigative measures. And again, those individuals indicted are not facing anywhere near the consequences that individuals are on the state side.

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DeBOER: So the indictment part and the, the sentencing and all that, for some reason that just, that just is not a compelling argument to me because that's not about the procedural issues and the proce-- like, it shouldn't matter what the consequences are. The procedures are what we're talking about here in this case in terms of whether or not there are adequate constitutional protections for pretrial discovery for a person who's facing whatever consequences they are facing. So I guess it's more the procedural piece that why are we different than the, the feds and what's necessary that I'm really worried about here and the FBI, yeah, somebody is going to investigate. That's not really much of a difference for me. So I guess I, I would really want to know what is the, what is the difference procedurally that allows defense attorneys in federal court to feel like they are adequately doing their job and able to adequately do that discovery that they can't in this, in this system?

MALLORY HUGHES: Because I think that in federal court, and the reason I brought up the FBI, it's the investigative process and it's different and it's more in-depth and they are-- there is more that the United States Attorney has to present before they can charge somebody so it would be--

DeBOER: Because the grand jury?

MALLORY HUGHES: Because of the grand jury and because of what they put together for an investigation. So I think, I think that there is-- I mean, the procedures matter because there are additional procedural safeguards in federal court that are not in place in state court so to make up for the lack of procedurals-- procedural safeguards.

DeBOER: Could we, could we adopt similar procedural safeguards in state court?

MALLORY HUGHES: I think that in state court-- I mean, if you look at 29-1917, which is the current deposition statute, defense attorneys have to motion the court for depositions. The state is allowed to object to those motions for depositions and make a showing as to why they're not necessary. If they object, defense counsel has to make a showing of materiality. So these things are all-- I mean, there's already so many conditions in place. The judge can say-- the judge is given full discretion under the current statute as written to limit the time of the depositions, to say the defendant cannot be present, almost every judge that I'm in front of says the victim advocate will

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be present. So we've got judicial discretion, there's a mechanism for us--

DeBOER: OK.

MALLORY HUGHES: --having to move the court.

DeBOER: OK.

MALLORY HUGHES: I mean, it's--

DeBOER: Sorry, I'm going to have to cut you off because I actually have to leave--

MALLORY HUGHES: OK.

DeBOER: --to introduce a bill in another committee. So thank you--

MALLORY HUGHES: Thank you.

DeBOER: --and Senator Geist will take over.

GEIST: I will. Are there any other questions from the committee? I don't see any.

MALLORY HUGHES: OK.

GEIST: Thank you for your testimony.

MALLORY HUGHES: Thank you.

GEIST: Any other opponents? Good afternoon.

APRIL O'LOUGHLIN: Good afternoon.

GEIST: Go ahead.

APRIL O'LOUGHLIN: Good afternoon, my name is April O'Loughlin, O'Loughlin. I am currently a Sarpy County Public Defender assigned to the major cases division. I have been a criminal defense attorney for over 16 years and a prosecutor for six years. I want to talk today-- I don't want to belabor some of the issues that have already been addressed by my esteemed brethren, but I think that we have to ask ourselves, and what's not been brought up today, is what is the purpose of this bill? When I heard Senator Slama speak, I heard not to revictimize a child victim. I don't know what that means. And I'm

going to challenge this committee to say that the question that needs to be asked is not is whether a deposition traumatic, but is a deposition more traumatic than trial? And I'm going to, I'm going to represent to this committee that that is not, in fact, the case. The two questions that we have to ask ourselves is, is, is the trauma of the child and what is traumatic about a deposition? And I have not heard any testimony today about what is traumatic about a deposition. If we're going to-- if the testimony before this committee is that reliving the event for a child is traumatic than that's a different issue and I'll talk about that. In a forensic interview, you've already been given a basic idea of what goes on in a forensic interview. What you've not been told is that forensic interview occurs either immediately or contemporaneously with that child's disclosure. That is arranged by law enforcement. At the direction of law enforcement, the brakes are given for that forensic interviewer to go out and ask law enforcement whether any additional issues. They are given the name of a suspect and a forensic interviewer is designed to pursue that course of action as it relates to the suspect. What a forensic interviewer is not designed to do is to ask about any other witnesses the child may have told, any therapist, any other collateral information whatsoever. There's no way that the forensic interviewer can know that at the time. That's our job in a deposition. What occurs in a deposition, I can tell you I have done as my practice is exclusively now sexual assault cases in the major cases division. That's all I do. What occurs in a deposition is a child sitting across from me in uncomfortable environment. I can't tell you how many games of Pokemon, Tic-tac-toe, spin the chair I have played with children prior to a deposition. That is my role. That is my job. I am there to get information. It's not to harass a child. What is traumatic for a child is a trial. And I can tell this court that I have had victims that have become comfortable with me in the deposition and if we have to do a trial, we'll waive it in the trial. That is always beneficial. We are not the big bad wolf. We don't roll in in a black cape. We are there to get information. I provided-- with all due respect, I provided this, this committee with a picture that was drawn to me by a seven-year-old girl. I always start the deposition that way. I give them-- if I may-- can I finish my sentence?

GEIST: You know what I will-- if you would just finish your sentence and then I'll ask for some questions.

APRIL O'LOUGHLIN: OK. I always start my deposition with, with giving that child a piece of paper, and I ask them to draw a picture of me and a picture of the prosecutor. And I do that because it puts the

child at ease. This picture I provided to you was drawn by a seven-year-old. What, what's not in the picture is that it said: To April with hearts on it. The picture I will, I will say was worse of the prosecutor, he won't wear that suit again. But this picture hangs on my wall in my office and I look at it every day and I'm reminded of why I'm there to do the deposition and the purpose of what a deposition is. It is not to harass. We are not, as Senator Slama said, the worst of the worst. That is not our function. That is not the role of a deposition.

GEIST: Thank you. Are there any questions from the committee? I don't see any. Thank you very much.

APRIL O'LOUGHLIN: Thank you.

GEIST: Any other opponents? Good afternoon.

RENEE MATHIAS: Good afternoon, my name is Renee Mathias, M-a-t-h-i-a-s. I am currently a lawyer at Berry Law Firm. I've been a defense attorney for 12 years. I was a prosecutor for eight years in Douglas County and the last few years I was a prosecutor. I was part of the Special Victims Unit that specialized in child sexual assault cases and sexual assault cases. I'm kind of here to wrap everyone's comments up, but I, I really believe the insight that I can provide can be useful to this committee because I also come before this board as a victim. I was sexually assaulted in high school and had to testify in trial. Had I had the opportunity to possibly resolve my case through a deposition then have to go through a trial I would have taken that any day of the week and twice on Sunday. It is horribly traumatic to get up in front of a room full of people that you have no idea who they are and have strangers asking you questions about one of the most traumatic events that could occur. So as Ms. O'Loughlin said, what's more traumatic, a deposition or a trial? Let me tell you, ladies and gentlemen, no doubt in my mind it is a trial. As a prosecutor and as a defense attorney, depositions are a useful tool in resolving cases. Coming from the prosecution standpoint, in a deposition when a prosecutor assesses a case many times we are getting a very brief synopsis and possibly a Project Harmony interview, that gives you very little time to assess a case and make an accurate assessment of how this case can start from charges to proof beyond a reasonable doubt and having an opportunity for the victim to sit down in a more neutral setting and to start to answer questions. And I can tell you I've been doing this for 20 years and the, the worst of the worst I haven't seen, I haven't seen, from as a prosecutor and now as

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a defense attorney, those situations that keep getting brought up here. They are a useful discovery tool. And one of the things that I do want to address quickly is there is talk about other jurisdictions and how that, how we are different and I can tell you in those other jurisdictions their pretrial process is significantly different than ours. In those pretrial processes, you are able to subpoena the alleged victims in and subject them to cross-examination. Those are tools at this point that in the state of Nebraska we are not able to use and so on that I would open it for questions.

GEIST: Oh, yes. Would you spell your first name, please?

RENEE MATHIAS: Sure. Renee, R-e-n-e-e.

GEIST: Thank you. Are there any questions on the committee? I do have one.

RENEE MATHIAS: Yes.

GEIST: And I'm not an attorney so I don't always know the process so this--

RENEE MATHIAS: [INAUDIBLE]

GEIST: --is just a process question. Let's say that you receive a deposition from a child--

RENEE MATHIAS: OK.

GEIST: --and you have further questions-- if this-- that you would like can you go back currently and ask the child questions?

RENEE MATHIAS: So in order to start the process, we have to as defense attorneys we have to motion the court for a deposition and so we get one shot at it. And in order to "redepose" an alleged victim, we would have to get permission from the court.

GEIST: OK.

RENEE MATHIAS: And one of the things that I think is important in having legislation that's going to try to structure and put time limits, in my opinion, you are going to absolutely increase the possibility for an alleged victim to go through another deposition. Because if you block me off at one hour and I have an hour, an hour and a half worth of questions based upon that hour that I want to ask,

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this bill does not stop me from being able to go back and petition the court and ask for an additional deposition. So I believe the way that it is written and some of the restrictions that it's allowing that, again, the way that the system is now, there are protections in place, there are victim advocates, there are prosecutors there, that if these-- the, the bad wolves that you guys are talking about, a prosecutor can stop it and the parties go up to the, the judge and let them hash it out. So there are protections in place.

GEIST: OK. Thank you. Any other questions? I do not see any. Thank you.

RENEE MATHIAS: Thank you.

GEIST: Any other opponents? Are there any that wishes to testify in the neutral capacity?

IVY SVOBODA: I had one that ran longer and things got moved around in Judiciary so I was not able-- I had intended to testify in support. Can I do that?

GEIST: I don't think so. You know what you could do is you can send the committee an email of your testimony and we could read that afterwards. It won't be recorded in the record, but we would have the ability to read it.

IVY SVOBODA: Can I testify in the neutral capacity then?

GEIST: But I already know you're in support so if you're going to testify in the neutral capacity I need you to testify neutrally.

IVY SVOBODA: I think it's more fact based so I think it will be fine to do neutral.

GEIST: OK.

IVY SVOBODA: OK. Thank you, Senator Geist and the committee. I'm Ivy Svoboda, I-v-y S-v-o-b-o-d-a. I'm the executive director of the Nebraska Alliance of Child Advocacy Centers, so we support the seven Child Advocacy Centers across Nebraska to enhance our response to child abuse and neglect. Nebraska is not alone exploring these issues as outlined in LB167. I know other states and federal law allow a child victim and witness to refuse pretrial interview or a deposition when they have previously given a statement and a forensic interview or in-court testimony. In fact, Nebraska Child Advocacy Centers are

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accredited and have a formalized working relationship with the FBI to conduct forensic interviews with them-- for them and are provided-- those are provided by the Child Advocacy Centers. The federal system does not use depositions and is able to present a constitutionally sound case. Child victims and witnesses in Nebraska are subjected to these-- the depositions that can be traumatizing, though, that lead to regression in child's-- and can possibly lead to regression in a child's healing and create barriers accessing justice for the children and families. So when law enforcement comes to the-- let me just skip to what I wanted to say. Nearly a third of the children, child victims served at Child Advocacy Centers are between the ages of 14 to 18. Nebraska statutes already recognize additional protections are necessary for the youngest child victims who are subjected to a deposition. So thanks to the work of the Legislature in 2020, the Nebraska Alliance of Child Advocacy Centers ask that this committee look to forensic interviews and depositions for all youth and whether additional protection should be put in place to protect Nebraska's most vulnerable children. So I'm available to any questions you may have.

GEIST: You did a good job making that neutral. Are there any questions from the committee? May I just clarify a point that you made?

IVY SVOBODA: Um-hum.

GEIST: You said that most of the children that you see at the Child Advocacy Center are 14 to 18, is that what you--

IVY SVOBODA: One-third of the children that we see--

GEIST: OK.

IVY SVOBODA: --at the Child Advocacy Centers. We see kids from 3- to 18-year-olds--

GEIST: OK.

IVY SVOBODA: --but a third of them are 14 to 18.

GEIST: And a third of them are 14 to 18.

IVY SVOBODA: Yes.

GEIST: OK. Thank you. Any other questions? Thank you for your testimony. Any other neutral testimony? As Senator Slama is coming to

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close we received 24 letters, they were all in opposition. You are welcome to close.

SLAMA: Thank you very much, Transportation and Telecommunications Committee Chairwoman, Senator Geist.

GEIST: A little out of my element today.

SLAMA: I know, you're a great third stringer in Judiciary, though. I'm really grateful for the discussion we had in this hearing. I've got a few rebuttal points that have been generously, partially, at least provided by former county attorneys that have actually been blowing up my phone during this hearing going, my God, we need this. Just to respond to you, Senator McKinney, I think you had a great question on what this language entails. So the court may order the taking of a deposition of a child described in subdivision (5) (a) of this section if-- so this is on page 3, line 10: The parties agree, which is the part that you definitely hit on, or the court finds that the disclosure of evidence is not reasonably available by other means and is essential for the defendant to prepare for trial. So it's not just do the parties agree, which I completely understand your take on that. And to drive home a point that was raised several times, I think, by every opponent is depositions and trials are absolutely not mutually exclusive. You can go through both. And moreover at trial if you look at Section 29-1926 (d) of Nebraska Revised Statutes: at trial, judges can place restrictions on victim testimony where it takes place out of the direct viewing of the jury. How this works in practice is you take the victim to the judge's chambers. Parties are there, jury stays in the courtroom, and by video call, more or less, that interview and that testimony and cross-examination is provided to the jury in that way. A question that was raised that I just found fascinating of what is traumatic about a deposition? And what is traumatic about the deposition of a sexual assault victim, especially a child sexual assault victim? What is traumatic there is in depositions, especially those, you-- and this is with a child-- you go into things that will never get brought up in trial. You go into what the victim sexual history was. Have they lied to their parents about their sexual history? Are they using birth control? Are they telling their parents they are using birth control? Absolutely, the prosecutors can shut this down. It is very rare to see that happen, though, because overall those questions are just taken as a matter of fact as to what a "depo" is. Those questions and those series of questions that are never going to come up during trial are incredibly traumatic, especially for a kid who is terrified to be coming forward about the worst thing that has

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ever happened to them. So I'm asking this committee to consider a commonsense bill in LB167 to put a reasonable restriction on these depositions to make sure that these kids aren't being "retraumatized" through an unnecessary or overly broad deposition. And I'd like to close out with something that I found really interesting. As I said during my opening, this is literally the exact same language from Senator Crawford's LB589. We, we sent that language up to Bill Drafters, they got it back to us. And a senator at the time made a comment that I wholeheartedly agree with. It is our job as adults, and this is on LB589 so we're talking about the exact same language here, it is our job as adults to empower and protect the children of Nebraska. If we can prevent them from reliving the experience of exploitation and abuse, that is a just purpose. And that was a quote from a senator that is a cosponsor and a wholehearted supporter of LB589 in 2018 and that senator was Carol Blood. So I'm more than happy to work with anybody on the committee regarding this bill. This is something, obviously, that's near and dear to my heart and I'm more than happy to work with anyone in any way that we can make positive progress on this front. Thank you very much for your consideration.

WAYNE: Thank you. Any, any questions from the committee? Senator McKinney.

McKINNEY: Thank you. Thank you, Senator Slama. I think some of the concern from some of the people were that this is creating a rule and then also allowing for an exception as well to the rule and basically feeling as though you're putting a lot of power into the hands of the prosecutors and kind of tipping the balance of the, the scale in a sense.

SLAMA: Yeah, and I, I appreciate those comments. I disagree with them in the sense that we're leaving that decision up to the court not to the prosecutor of, all right, we've already conducted the CAC interview, prove up as to what information you need that is narrowly tailored in this deposition that you can't reasonably get anywhere else. And that's up to the court, that's not up to the prosecutors. If the two parties agree, yeah, of course, that deposition is going to be allowed to happen. But I think this more empowers the neutral courts in their handling of these depositions.

McKINNEY: OK. Thank you.

SLAMA: Thank you.

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McKINNEY: Yep. No problem.

WAYNE: Any more questions from the committee? Seeing none, we had-- oh, already did the 24 letters? OK. That will end the hearing on LB167.

SLAMA: Thank you.

WAYNE: And with that, we will open the hearing on LB2-- LB127, Senator Day. Oh, I didn't see you, that's what I was looking for. I was [INAUDIBLE] because I didn't see you. Welcome, Senator Day, to your committee-- your Judiciary Committee.

DAY: Thank you, Chairman.

WAYNE: Oh, we'll give them a second.

DAY: OK.

WAYNE: Go ahead.

DAY: Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Jen Day, that's J-e-n D-a-y, and I represent Legislative District 49 in Sarpy County. I'm here today to introduce LB127. LB127 is grounded in a pair of cases decided in 2010 and 2012, the United States Supreme Court held that mandatory sentences of life without the possibility of parole are unconstitutional for juvenile offenders. After these decisions, states, including Nebraska, were required to modify their criminal codes to prohibit children who are prosecuted as adults from receiving life sentences. Even though we made changes to our criminal code to eliminate mandatory life sentences for children charged as adults, our statutory schemes still permit sentences of life imprisonment for juveniles. The sentencing range available to judges allows de facto life imprisonment for juveniles because those juveniles receive sentences of so many years that they are essentially life sentences, even though they are not technically life sentences. Our understanding of brain science and technology has improved our appreciation of how the adolescent brain functions. Young people's decision-making ability continues to mature into their early to mid 20s. Adolescents' brains are different from adults, both structurally and how they are influenced by chemicals produced by the body. Additionally, adolescents are more likely to be influenced by peers, engage in risky and impulsive behaviors, experience mood swings, or have reactions that are stronger or weaker than situations warrant. This does not mean that children cannot do

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harmful or dangerous things to others. They certainly can, and when they do, they should be held accountable. But our Criminal Code should recognize the differences in young offenders. Our criminal justice system should incorporate and use the knowledge we have of adolescent decision-making when determining the appropriate level of criminal punishment. LB127 addresses this reality by amending the potential range of sentencing provisions for crimes committed by children who are prosecuted as adults. Specifically, LB127 would set the maximum sentence for a Class IA felony to 40 years to 80 years' imprisonment. Currently, a maximum sentence is life imprisonment. Additionally, LB127 would set the maximum sentence for a Class IB felony to 20 years to 80 years' imprisonment. Currently, a maximum sentence is life imprisonment. These amendments are to ensure that those children who commit such offenses while under the age of 18 do not receive the sentence of life imprisonment without parole. I have circulated a map detailing what other states provide for regarding life without parole for juvenile offenders. Some key points. Twenty-six states have banned life without parole options as a possible sentence for youth offenders. This includes all of our border states except for Missouri. Seven other states have not banned life, but have no one serving life without parole. We should follow the other states' lead on this. In Nebraska, sentences are final and a person cannot be resentenced at a later time. This bill recognizes value of individuals and encourages redemption and transformation, rather than having a system in which people are sentenced and locked away for the rest of their lives. People convicted of even serious crime can and do transform. As Governor Pillen told us on January 25, 2023, in his State of the State address, "Nebraska will never, ever give up on a single kid". I take him at his word, and this bill is a fulfillment of his pledge. I urge the committee to support LB127. And with that, I am happy to answer any questions.

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

DAY: Thank you.

WAYNE: Will you be here for close?

DAY: Yes.

WAYNE: First up, proponents. First, proponents.

THOMAS RILEY: Good afternoon, Chairman Senator Wayne and members of the committee. My name is Thomas Riley, T-h-o-m-a-s, last name Riley, R-i-l-e-y. I am Douglas County Public Defender, and I am here to testify on behalf of the Public Defender's Office and Nebraska Criminal Defense Attorneys Association in strong support of LB127. Listening to Senator Day's introduction, she hit all the, all the bases. I've, I've been down here before and, and I know you've heard numerous times about the, the, the science that is unrefuted about the development or lack of development of the, of the adolescent brain that the Supreme Court of the United States has said kids are different. And what this bill does is it gives real teeth to the elimination of life without parole because, as Senator Day accurately stated, what happens in reality is with these sentences the way they are currently, judges can give people, and have on numerous occasions, kids under 18, 90 to 120, 160 years in prison. Those are life sentences. And what this bill does is it, it forces the courts to recognize the science and not just give lip service to it. By saying on the IAs that the, the minimum sentences have to be 40 and the maximum is 80, the judge can give anywhere between, you know, has to give a 40-year sentence on the bottom, which make the person eligible for parole in a reasonable period of time and can give up to 80, which is 40 years in prison. I mean, do the math. If you're, you know, 15, 16, 17 years old, you're going to be in prison for most of your life anyway. But what this does is it makes people eligible for parole. You've heard from numerous people on other bills that have been rehabilitated that went to prison and I've told you before about the 13 individuals who were resentenced under the Supreme Court's decisions and six of-- I think seven of the 13 we had are out of prison currently and not one has re-offended. This, this gives absolute credence to the, to the, to the science that people can change. And I, I really thought that Senator Day's quote from the Governor is very appropriate here today. The courts, when they sentence people, they're looking forward. They don't have a crystal ball. People can change while they're in prison and can be released from prison when the Parole Board says they're eligible. This does not mean that, that someone's going to get out of jail just because they are eligible for parole. They have to show through their, through their conduct that they're worthy of parole.

DeBOER: Thank you. Are there questions for this testifier? Senator McKinney.

McKINNEY: Thank you, Senator DeBoer. And thank you, Mr. Riley, for your testimony. What would be the reason for the county attorneys and

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the police to oppose this bill when essentially, as you just stated, if I am 15 and I'm sentenced to life or, or if I'm sentenced to a 40 to 80 and I don't get out until I'm basically 55? What would be the reason for them to disagree when the statistics show that individuals that are released at that age or higher, the recidivism rate is low?

THOMAS RILEY: Well, never have-- I've been a defense lawyer for 48 years and I've never been a prosecutor so I don't think the way they do. However, I do try to, when I'm dealing with them, try to say, OK, what is their response going to be as to why they think a certain thing is appropriate that we disagree with? And the only thing that I can venture to guess is that they'll say that if you, if you do the crime, you got to do the time. And that's a rather trite saying, but it ignores the, the fact that people in prison can and have done-- have shown that they are rehabilitated. It doesn't take 40 years or 50 years for many people and--

WAYNE: I'm going to cut you off there.

GEIST: Oh, that was a--

WAYNE: Oh, sorry.

McKINNEY: He was answering a question.

WAYNE: Nobody told me. I sat back down. I'm, like, all right, let me-- well, I'm, like, why is he at 4:30? I even-- not all my fault, OK, because a total mess up. Sorry, Senator McKinney. Sorry.

THOMAS RILEY: I, I, I pretty much said what I was going to say anyway. Did that answer your question?

McKINNEY: Yeah, and my last question, do you think that tough on crime approach has worked?

THOMAS RILEY: Well, you're, you're, you're singing you do the choir with me. Obviously not. I think the sentencing that we-- the sentencing schemes that we have in Nebraska are not-- well, they're kind of outrageous, gives-- it gives judges way too much discretion looking forward when they don't have a crystal ball and they're throwing people in prison for ever. Don't forget some of the IB felonies, they're drug cases. They're talking about giving people life in prison for drug cases if it's a IB. So these are draconian sentencing approaches that we have here that need, in my opinion, a total overhaul. But we get a lot of pushback from the County Attorneys

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Association, law enforcement, and that's why we have these debates, I guess.

McKINNEY: All right. Thank you.

THOMAS RILEY: Sometimes I feel like no one's listening, but.

WAYNE: Any more questions? I didn't know we were on questions. Sorry about that again, Mr. Riley.

THOMAS RILEY: No problem.

WAYNE: It's the one thing I've been a stickler about this year is when the red light is on we're turn it off, so.

THOMAS RILEY: I know.

WAYNE: I walked in on a red light and I'm, like, why is he still talking?

THOMAS RILEY: No, I understand.

WAYNE: Anyway, thank you for being here today.

THOMAS RILEY: Thank you.

WAYNE: Next proponent.

JULIET SUMMERS: Good afternoon, Chairman Wayne, members of the committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm the executive director of Voices for Children in Nebraska here to support LB127. Every young person deserves the chance to grow into a healthy, productive adult, and we should respond to youth behavior in a thoughtful and effective way that preserves community safety, contributes to Nebraska's future prosperity, and gives both children and communities the protection they need no matter the offense. We support this bill because it distinguishes youth offenses from other offenses, acknowledging that even in those most tragic of cases developmental factors simply make youth defendants difference. Eliminating life without parole as a sentencing option for individuals under age 18 acknowledges this truth and would bring Nebraska into line with a growing majority of states. You have my written testimony, and I-- it echoes much of what both Senator Day and Mr. Riley have already said to you. So I'll use my time instead to explain the, you know, tree that is being handed out to you here today. So we have also

worked on this bill with the national Campaign for the Fair Sentencing of Youth. They were unfortunately unable to be present here today, but I believe they sent a letter of support both through the portal and to Senator Day's office for distribution. I have also been given permission to share these supplementary materials. The map may be, I believe, is probably the same one that you received from Senator Day, but they've also included for us statements of survivors and family members who were themselves victims of youth violence in support of abolishing life without the possibility of parole as a sentencing option for children. So you have that in this packet along with profiles of their youth advocates who are adults now, who are individuals who were each sentenced to a term of life without parole at some point in their past as a teenager and because of the Supreme Court decisions overturning the automatic sentencing schemes were able to eventually get resentenced, get out, and are now thriving. As Mr. Riley noted, we have people like that here in Nebraska as well who unfortunately were also not able to be present today. I think that's all I gave you. This, this may or may not have come with Senator Day's map that she gave you, but it is just a listing of all the states and where they fall. So you can really see that Nebraska is an outlier among our neighbors in this issue. And for all of these reasons, I would heartily urge this committee to advance LB127. Thank you so much for your time and I'd be happy to answer any questions if I'm able.

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

DANIEL GUTMAN: Good afternoon, my name is Daniel Gutman, D-a-n-i-e-l G-u-t-m-a-n, testifying here on behalf of the ACLU of Nebraska who supports LB127. The United States often treats children, particularly youth of color, who come into conflict with the law in a manner that disregards their obvious differences from adults. This is evidenced most starkly by the fact that the United States is the only country in the world that sentences children to die in prison by imposing life without parole sentences on individuals under the age of 18. States across the country are responding to this injustice by passing legislation to ban juvenile life without parole. And just to highlight a point that Senator Day made, every single state that borders Nebraska, every single state, South Dakota, Wyoming, Colorado, Kansas, Iowa, and Missouri, every single one of them has either affirmatively banned the practice or no one is serving that sentence there. With so many states banning the practice of juvenile life without parole prison sentences, the state of Nebraska has a hard reality to grapple with. Currently, the state of Nebraska is one of the few places in the

world that continues to sentence its children to death in prison without the possibility of parole. Brain science consistently shows that young people's brains are not fully developed until their mid-twenties, meaning that young people have a greater potential for rehabilitation. A line of four Supreme Court cases over the course of the last 13 years has recognized these principles and it's time Nebraska changes course to better align with the values of this state and country. We urge the committee to vote to advance LB127 to better align our state with the majority of states in the U.S. and every other country in the world.

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

DANIEL GUTMAN: Thank you.

WAYNE: Next proponent. Proponent. First opponent. First opponent.

DON KLEINE: Good afternoon, Senator Wayne, members of the committee. My name is Don Kleine, K-l-e-i-n-e. I'm here as the Douglas County Attorney and as a representative of the Nebraska County Attorneys Association. It seems to me just in hearing the testimony today that there's some misstatements being made. There, there is no-- for juveniles, there is no life without, life without parole for juveniles. The statute was changed-- Miller v. Alabama said you can't have that, OK, so Nebraska changed the statute on first-degree murder and said what, 40 to life. OK. But when you have an indeterminate sentence like that, you're eligible for parole and what the minimum so the judge can sentence somebody to 60 to life or if it was 40 to life then they're eligible for parole in 20 years. A IB, which is secondary murder, it's 20 to life. If the judge gives a life sentence under a IB, you're eligible for parole in ten years, whatever that minimum sentence is. That's my understanding of the law. But it isn't life without parole-- the possibility of parole. So I, I don't understand the need for this other than-- what I hear here, too, also is more of not something about prosecution or not something about police, but it's about judges. Well, the judges are giving too much time. Well, again, the judge has the discretion to give anything within the parameters of those sentences. They look at all the facts and circumstances. They look at all the background of the defendant, whether what age they are or how well they did in school, how much their brain was formed on whatever expert testimony somebody wants to provide the judge and they sentence what they feel is an appropriate sentence within those parameters. And I think the judges do a fairly

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good job with regard to the circumstances as they see them, depending on what they see with the facts and the evidence that were provided as to what this person did. We talk a lot about this brain formation, and I don't disagree with that as, as anybody, but we always look at a person's brain when we prosecute somebody. And then do they know the difference between right and wrong and do they know the nature of the [INAUDIBLE] they're given? And if they do, then they don't qualify as being not responsible for what they did. Because we do find people not responsible for what they did based on their brain. So I think those are things that are, are taken into context on mitigating circumstances maybe for a judge in sentencing and those are things that are looked at and I don't think there's a need to change the sentencing parameters here because we already have ones that are less than. I hear this, again, life without parole stuff, that's not accurate. I'd be happy to answer any questions.

WAYNE: Any questions from the committee?

DeBOER: Actually--

WAYNE: Senator DeBoer.

DeBOER: I actually do have one.

DON KLEINE: Yeah.

DeBOER: I always seem to have questions for you, sir. So if the-- so if they're getting it wrong what the proponents told us about what the current law is.

DON KLEINE: Well, I understand what Mr. Riley is saying because-- Tom saying, hey, it doesn't say life without parole but, in effect, if a judge gives them a sentence of, you know, 60 to 80 years, that's a, that's a life sentence in effect.

DeBOER: Yeah.

DON KLEINE: But again, that's a judge who's looked at all the circumstances. But I don't think, per se, that it's, it's a sentence of life without parole.

DeBOER: So he's saying de facto, you're saying de jure.

DON KLEINE: Right.

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DeBOER: OK.

DON KLEINE: Right.

DeBOER: All right.

DON KLEINE: OK.

DeBOER: Thanks.

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

McKINNEY: Thank you. So if, if you're arguing there is no juvenile life without parole essentially in our state, then why are you opposing the bill?

DON KLEINE: Well, why do we need the bill? That's-- we don't have a life without parole here in Nebraska.

McKINNEY: So you're opposing--

DON KLEINE: I'm saying the 40 to life sentence that Nebraska has changed already from-- you know, originally it was if you get convicted of first-degree murder, you get life, and life means life. That's not the case anymore for a juvenile. The amendment in-- what is it 28-303.02 [SIC], or whatever, says if you're less than 18 then minimum sentence on a first-degree murder is 40 to life. All right. So a judge can sentence anywhere in those parameters.

McKINNEY: So you're basically-- so you're arguing that you don't like the sentence, sentence structure in the bill. Is that what you're opposing?

DON KLEINE: Right, I'm saying-- and I could even work with that, but I'm saying why, why are we taking away the discretion of the court? Because they can sentence somebody on a first-degree murder that's a, that's a juvenile to 40 years if they think it's appropriate. OK. And they're the ones who look at all the facts and circumstances, the criminal history, all those kinds of things that judges are supposed to do and they make the determination as to the sentence. And I don't think that's a bad parameter for anybody to have--

McKINNEY: So--

DON KLEINE: --for, for--

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McKINNEY: --so what if a judge sentences a juvenile to life to life?

DON KLEINE: I don't think they can do that. I don't think they can say life to life. I don't think they can give a flat sentence of life to life. I think if they said life, if it's an indeterminate sentence, then the minimum sentence for that crime is the minimum sentence if they just said life. It's just like if it's a second-degree murder and if somebody says life for an adult, then that sentence is 20 to life. And if they say it for, I think, somebody on a first-degree murder now even because we don't have-- we can't have life without parole, it's 40 to life. But the judge could sentence somebody to 60 to life or I think 60 to 80 or whatever might be in that parameter.

McKINNEY: All right. Thank you.

DON KLEINE: Sure.

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

DON KLEINE: Thank you.

WAYNE: Next opponent. Opponent.

WILLIAM RINN: Good afternoon.

WAYNE: Good afternoon.

WILLIAM RINN: My name is William Rinn, W-i-l-l-i-a-m R-i-n-n. I'm the chief deputy administration for the Douglas County Sheriff's Office on behalf of Sheriff Aaron Hanson and the Douglas County Sheriff's Office. We are opposed to LB127. I'll try to keep my comments pretty brief. I think I would wander into dangerous territory if I tried to mention anything about the challenged science, which is accurate, I believe, depending on what side of a, a debate you are on. Juveniles do have-- there, there-- the science is undisputable. I think the senator asked why law enforcement would be opposed to this bill or similar bills like it so I'll try and address it in that context so that we're not repeating testimony here today. And generally speaking, Mr. Riley and his office are some of the top notch people in their job and, and, and I truly believe in the, the genuineness of their job is to support their clients both in the present and in the future and they do a darn good job of that, which is why I always have the highest of respect for their-- for the Public Defender's Office. On the flip side of the coin as to why law enforcement or potentially

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prosecutors would be opposed to it, had to do-- would have to do with what our job is as law enforcement officers and in prosecutorial phases and that is support victims and the victims families of offenses that become violent in nature where people are either killed or permanently injured. So that's really the select area in which we see more opposition than trying to argue the facts of, of the juvenile abilities and, and whatnot and cognitive abilities. And that, in turn, we have a balanced approach that we have to also consider and that things that come through, which may be perceived as setting limits on the prosecutor or, or a judge's discretion, you know, I could, I could not sit here and say that bad sentencing has not occurred. However, there are appeal processes in place for appealing bad sentences or sentences deemed to be too restrictive. And, and the judge-- statute does direct the, the court to consider mitigating factors such as age, development ability, all of those family factors that are already in place right now. With that, I will open to any questions that you may have.

WAYNE: Any questions by the committee? Senator McKinney.

WILLIAM RINN: Yes, sir.

McKINNEY: So you, you mentioned that, you know, there's appeals process, but you do realize to get appeals, it's difficult for most people to get to an appeal on a conviction like this.

WILLIAM RINN: I really can't speak to the difficulty level, that, that's not part of the process that I get involved in.

McKINNEY: So--

WILLIAM RINN: I just know that it exists.

McKINNEY: And just like I asked the county attorney previously, so if-- what is your pure opposition, is it just the, the sentencing structure in this bill or are you just opposing it because you believe juveniles should be sentenced, sentenced without the possibility of parole?

WILLIAM RINN: I believe the discretion should be left to the, the judges and that we have to also consider victims and victim's family as well in a more balanced approach and not taking that perception that we're trying to adjust the discretion of the court.

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McKINNEY: So-- and, and this is probably for all law enforcement, try to-- what is justice? Because as somebody who has lost somebody very close to me even after ten years and I'm for, I'm for sure after 50 or 60 years, I'm still going to feel that pain. But we also have to be fair on both sides and we can't--

WILLIAM RINN: Certainly.

McKINNEY: --tip the scale for either side because it is supposed to be justice. And I feel as though when, when a lot of times people bring up victims, not to be offensive, I feel as though sometimes we're kind of tipping the scale kind of because, yes, those individuals made a mistake. But at what point, especially if somebody is 14, at what point does that 14-year-old be able to showcase that, hey, I made this mistake when I was 14, but if I serve 40 years in prison, I'm definitely not that same 14-year-old and I deserve a second chance. So what is justice to you?

WILLIAM RINN: Well, if I could figure that out, I guess, there's certainly Webster's. But to me personally, I feel justice is a process and that's an ongoing process. You know, whether it goes in someone's favor or not, the way they were looking for, whether it's prosecutorial side or whether it's on the defense side, if everyone at least has the process heard through and, and a decision is made by a juror or a judge, then justice has been served. Now there are persons that will tell you from the victim [INAUDIBLE] or the, or the family members of the defendant that they don't feel justice was served, again, those are going to be more subjective than objective observations that I, I can't speak to.

McKINNEY: All right. Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here. Next opponent. Next opponent. Opponent. Is anybody testifying in the neutral capacity? Neutral capacity? Seeing none, you are welcome to close. We have four letters: two in support and two in opposition. Senator Day to close on LB127.

DAY: Thank you for your time this afternoon. I appreciate all of the testimony. And I apologize, I had to go introduce a bill in another committee, so I didn't get to hear all of it, but I was briefed a little bit on what was said. I just wanted to mention this bill came to me this past year when I attended an event that the Omaha Public Library had put on, and we had the ability to hear author and civil

rights attorney Bryan Stevenson speak. And I had the opportunity to meet Shakur Abdullah, who some of you may know is a restorative just-- restorative justice activist here in Nebraska after being convicted at 17 and then sentenced to death, was subsequently released. For me, I have followed Mr. Stevenson for many years, and the work that he does is really incredible. And I think for me, one of the most profound things that he has ever said is that he believes that we are all more than the worst thing that we have ever done. And I think especially when we're talking about our kids. I understand that some of the opposition to this bill is that we are not sentencing life to life. We are not sentencing children for life to life. Some judges will look at each individual case and sentence 60 to 80 years. But from what I'm hearing, judges still can and have the opportunity because we have not codified this, they can sentence a juvenile to life, to life. And also many judges are not opting for 60 to 80 years, they're opting for a much longer sentence with the bottom a number of years starting at 90 years, which we know is essentially a de facto life imprisonment without the opportunity for parole. And all we're doing here is saying that we can't do that to kids anymore because that's not OK. And that we do believe that we are more than the worst thing we have ever done, and that we do believe in redemption and we do believe in mercy and grace, especially when we're talking about children who have not had the opportunity to fully grow into human beings. I think we often talk about these cases and these sentences in terms of decades and years, but we sometimes lose sight of the fact that we are talking about a lifetime. And if you think about who you were at 10 or 15 versus who you were at 30 or 40 or 60, it's drastically different for all of us. And I also often think about the things that I was doing when I was 15 or 16 and how I had the fortune of being born into the family that I was born into and living in suburban Omaha through no account of my own. That was just my luck in life. Many kids do not have that kind of luck. They're born into situations through no fault of their own that send them on a cascading sequence of events that puts them in really awful situations. And this is certainly-- these bills are not meant to minimize the very serious nature of these crimes. That's not at all what we're doing. What we're doing is essentially saying we believe that it is cruel and inhumane to sentence a 15-year-old to life in prison without the opportunity for parole. We believe that that child is not redeemable. And I think that's wrong. So with that, I would be happy to answer any questions that you have.

WAYNE: Any questions from the committee? Senator, Senator DeBoer.

DeBOER: I'll ask a question, thank you. I was sort of struck in this hearing by the discussions of roles, because we all have these different roles in this criminal justice system. And Mr. Riley as a defense attorney, has to zealously represent his client and looks after his clients. And so he has a perspective and he has a role to play, and the prosecutors have a role to play. They have to, you know, zealously represent the people of Nebraska, their various counties. And the police have their role to look after the victims and all, and to ensure the crimes are taken care of-- or are investigated and, and gotten to the prosecutors. How do you see our role as a Legislature? What is our role?

DAY: Thank you, Senator DeBoer, for that question. And this is a point that I actually wanted to touch on, so I appreciate you asking. I think that our role as a Legislature and my job as a lawmaker is to balance those two sides and to, to meet somewhere in the middle. It's our job to uphold public safety, right? It's also our job to make sure that the laws that we provide for the public are just and they're based in science. When we know better, we do better, right? We know that since we have been sentencing child-- children to life and to the death penalty and all of those things, science has evolved to help us understand the poor decision-making ability of a child. And I think that as lawmakers, it's also our job to make sure that we are not unjustly using the law, in addition to balancing that with public safety.

DeBOER: And, and I think that's a really good way of saying that we have to look at the public policy implications and the balancing of all the various interests, and that what we do-- and what I think you are attempting to do in this bill is to set a window, right? We heard that the judge has the discretion to--

DAY: Correct.

DeBOER: --choose within a window.

DAY: Correct.

DeBOER: But then maybe it's our responsibility as a Legislature, and it always has been, to set where that window is supposed to be.

DAY: Correct.

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DeBOER: And that's what you're trying to do here, not take away the judge's discretion, but to give them that discretion, but also to not fail to do our own job.

DAY: Absolutely right, because we have to balance both sides of that discussion. And we are giving them a window. We do-- still do allow of judicial discretion. We allow, we allow prosecutors the opportunities here that they need to have to provide punitive measures for very serious crimes. This ultimately still is up to prosecutors in cooperation with judges and defense attorneys and also the parole board. We're not leaving the parole board out of the, out of the discussion here. This isn't a mandatory parole. You know, you don't automatically-- you're not automatically up for parole after you meet the minimum sentence. It's still up to the discretion of the parole board and whether or not that person, person should be eligible. And yes, it is our job to set what that window is in a fair and just way to balance both of those sides.

DeBOER: Thank you.

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

DAY: Thank you.

WAYNE: And that will close the hearing on LB127. And we will open the hearing on LB620, Senator McDonnell.

McDONNELL: Thank you, Chairperson Wayne, members of the committee. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l, represent Legislative District 5, south Omaha. LB620 changes the provisions under which a juvenile who commits a serious crime of violence can be charged as an adult. As written in 29-1816, prevents a juvenile who was under the age of 14 at the time of the offense from being charged as an adult for any crime, regardless of the class or felony or nature of the offense. The number of juvenile perpetrators of gun violence has steadily increased over the, the last few years. Even more concerning is the age at which these juvenile perpetrators are committing violent offenses has decreased. In the last six months, in Douglas County alone, four juveniles under the age of 14 were charged with first-degree murder and two were charged with accessory to first-degree murder, all of which would only be charged as juveniles due to the current legislation, regardless of their amenability to juvenile court services, their past criminal history, or the

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circumstances of the offense. The goal of juvenile justice is rehabilitation, which goes hand in hand with public safety. This cannot be achieved without allowing the judicial system to consider the relevant factors and make a determination as to the appropriate avenue for the charge to proceed in on a case-by-case basis. This bill would, would allow the most serious of violent felonies to be filed in adult court when committed by juveniles aged 12 or older. The bill would still provide an avenue for those charges to be transferred to juvenile court if after considering, considering all the relevant factors a judge determined the juvenile was amenable to the services and rehabilitation plans available in the juvenile court while also taking public safety into consideration. This bill also includes provisions on the requirement for a hearing in juvenile court when a juvenile is taken into temporary custody or detained or placed in an alternative to detention. This bill would eliminate the waiver of a detention hearing through counsel and would require a juvenile to appear before a judge court-- before a juvenile court judge within 24 judicial hours of being detained or placed in an alternative to detention in order to ensure the juvenile's best interest and the community safety has been considered by the judge. Also here to testify and further elaborate on the need of this legislation changes are Don Kleine, Douglas County Attorney, Lieutenant Nick Andrews with the Omaha Police Department, and Chief Deputy William Rinn with the Douglas County Sheriff's Office. I'm here to answer any of your questions and I'll be here to close.

WAYNE: Any questions from the committee? Senator McKinney.

McKINNEY: Thank you. Thank you, Senator McDonnell. What is the difference between 12 and 14 years of age?

McDONNELL: Someone that committed murder. So if you're at the age of 12 versus the age of 14, the age of 15, it's not about so much that it's about the person that just took another person's life.

McKINNEY: When you were 12 and you made mistakes-- I'm not sure if you made mistakes at 12, but if you did, were you fully aware of everything you were doing? Conscious of everything?

McDONNELL: Definitely, Senator, I did make mistakes at all ages, and I at times was aware and times I wasn't. There's, there's reasons, of course, I don't believe there's excuses, but we can look at any time a life is taken by an individual, who's responsible, is it us as state senators? Yes, we're part of the responsibility based on we're trying

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to improve things. It is family, friends, and, and neighbors? Yes. Is it potential educators? Yes. I believe we all have responsibility to try to help each other be the best versions of ourselves, but there is also that person that is going to have to be punished. And at that point, should that person be punished as a juvenile or as an adult and which court system does it go through? It still comes down to someone lost their life and that's what we're dealing with.

McKINNEY: I lost the question I was thinking about. My bad. Thank you.

McDONNELL: I'll, I'll be here to close--

McKINNEY: All right.

McDONNELL: --if you think of it.

WAYNE: I have a question. Why 12, why not 10?

McDONNELL: Well, and, and based on just recently, it's that people younger than 14 are committing murder.

WAYNE: Thank you. Senator--

McKINNEY: I remembered.

WAYNE: --McKinney.

McKINNEY: You mentioned an increase in this in, like, the last six months or a year, and I grew up in north Omaha. And when I was a kid, this happened every once in a while. So I'm, I'm curious, is, is, is it the view of yourself and probably law enforcement, was this-- was last year an anomaly or is this something that you expect to see going forward? Because in my perspective, I think a lot of the things that happened last year, understanding those situations from talking to people in a community it was more so probably more of an anomaly for all of those things that happened how they happened than this just being a recurring problem. Yes, it has happened. It probably will happen again in the future, but it's not like it's something-- a big increase in 12-year-olds killing people or something like that.

McDONNELL: I think we'd all agree, of course, one is too many. I will try to get you the statistics going back the last ten years. I, I don't know that, but I think we'd all agree one is, one is too many.

McKINNEY: All right. Thank you.

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WAYNE: Senator DeBoer.

DeBOER: Senator McDonnell, I'm interested in the question that Senator Wayne asked about why not ten, why not eight, why not whatever? What, what is the policy reason for having a bottom, you know, that 12, 14, 10? What is the-- what's the reasoning for where we set that number? Why do we have that number at all, the, the point at which you cannot be tried in adult court?

McDONNELL: The history on, on the age 14, we can get you that. The reason we're talking about what's going on right now with people younger than 14 is because it's happening right now in our community. People at that age are taking people's lives. The history on how it was at 14, I wasn't here. But right now, the reason we're dealing with it is because, as I mentioned in my testimony and to follow up with Senator McKinney, I will get statistics going back further. But here's what the people that are coming to us to say there is people taking other people's lives and how are we going to deal with that, potentially are they going to be in the juvenile court or are they going to be going in adult court?

DeBOER: And I get that, and I get that and I get why you're here. I'm trying to ask why not just take the number off all together? There's, there is some reason, we obviously have some reason, like, we probably wouldn't want a two-year-old to be tried in adult court. Right?

McDONNELL: How many two-year-olds have committed murder, have happened?

DeBOER: I'm saying, like, you know, it's a boy, a five-year-old, maybe a five-year-old accidentally did, right? Like, there's, there's probably some point-- there's some reason to have that low number, I would suggest.

McDONNELL: I, I understand your question.

DeBOER: And so I think we should sort of be clear about what that point is when we're thinking about how to change that number. Because if we don't know why we have that number in the first place, we probably ought to be careful about why we're changing it.

McDONNELL: And I think the people that are here to testify possibly can talk to you about the history of age 14 that's current.

DeBOER: Perfect.

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McDONNELL: And then potentially why we're here today.

DeBOER: Yeah, because I think we would want to know why we have the number where it is to know what the repercussions are, because the juvenile justice system, my understanding is it's a rehabilitative system rather than a punitive system, which would probably affect that number. All right. Thank you.

WAYNE: Any other questions?

McDONNELL: And I'll be here to close.

WAYNE: Seeing none, thank you for being here. First proponent. First proponent. Proponent.

DON KLEINE: Good afternoon again.

WAYNE: Welcome back.

DON KLEINE: My name is Don Kleine, K-l-e-i-n-e. I'm Douglas County Attorney and I'm also a representative of the Nebraska County Attorneys Association. And I, I don't like to be here talking about 13-year-olds committing first-degree murders. I know Mr. Riley wouldn't either. We, we get handed these cases that happen in the community and we have to figure out what to do with them. And I think maybe the age, the reason the age is where it is is because no one, no matter where they live, likes to think that we would be here talking about a 13-year-old committing a first-degree murder. We have several charged now. And so we have to make sure that we can adjust to the law so that it fits what the discretion of a county attorney is and a judge is and within the system of being able to file that case. And for the kinds of-- this isn't just a situation, and I'll talk a little bit factually without saying names or anything, of some young person just shooting in the air and hitting somebody. We have one case-- two cases for 13-year-olds right now. One is a beat up from a gang perspective where the 13-year-old shoots another one, kills him, and the other one is one of the more preplanned, premeditated first-degree murders that I've seen. And it's a 13-year-old who has a gun, make sure that the person he is seeking out has a relative that he, he knows isn't going to be home that day, steals a car, you know, a, a colleague, set things up to stage, stage where they can get to the house of the intended victim. The 13-year-old goes into the house of the intended victim with a mask on, asks the mother of the victim where that person is. She tells him he's not home. He starts to look

around the house. The intended victim comes upstairs and in front of his mother with a mask on he shoots that other person seven times in the face and then runs out of the house. Unimaginable, right? I mean, it really is. But OK, Mr. Kleine, what are you going to do with this case? And we couldn't charge that person as an adult even to begin with because of the statute. So we've got to adjust that, I believe, so that we could at least begin that case in the adult court system and then have a judge look at that case and make a determination if it should stay in that system or be transferred to juvenile court. I'm not saying that these cases all belong in adult court, but certainly they might need to be started there and then see where it's going to go as we, as we move along. But certainly for that kind of situation, in that kind of fact situation, it certainly is very troubling to everyone. And it's, OK, what do we need to do to, to get justice for this family? So I'm sorry, I see my time is up.

WAYNE: Thank you. Senator DeBoer. Questions? Senator DeBoer.

DeBOER: I can't let you go without asking a question since I've been doing it all day. That is, that is unimaginable for at any age. Like, that's--

DON KLEINE: Absolutely.

DeBOER: --unimaginable horror. So I can't imagine what you have to, and everyone has to deal with with that. What currently is the mechanism under the juvenile code for homicides?

DON KLEINE: Well, it's no different than any other case. Whether-- you, you know, what happens in juvenile court is, is we charge somebody as a delinquent, which is what the juvenile court would charge would be a delinquency and it's-- they're not punishable by going to the Penitentiary, going to jail, I think. The mantra in juvenile court is what it should be, what's in the best interest of this child? All right. And the jurisdiction of the juvenile court only goes until that person is 19. But it doesn't matter even what the person's is. They don't use the term convicted, it's found in juvenile court. It could be doing graffiti, it could be murder, it could be assault, it could be theft. What happens is the judge doesn't really sentence somebody, they take, they take jurisdiction over this individual until they're 19 possibly, either put them on probation, they place them out of the home, they place them in a, a youth facility, but that jurisdiction ends at 19.

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DeBOER: So, so if someone committed a homicide at 14 now--

DON KLEINE: Yes.

DeBOER: --wait, let's do a 12, 12 now, and they were then under the juvenile court, they would be from 12 until 19--

DON KLEINE: Yes.

DeBOER: --under the jurisdiction of the juvenile court.

DON KLEINE: Possibly, if that's what the judge felt is appropriate.

DeBOER: OK, under the-- but for a homicide probably is going to lean that way. And then at 19, they're released?

DON KLEINE: Totally, there's no-- nothing the juvenile court could do with that person if they violated their probation, if they did anything as a juvenile, because they're 19. That's the age of majority.

DeBOER: Is there a presumption at, say, 17-- I don't know this, I should, but I don't-- at 17 or something that they-- if, if it's a certain kind of case, they will be charged as an adult most often?

DON KLEINE: We have that discretion. We make that determination based on the person's criminal history, their background, the serious nature of the crime. And then it will be-- but the problem is when somebody is even 17 is, for all practical purposes, jurisdiction ends up there when they're 18, and sometimes if you file a delinquency in juvenile court it might take a year for that to get adjudicated.

DeBOER: That's why I was asking it.

DON KLEINE: And all of a sudden--

DeBOER: That's why I was asking it. So it could be a very short period of time--

DON KLEINE: A very short period of time.

DeBOER: --in which-- so that's probably something that you consider when you're determining whether or not to bring it in juvenile court.

DON KLEINE: Absolutely.

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DeBOER: OK. So all right, that's-- and what is the reasoning for 14?
You said--

DON KLEINE: Well, I think, I think it's just because nobody thought 13-year-olds would be out there committing a first-degree murder that was a premeditated, planned out thing until we saw examples of it happening. And I-- and by the way, this only applies to first-degree and second-degree murders this, you know, 12- and 13-year old--

DeBOER: So--

DON KLEINE: --as far as being able to file on them as adults.

DeBOER: How long have you been practicing criminal law?

DON KLEINE: Criminal law?

DeBOER: Yeah.

DON KLEINE: For probably-- let's see, I'm, I'm not going to say when I graduated from-- I'll just go with that's been about over 40 years.

DeBOER: OK.

DON KLEINE: And as--

DeBOER: A long time.

DON KLEINE: --as a defense attorney and as a county attorney and a prosecutor.

DeBOER: Right. That's what I thought that you've been doing it for a long time. Do you recall prior to these recent cases, a situation where there were young teenagers or "tweenagers" or whatever that were involved in these kinds of very serious cases?

DON KLEINE: Not, not very often. It would be abnormal. I mean, I can remember there was a young man in the area of Cripple Park in Omaha who took an arrow and found a young girl in the park and stabbed her to death. But that was-- it was unusual, extremely unusual for the deputy. I think he was, like, 16, but I've never seen 13- and 14- and 15-year-olds involved in the type of violent crime that we've seen.

DeBOER: What he told me once and this may be baloney, but you may have information about whether it's borne out or not, that the gang groups

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were specifically targeting younger and younger members to act as their violent--

DON KLEINE: Their surrogate, their person that could go out and do the dirty work, because they couldn't--

DeBOER: Because they would not--

DON KLEINE: And I, I, I don't-- I'm not saying that doesn't happen. Then the other case we had was a gang case, where the 13-year-old took a gun in the, in the Hanscom Park area and killed another young person at like, midnight. And we got the gang from-- the gun, from other gang members. There was a lot of social media, media postings. So, I don't--

DeBOER: So the reason, the reason I ask that is if that is a troubling trend.

DON KLEINE: --yes.

DeBOER: I don't know if it is or isn't. I just don't have the information. Would it be possible that they would just keep driving that number down? Like, so if we put this number at 12, are they going to do-- are they going to put a ten year old-- are they going to do a--

DON KLEINE: God, I would hope not.

DeBOER: --I mean--

DON KLEINE: I mean-- that's what I mean. Like I said, we don't want to be here having to talk about-- we need to do things on the other end of the spectrum, just to-- I'd rather see us do whatever-- you-- the Legislature can figure out to do, to prevent these kinds of things from happening. And that's why I think, you know, education, hope, all those kinds of things are the most important thing to give young people so that they stay in school, so that these kinds of things don't happen. Because we all know the-- it's horrifying.

DeBOER: I mean, it's, it's really hard to distinguish. Yeah. What-- what's-- at some point, it does seem like we would get too young to try someone as an adult. It really does. And--

DON KLEINE: Yes. I, I agree.

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DeBOER: --so that's the thing that I think we'll have to struggle with. Thank you.

WAYNE: Other questions? So I got, I got one. Oh, Senator McKinney.

McKINNEY: Thank you. Thank you. So earlier, kind of was-- you were advocating for a bill for 17-year-olds not to give a deposition. And now, you're advocating for a bill for 12-year-olds to be charged as adults. Can you clar-- make, make that make sense for me?

DON KLEINE: What, what we're talking about, with, with this bill, to change it to 12, we're talking about people who have-- commit or were allegedly first-degree or second-degree murders, so that we can charge them as adults or not charge as adults and use our discretion in that regard. And then a judge, again, will oversee that if we do decide to charge as an adult and can transfer that to juvenile court anyway. But I think with the serious nature of these kinds of acts, that we need to have the ability to potentially charge them as adults.

McKINNEY: But you, you mentioned and I would agree, it is abnormal for that increase like we had last year to happen. So wouldn't it be-- I would think we should really evaluate it in, in totality, to see was that anomaly or was that a full-- not even a trend, something that's just going to continue to just happen. And then my other question is, will your office ever choose to charge a 13-year-old in juvenile court?

DON KLEINE: Sure. We just charged a 14-year-old in juvenile court, with a homicide case, just a few months ago.

McKINNEY: Has your--

DON KLEINE: And so, we have done that before.

McKINNEY: --has your office ever declined to charge on these offenses in adult court?

DON KLEINE: I don't know what you mean by-- oh, sure. If we, if we determined that we weren't going to file on him as an adult. Sure. I mean, this was a 14-year-old, so we could have charged him in adult court at that time.

McKINNEY: And then my last thing is, you said county attorneys or your office supports preventative measures. But since I've been here, the county attorneys have basically opposed every preventative measure

that I've seen, that was meaningful, that came before this body. And I don't recall that you guys went in front of the Urban Affairs Committee last year to support LB1024, which would provide economic recovery or even this year, economic recovery in either the Urban Affairs Committee or the Appropriations Committee. I'm not sure if you guys support taking away the ban of, you know, of individuals with felonies that are on SNAP. Those are, those are preventative measures that could improve the environment of the community. So outside of just coming in here, advocating for penalties to prosecute kids pretty much as adults for, say no--

_____ : [INAUDIBLE].

DON KLEINE: That wasn't mine. [LAUGHTER].

McKINNEY: But-- or you know, just coming in here saying no to, you know, bills to try to change the system or-- in those things, I think you guys-- if you guys are truly about preventative things, you should just be showing up in the Judiciary Committee. You should be going to other committees, advocating for bills that would change the life outcomes of these kids. And I know you might say this is out of my job or out of our scope--

DON KLEINE: No, I wouldn't say that.

McKINNEY: --but-- well, some people do and maybe you won't. But I would implore you and the county attorneys, your philosophy cannot just be no, no, no, no, no. This guy is going to fall. You guys should be coming out to the Legislature, advocating not just against bills that might change the system or advocate for bills that further prosecutes people and kids, you should be advocating for legislation that changes life outcomes. So hopefully, next year or sometime down the line, we'll start seeing county attorneys support bills that are directed towards prevention a lot more.

DON KLEINE: Well, I respectfully disagree, because if you came to-- saw what our office does, you would see the kind of prevention work we do. We have 16 lawyers that are in place in the juvenile court system to help young people. We work very hard to keep kids in school. We have all kinds of programs that we work with, work with the superintendents. We also have a drug court, a veterans' treatment court, a young adult court, a diversion program, mental health diversion, where we keep about 350 people out of the system, by helping them with addiction issues or whatever problems they might

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have, so that they don't get convicted of crimes. So there's a lot of prevention work that we do and that we-- we are here, ask-- been to the Legislature asking for more funding for our problem-solving courts, for more help with-- regarding our truancy programs to keep kids in school.

McKINNEY: See, that's my issue, though. It's just about courts and your programs. I'm talking about things outside of your purview that will prevent these kids from ending up in these situations, in which I think you guys should be supportive. That's, that's my issue.

DON KLEINE: Well-- and we do. So.

McKINNEY: Yeah. OK.

WAYNE: OK. So I have a question. And it's not really fair to ask you for the whole County Attorney Association, because in my understanding, if a couple county attorneys object to it, the whole, the whole association kind of takes a negative or a no, but would you be open to charging in juvenile court, 12-14-year-olds, with the option of transferring up?

DON KLEINE: I don't know what you mean by transferring up, you mean to adult court?

WAYNE: Yeah.

DON KLEINE: No. I still think the best way to handle these cases is to start in adult court. The adult court still has all the services available to them that the juvenile court does, also. And they're going to hear the testimony about the case, if we do decide to file in adult court and they can transfer it there.

WAYNE: Well, the reason I'm thinking just-- we're having a dialogue and again--

DON KLEINE: Sure.

WAYNE: --I don't know what parameters, you-- the motion was passed or not passed in the association to, to testify, but-- so if you, if you, if you-- hear me out. Right now, we are in district court. We trans-- file a motion to transfer. The state is on-- the burden is on the state to keep it in district court, which is not the hard burden to meet, but nevertheless, it's there. And so, we keep the burden on the state, but you start in juvenile court and transfer up. And from my

position, we, we argue for judge's discretion, but why can't we have a juvenile judge discretion to go up versus down. Because they would know better than, I think, a juvenile-- I mean, a district court judge, of whether the juvenile services could rehabilitate this child before they turn 19, versus a, a district court judge who doesn't play in the juvenile sector very often.

DON KLEINE: Yeah, but they do hear, during testimony, during those transfer hearings, about all the services that are available in juvenile court, how long jurisdiction is, all those kinds of things versus-- and they could be expert testimony, you know, the defense might bring, about brain formation and those kinds of things. And I think a district court judge is in a better situation to make that decision because they deal with these kinds of cases all the time, whereas the juvenile court really doesn't deal with these all the time.

WAYNE: Then my followup question-- it would be easier for me and this is kind of just a thought, so it's not really a question, but I would like your response. It would be easier for me to lower it to 12, if, at the same time, the county attorneys were not against LB184, which is testimony in juvenile proceedings not being used in any other proceeding. And the reason is, as you just said, if a district court is trying to figure out what's best, oftentimes, you have clients or I have clients, when I'm on the other side, where I don't want them to unnecessarily-- I'm not going to put them on the stand. But two, if I send them to a counselor, I need them to be-- or a therapist, I need them to be open and honest, so that judge can really see what-- because one of the factors is whether the kid is honest or trustworthy in any evaluation. And if they're holding back because the attorney is afraid that what they say will be used in a trial, then we, we can never get to the point of a, of a transfer actually meaning what it's supposed to mean.

DON KLEINE: And I don't necessarily disagree with you about that. I mean-- and I've talked to people about that, like when we have somebody go to the Regional Center. They are told right away, which is in, in some ways problematic, because it should be almost like patient--

WAYNE: Right.

DON KLEINE: --client privilege. But they're told right away, anything you say, you know, we can, we can hand that over to, to law

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enforcement and they can use it against you, which makes them tentative about what they say. So I'm, I'm open to discussion about that possibility.

WAYNE: All right. I would tell you, for me, I understand. And one of the cases, you know, I'm very familiar with, because I represented the father in a civil proceeding, just to be transparent. I understand the, the dynamic you guys are facing and, and particularly Omaha. But if I can't have a fair transfer hearing, it's hard for me to sign off on-- so I'm, I'm just putting that out there to take back to the association.

DON KLEINE: So I would like to talk about you--

WAYNE: OK.

DON KLEINE: --with that, about the issue about being able to be forthright with an expert or a therapist or a doctor and not have that testimony be used against you [INAUDIBLE] in a trial.

WAYNE: If that gets worked out, I think you might have a, a pathway here for-- at least in my book. But again, for me, the big issue is-- and you know how it works. You got-- you filed a motion. You're supposed to have a hearing in 10 days. Nobody ever does, because we ain't got discovery yet even exchanged. And so, you're sending a kid to a, a therapist to get a psychological evaluation and the first thing I do say is, look, this isn't protected. Then you got a 14-year-old kid saying-- calling me back, saying, should I tell them everything? And, and there's cases that I say no and there's cases that I say yes, tell them everything because I think it will help you. But that is a big-- that's my issue with this whole dynamic, so I'm just putting it out there.

DON KLEINE: All right.

WAYNE: Senator DeBoer.

DeBOER: Thank you. Something you said brought this up for me. Why, why did you not charge that specific 14-year-old in adult court? Why did you charge that-- you mentioned a 14-year-old--

DON KLEINE: Well, because of the facts and circumstances of that case. And it appeared-- there were circumstances that made this case appear that it should be in juvenile court. I've had a situation where, I think it was a 14- or 15-year-old girl who shot her father as he laid

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in bed. And I said, set that immediately to juvenile court. There was a history of some issues between dad and, and daughter. So we look at all the facts, the circumstances, the background.

DeBOER: Is it, is it about the-- generally, for you, is it about the crime or law violation, however you want to describe it?

DON KLEINE: Well, sometime--

DeBOER: Or is it about the individual's mental capacity, like, you know, maturity, I guess, or what is it that--

DON KLEINE: --a little bit of all that. Because it, it-- the act itself can take, say, a dynamic of-- well, this is a, a juvenile acting as a juvenile. This wasn't some premeditated, preplanned-- it was somebody who kind of lost it all of a sudden did something rashly. And, and maybe that's where this belongs. And we look at that person's background. They don't have a history, they're not in a gang or whatever.

DeBOER: Do you know what the other-- what other states-- what that break is? Are they at 14, 12, 10, 27?

DON KLEINE: You know, I'm not-- I didn't look. I didn't do any research on the age [INAUDIBLE].

DeBOER: OK. I just thought maybe you happened to know it. OK.

DON KLEINE: I don't know.

DeBOER: Thank you.

DON KLEINE: Sure.

WAYNE: So last question. Not a question, I guess, more to take back-- I see some other county attorneys here, so to have a conversation with your association is-- for the 10-12-year-old range, maybe it's still a Class I or whatever, Class 8, whatever they call them now, but what if the sentencing structure was different for that 10-12-year-old or 12-14-year-old? So we don't-- so I'm combining bills here, but I'm just saying so what if, what if, that, that 12-year-old can't get 80 to life, but a 40 to life or 40 to whatever? I'm just throwing out a hypothetical. I'm trying to get to a yes, is what I'm trying to figure out.

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DON KLEINE: Yeah.

WAYNE: But I don't know-- and, and part of the problem is, is I only get-- to be transparent, I only get nos all the time, to what Senator McKinney's, kind of, point was. But I think when I-- if I talk to you individually or Mr. Condon individually, in Lancaster, I think we get moving, but when we get out further, it's like, no, no, no. And so, I'm just trying to figure out how do you-- how do we solve this? Because it seems like it's a Omaha problem. I understand that, but.

DON KLEINE: Well, I'll be happy, anytime, to sit down and visit with you about it. And sometimes, there's a big difference, as you're aware, in the Legislature, between the urban part of the state and the greater part of the state. And I think there's different issues there, so-- but I'd be happy, again, to visit with you about any of those issues.

WAYNE: Thank you and I appreciate it. And just for the record, all the clients I represent are usually treated worse from Mr. Don Kleine's office because-- no, I'm joking. No. He just says, no, we're not giving him a deal. We have to make sure Justin works four times as hard. So I appreciate it. It makes me a better lawyer. Thank you, Mr. Kleine. Next proponent. Next proponent. Sorry. I'll step out and talk to you right now, but I, I can't have you interrupt the hearing. But let me-- we'll talk about what you want to talk about. I'll give you a space. Will you take over?

DeBOER: Yeah. Welcome.

PATRICK DEMPSEY: Hello. Good afternoon. My name is Patrick Dempsey, P-a-t-r-i-c-k, last name Dempsey, D-e-m-p-s-e-y. I'm a 13-year veteran of the Omaha Police Department and currently serve as the secretary for the Omaha Police Officers Association. I appear today on behalf of the 800 sworn officers in our association in support of LB620, an important and necessary change that will reduce violent crime in Omaha. Juvenile offenders who commit murder must be held accountable for their actions. Charging them as adults and requiring them to serve the appropriate sentence is essential to ensure public safety. That experience demonstrates that these most violent juveniles are most likely to reoffend. Current statutes do not adequately protect the public from these offenders. Individuals aged 12 and 13 years old who commit homicide can be charged for that murder, but they will not serve a sentence, sentence proportional with that crime. Instead, these juveniles will be sent to the Youth Rehabilitation Center in

Kearney and either return to their community once rehabilitated or released from the court on their 19th birthday. While we recognize that juvenile offenders deserve justice and opportunities for rehabilitation, the crime of murder, even for 12- and 13-year-olds, must carry a more significant consequence to end these cycles of violence. And I'm sorry, this is repetitive. As a homicide detective. I've had too many firsthand examples of why this change in law is necessary. A recent case involved a 13-year-old perpetrator who stalked a potential victim, conducted surveillance on them and their siblings at school to ensure that no one else was present in the home. The perpetrator later broke into the residence and killed the victim in a carefully planned execution. This same 13-year-old had been previously known to us for auto theft cases, where he would steal and strategically place cars throughout the city to methodically cover up the crimes. This offender, now incarcerated for first-degree murder and participation in many other crimes, is aware of the soft legal consequences of his actions and unfortunately, is not the only example of a juvenile murder currently incarcerated in Douglas County Youth Corrections. While we must never forget that these juveniles are still human beings with potential for change and redemption, we must also remember that they are responsible for their actions and take responsibility for the consequences. I thank you for your time today and I am open to any questions.

DeBOER: Thank you for your testimony. Are there any questions for this testifier? I don't see any. Thank you for being here.

PATRICK DEMPSEY: Thank you.

DeBOER: Next proponent.

WAYNE: Welcome.

NICHOLAS ANDREWS: Thank you. Good afternoon. My name is Nicholas Andrews, N-i-c-h-o-l-a-s, last name Andrews, A-n-d-r-e-w-s. I'm a lieutenant on the Omaha Police Department and serve as lieutenant of the Homicide Unit. I'm here on behalf of Chief Schmaderer and the Omaha Police Department in support of LB620. Unfortunately, like my two colleagues have spoken earlier, there has been an experience of spike in juvenile offenders when it came to homicides, in 2022. Current laws prevent prosecutors and judges the ability to address these situations. I'd like to provide you some statistics. You've already heard about these. But in 2022, Omaha had 30 criminal homicides. Eleven juvenile suspects were arrested and charged with

either first-degree, second-degree or some type of manslaughter, resulting-- or I'm sorry, as a result of those 30 criminal homicides. Four of those juveniles were under the age of 14 and have been charged with first-degree murder. If convicted under the current system, like Mr. Kline spoke about, those juveniles are free and cut through-- cut off-- I'm sorry, cut loose at the age of 19. OK. So there's no, there's no other action that the courts can take at that point. That's where our job becomes very difficult with families. Part of our job involves dealing with families to help understand the court system. When detectives have to explain to families of homicide victims that the person responsible for killing their loved one will be released at the age of 19 is overwhelming to people. Unfortunately, I have had to sit through those conversations and it is very difficult. I cannot, I cannot begin to experience what those families are going through. So something needs to change, especially in these first-degree, premeditated murder situations. And there are very few of them. This is not something that's widespread and going to happen with all juvenile justice. This covers a very small portion of them. Prosecutors and judges need the option, using their professional expertise, to charge specific, specific juveniles as adults, so that-- LB620 can afford the courts the option, the option to do that. Again, the Omaha Police Department would like to thank Senator McDonnell for introducing this legislation and I believe that it's going to make Omaha and the state of Nebraska safer. Are there any questions? Senator.

WAYNE: Go ahead, Senator McKinney.

McKINNEY: Thank you. See, my issue with this bill and other bills like this, kind of reflect on the past, when, in the nineties, I believe, our society overreacted to a lot of things and increased a lot of penalties, which basically increased mass incarceration across the, across the U.S.. And what frustrates me is that there's always a willingness to lock kids up that look like me, that offend, but there's not a lot of willingness to give those kids a second chance. And my, my, my problem is that is this an overreaction to a spike or is this a reality? Because I don't think-- I think it was just an anomaly and a spike. And I'm, and I'm fully aware of the situations that these kids was in, because I just-- I, I am. So why not wait-- and, and I know some say, OK, if you wait, there will be more 13-year-olds or 12-year-olds committing these crimes. But I say that because my fear is that we keep overreacting, increasing the amount of individuals that look like myself, that are entered into the justice system and stuck there. And then, when individuals introduces policies

and legislation to try to give those individuals second chances, people that look like you and others in the back of the room fight it tooth and nail because you want to have this tough on crime approach. So do you believe and do the police believe that being tough on crimes since the nineties have worked?

NICHOLAS ANDREWS: Well, there was a lot of questions there. What I'd like to, what I'd like to address is the, the spike. First of all, obviously, from a, from a law enforcement standpoint, from a prosecutor's standpoint, yes. We hope this was just a one-time spike anomaly, that it'll never happen again. But it's my job to protect the community. It's prosecutor's office' job to protect the community. And what if it wasn't just a spike? What if these numbers continue to increase? How long do we wait? We have to ask those-- we have to have those hard conversations with family members and say, well, I'm sorry, we waited another year. We can't do anything. This juvenile is going to be released at the age of 19. I, I can't do that. I can't go to another family and have that conversation. I think we need to make change now. So that, that was one of your questions. The second question is tough on crime. You know, I think there has been a swing in the pendulum. I don't think that it is like the nineties anymore, when it comes to tough on crime. I think it's a lot-- I think things have been moderated from those days of sentencing. And we obviously had testimony earlier, talking about that when it was talking about mandatory minimums and life in, life in prison sentences. So the conversations are being had. It's my job, again, as a lieutenant of the homicide unit and a, and a police officer to protect the community. And we're going to use all the tools that we can to protect the community.

McKINNEY: Yeah, but very few times you guys actually prevent any of these situations from happening. But you're saying make change now. OK. We make the change now that we find out. It disproportionately affects individuals that look like me and we over-incarcerate these individuals. You guys will not be willing to come down here to make the changes to address that problem and that is my issue. And then you say it's not the nineties and this reflect-- like, this is just clearly like deja vu of the nineties or however I want to say it. But this reflects back on the nineties to me, where people were going around saying individuals in minority communities were super predators and we should lock them all up and throw them all away, three-strikes laws, they, they can't be redeemed and all those type of things. And this, this hits at that. And that is my biggest fundamental problem, is that you guys want this now and when we realize that it's not

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working and it disproportionately affects people, you guys will not stand up and say we were wrong and try to change those laws. And that's the problem.

NICHOLAS ANDREWS: I guess, what I would like to say to that, is this is only dealing with, right now, four individuals in Omaha's jurisdiction. This is not a wide-sweeping, we want to start charging every single juvenile as an adult. This only deals with four specific individuals.

McKINNEY: And you want me to trust that you guys won't start charging more. Come on. Let's, let's be honest here.

NICHOLAS ANDREWS: Again, I, I deal with the families and I'm trying to protect my community.

McKINNEY: I deal with the families, too, on both sides. Thank you.

WAYNE: So, I mean, so here's my dilemma, right? And I'm asking questions as I get through here. And this is unfair to you, because you probably, you probably don't know the answer, but this is the information that I think we should be figuring out if we're making decisions. And let me give you the background on it. When it comes to tax incentives, we look at what other states are doing, we look at the data and we look at evidence to make a decision. When it comes to water quality and moving water in and out of trust funds, we look at what's going on. But here, we just see an uptick. And so my question to you, has anybody studied why there's been an uptick in the last two years, of youth committing these crimes?

NICHOLAS ANDREWS: No.

WAYNE: Have we tried other different methods of deterrence on, on-- as it relates to juveniles committing these crimes?

NICHOLAS ANDREWS: There are lots of-- there's lots of programs out there within the police department and the county attorney's office, like Mr. Kleine spoke about, you know, the different types of courts. I know there's, there's programs that our captain of the, captain of the, you know, gang units and special operations units, go out and try and do preventative home visits and stuff like that to try and prevent this stuff. So, yes, there are, there are programs out there.

WAYNE: And isn't it true that many of the 12, 13-- maybe not the 12, I'm thinking of that case, but many of the 12-, 13- and 14-year-olds,

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many of them are already in the juvenile system. And, and-- or it can be an answer. I could say true or false and you can say or, but I'm not doing that. I'm just saying isn't it kind of true that they were-- the majority of them were already in the system? Many of them had trackers and some of them removed their trackers to commit these horrific crimes?

NICHOLAS ANDREWS: That'd be fair to say. Yes.

WAYNE: So there's nothing saying that even if they get out on a bond, like an adult, or, or they have presentence services, like many people are out on ROIs or even if they do those things and they have a, a tracker as in adult court, there's nothing that says that that deteriorated or prevented any of these things. Correct? I mean, nothing is-- it didn't stop them. And, and those are the same services that are offered in adult court.

NICHOLAS ANDREWS: Those are the same services that are offered in adult court, but I don't think many of our first-degree and second-degree murderers are getting out on bond and pretrial situations.

WAYNE: Well, no, no. But before they committed their crimes, many of them, low-level robberies or auto theft, which many people in adult court get out on.

NICHOLAS ANDREWS: Yes.

WAYNE: So that wouldn't have prevented these same individuals--

NICHOLAS ANDREWS: That's correct.

WAYNE: --being in adult, adult court, right?

NICHOLAS ANDREWS: Yes.

WAYNE: So, there are some services. But one of the problems when you do a motion to transfer is there are many services and I hate this question and I meant to bring a bill on it, that says do they have pretrial services, etcetera, etcetera and that's a factor in the motion to transfer. Outside of Douglas County and partially Lancaster County and partially Sarpy County, many of those preservices for a motion to transfer aren't even qualified, because they don't even-- the county doesn't even have those programs. So outside of the big three, that's always a negative on a motion to transfer. If I bring an

amendment, will OPD and the county attorney support eliminating that negative or treat it as a presumptive, had they would be services, they would be a positive thing. So you don't have to answer that because you're not the county attorney. I'm just putting it on the record, because there's plenty of county attorneys here who we're going to have this conversation about. But the question is, is an adult court equipped to handle, handle juveniles who are put into the system or-- I guess they will still be at DCYC. I answered my own question there. Lowering it to 12, are we focusing on the deterrence or are we focusing on the punishment? Because it seems like we have no evidence on the deterrence factor, so we're just focusing on the punishment side.

NICHOLAS ANDREWS: That's fair to say. I think, I think the lowering it to 12 is an-- is a example of the situation that Omaha has experienced in 2022. That's what, that's what I can testify to, is obviously, remember the Omaha Police Department. We haven't seen any cases lower than those ages. So.

WAYNE: Thank you. Well-- nevermind. I need a county attorney to answer that question. Go ahead. Thank you. Any other questions? Seeing none, thank you for being here.

NICHOLAS ANDREWS: Thank you.

WAYNE: Next proponent.

WILLIAM RINN: Good afternoon, Chairman, and thank you, Commissioner. Members of the Legislature, committee, my name is William Rinn, W-i-l-l-i-a-m R-i-n-n, and I am the chief deputy of administration for the Douglas County Sheriff's Office. I'm here on behalf of Sheriff Hanson and the Douglas County Sheriff's Office, as a proponent of LB620. We have submitted both online and here with regard to our comments. I'll just try-- and it's pretty easy and I'm sure it's very frustrating for some of the bodies and persons that are advancing bills to, to get away from testimony that is not a bandwagon effect. It certainly can be frustrating on both sides of the equation. So we try and offer as fresh a perspective with the Sheriff's Office as we can, with regard to the-- to our reasonings for being a proponent of something. With regard to Senator Blood had asked me a question here, some weeks ago when I was here, about what is the Sheriff's Office doing with regard to getting involved in the juvenile program and juvenile advocacy? We have expanded a couple different programs, both through grant work and changing our budget, so that we can have some

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specialized units, a special operations group, a juvenile investigative unit, to better address some of those areas of juvenile running, the detention programs, the lack of detention or, or some of those monitoring programs that simply were-- this-- current systems are overtaxed to take. The-- so for this aspect of this legislative bill with regard to having the hearings and having to air out a little bit more and on a little more basis, the sheriff's office has some companion legislation, in LB110 on there, that they can get involved and offer some influence, some subject matter expertise on some of these hearings, to do threat assessment and, and tracking on a little more, a little more regulated to keep the, the juveniles and the community a little bit more safe. And from that aspect, which is where we get most of our support. And for the-- as for the other aspects, you know, once, once something is out in a bill and on paper, I'm a bit of a, a student of communication, it's kind of like being first in line. Some of the times when we do these testimonies, it's already on the bill, it's already written and it's already been discussed. So I'm kind of new to this game a little bit, not new to law enforcement. I always encourage and want to get to know as many senators as we can so that we can get on paper and with some of these. We're not always going to agree. We're not always going to agree on one specific bill. But if we can move in the aggregate, forward, I think we'll be better off.

WAYNE: Any questions from the committee? Senator McKinney.

McKINNEY: Thank you. Thank you. So if this bill passes and after a period of time, it is shown that the effects of this legislation has disparate impact on black kids in Omaha. Will the Sheriff's Office come down here to advocate to reverse the changes that you're advocating for in this bill?

WILLIAM RINN: I'd say that we would have to look at it pretty closely, wouldn't I? And, and look at what the data says. I can't sit there and say I would or wouldn't, but I'd be irresponsible to sit there and say I, I would.

McKINNEY: But if it is shown to have negative impacts, you'll just oh, maybe we'll consider it or maybe we won't consider it. You won't come down here and say we need to make this change because it's negative-- negatively impacting the community.

WILLIAM RINN: I guess I'm gonna have to say no, because I can't give you a definitive answer right now.

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McKINNEY: And that's my problem. Thank you.

WILLIAM RINN: Sure.

WAYNE: Quick question from me. So and this is not really directed at you, it's directed at the county attorneys--

WILLIAM RINN: That's OK.

WAYNE: --who aren't here. But I forgot to ask it, so we are just going to go with it. It's one privilege of being a Chairman, I guess. The question is so like first-degree murder, right. There's nuances to first-degree murder, because underneath all first-degree murder, you could have an aiding, an aiding and abetting conviction. That's still first-degree murder, but the theory is you aided and abetted.

WILLIAM RINN: Absolutely. Yes.

WAYNE: Do we think some juveniles at 12-- I mean, how are we going to deal with the nuances of that? Like, I'm in a car riding. And then a murder happens. I understand when you're 23, 24, and you're going to rob a bank with guns, a murder could happen. But I don't know if a 12-year-old who's going to do a mutual fight at Wal-Mart in the parking lot--

WILLIAM RINN: Sure.

WAYNE: --has the same kind of mindset. Like that-- it's those nuances I'm trying to figure out how we get there. You have any--

WILLIAM RINN: Well, it certainly is and, and was my job, was/still is my job, to know the elements of any law--

WAYNE: Right.

WILLIAM RINN: --as well as I can, from my non-law background, but still, we're certainly responsible for it. That's where we get on the phone with Mr. Kleine's office and his-- the different units that he has and say, what do you think here? This is what we have. We certainly talk those things out as best we can before we pull the trigger. No-- bad reference. But until we, until we get to that phase where we are doing that, is we don't want to-- and I know I can only speak from the Sheriff's Office aspect. We don't want to flood the system or overburden the system with those things when we don't have to.

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WAYNE: Right.

WILLIAM RINN: You're, you're probably right. It is a better-- how we get past that, I don't know that I don't, I don't know that I know that answer.

WAYNE: And I don't think you could probably write a law that's perfect enough to cover that scenario, but it does-- just-- this part of this nuances of a 12-year-old versus-- and even a 14-year-old. But that law has already passed, so I can't really change that. But, appreciate it. Thank you.

WILLIAM RINN: Sure. Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here. Any other proponents, proponents? Shifting to opponents? Opponents? Welcome back.

JULIET SUMMERS: Good afternoon, Chairman Wayne, members of the committee. My name is Juliet Summers, J-u-l i-e-t S-u-m-m-e-r-s. I'm the executive director of Voices for Children in Nebraska and we oppose LB620. All children, even when they've committed a serious crime, deserve the opportunity to grow and change. Today is really-- the Judiciary Committee is asking that question of when and how do we let kids be kids when they come in contact with our justice system in a couple of different ways. And I hear this committee and all of us wrestling with that question today. We believe the criminal justice system is no place for kids. And even those who've committed grave offenses deserve the chance to access rehabilitative services and supervision that will allow them to grow into healthy adults. There's been some questions about the history and why we've set 14 as our, as our minimum. In 2014, the Legislature passed LB464 into law, which required that nearly all cases, in which minors age 17 and younger are charged, that those begin in juvenile rather than criminal courts. There absolutely were discussions at the time of the hypothetical or real 13-year-old murderer and the Legislature settled on 14 as an appropriate age to set that boundary. The bill was based on years of research showing that charging minors as adults does not reduce violence or other antisocial behavior. It does not make communities safer. It is more likely to encourage it. Exposing minors to criminal charges and incarceration leads to increased recidivism, increased risk of prison rape, suicide and other dangers and it infringes on parental rights and responsibilities to hold youth accountable and support their development into law abiding citizens. I would note

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there's been some questions, also, about the data, overall, that since the passage of LB464 in 20-- 2014, our youth crime rate here in Nebraska, overall, has continued to fall. So in 2010, there were over 14,000 youth across Nebraska who were arrested on various offenses. And in 2021, the last year for which we have full annual data from the Crime Commission, that had dropped to just under 5,000. So recognizing that we are seeing a spike, a bubble, for particular types of offenses in Omaha, the story of the last decade has been a real success in moving that pendulum towards science and understanding of youth development. Scholastic Books recommends Percy Jackson or the Babysitters Club for a 12-year-old. And in seventh grade, they're only starting to learn algebra. A 12-year-old who's committed one of the acts described in LB620, which is more than just murder-- I'm going to be out of time, but I'd love to talk further about that if there are questions. They are still a child. They are all possibility. And facing the aftermath of an offense like this is not easy, especially when it stands in contrast to our expectations for children. So we are not here to minimize the impact of these offenses and the harm they do. But we are the adults, so we bear the responsibility to see through those actions to the child underneath. I'm out of time, but I'd be happy to answer any questions.

WAYNE: Thank you. Any questions from the committee? Senator Blood.

BLOOD: Thank you, Chair Wayne. Thanks for coming in today. So I'm glad you said LB464. I saw it was the Brad Ashford bill, right.

JULIET SUMMERS: That was.

BLOOD: I remember that. So and maybe you don't know this answer, but this-- I had actually wrote this on my pad before you even said it. So I'm curious, do you know what was going on around that time when it came to juvenile justice? I mean, clearly you knew the number was high, but what was going on at that time that encouraged Senator Ashford to move forward on that? Wasn't he chair of Judiciary during that time, too?

JULIET SUMMERS: Yes, Senator Blood. And I started at Voices at the end of 2014, so I just missed getting to work with him. But I did work with Senator Krist, who had also been part of that, Senator Lathrop, at the time. Broadly speaking, both nationally and in Nebraska, over the late 2000s to 2010s, there was this better understanding of youth development, brain development, brain imaging that showed what the prefrontal cortex is, is doing in those adolescent years and applying

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that science, that scientific understanding of youth development to our justice systems. And then the United States Supreme Court was a big part of that, in holdings around the death penalty, life without parole, etcetera. So in-- simultaneously, the Nebraska Legislature was being asked to consider the question of life without parole for the first time. It was the same group of senators working on it in this committee-- were really grappling with what all we had learned, since the nineties, about children and about children who commit crime and how much of it is-- can be prevented, through strength-based programming, through upstream prevention. And also, how the vast majority of kids-- 95 percent of kids who commit a criminal offense in their teenage years, if we did absolutely nothing, they would just age out of crime. They would just age out of it, because that's how the teenage brain is and that's how teenagers are. So again, that's not to minimize the gravity of the possible offenses we're talking about here and the harm that is committed. It's to say that we also have to look at the individual and consider their culpability, their ability to to really reason and understand the consequences of their actions.

BLOOD: Thank you.

JULIET SUMMERS: Yeah. Thank you.

WAYNE: Any questions from the committee? Do you know what jurisdictions the juvenile can waive Miranda? I, I don't-- I'll ask Spike, so he can-- he has time to Google it before he comes up.

JULIET SUMMERS: What-- in what jurisdiction a juvenile can waive Miranda?

WAYNE: Yeah.

JULIET SUMMERS: So there's been some bills on this, too and, and how we want to protect that. My understanding is, at any age we allow them to, if the court will later find that it was knowingly, intelligently, voluntarily done. And there are certain, there are certain questions that the court asks in that, when it's applied to minors.

WAYNE: So we won't let a 12-year-old vote, we won't let a 12-year-old enter into a contract, but they can waive a right whether to incriminate themselves.

JULIET SUMMERS: That's right.

WAYNE: Interesting. Senator DeBoer.

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DeBOER: You have a lot of data always and I appreciate that about you. You may have said this and I didn't hear it. Do you know what other states' ages are, for that break between-- did you say it already?

JULIET SUMMERS: I did not. I was going to let Spike do something, but he's got a whole printout for you. The-- of all the states and what their age is for transfer or bind over, but the average is 14. Most states are 14 or higher. There are a handful of states that are lower. This would be moving in a backwards direction.

DeBOER: OK, I will wait for Spike so he gets to do something.

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

JULIET SUMMERS: Thank you so much.

WAYNE: Next opponent.

SPIKE EICKHOLT: Good afternoon, members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in opposition to the bill. You've got my statement. You're also getting a handout that Ms. Summers just referenced earlier. I'll talk about that in a bit. We've talked-- the proponents and the introducer have talked about murders. But if you look at page 2, lines 7-9, this bill does much more than that. This exposes to criminal prosecution children, age 12 or older, for a whole series of felony offenses, not just murder, not just homicide, all the way down to a IIA felony, which is a burglary, which is a serious felony theft, which is a whole other series of crimes, not necessarily violent crimes. That's one thing that I want to make clear to the committee. What the bill does, essentially, is it just exposes a narrow-- hopefully, narrow group of children to adult criminal prosecution. It lowers the age. That's all. It does not provide services. It simply gives prosecutors an opportunity to charge youth as adults, prosecute them as adults. What does it mean if this bill is adopted without anything else? And Senator Wayne mentioned that earlier. We don't have any affirmative protections for a waiver of Miranda. We heard a bill earlier this year that was opposed, that wouldn't even let law enforcement lie to children when they're interviewing them. This would expose children from ages 12-13 to be lied to by cops and face criminal prosecution. We heard a bill earlier today that would impact as well, and that is if a child is charged as an adult, found guilty of a Class IA or a IB felony, they could get 90

to life. That's what this bill would do. LB194 is another bill that has some connection to it. And that is if we do charge a 12-year-old as an adult and we don't pass LB194, well, then we're not going to have that child evaluated because we're not going to have any kind of assurance that the admissions that child makes to a professional won't be used against them in the transfer hearing or even in the trial. Other states do have a set age. And you're, you're looking at a summary that I got. It's a 5-page printout from the Interstate Commission for Juveniles. And if you look at the center column, if you will, there's like five columns that go up and down. That's the age that a juvenile case can be transferred to juvenile court or transferred to adult court. Most other states start their juvenile prosecutions for all crimes or all offenses in juvenile court. We don't do that necessarily. But as you'll see by skimming, most of the ages are 14. And as Ms. Summers referenced, some of them are 15, 16. Some of them are admittedly younger than that. Some of them have younger age, depending on the type of severity of offense, which is something that Senator Wayne asked about earlier. This, LB620, simply exposes to prosecution for a whole series of felonies for-- as adults, for children up to the age of 12. And I'll just say, if this is adopted and passed by the Legislature and I've done this for seven years, I, I can just-- and I'm not being critical, I'm just being descriptive. It won't get reversed.

WAYNE: Thank you. Any questions from the committee? Senator McKinney.

McKINNEY: Why won't it get reversed?

SPIKE EICKHOLT: Well, unless something significant changes and I'm not criticizing the committee makeup or the membership of the body. It's just-- it seems to be so difficult to either follow other states on reforming things-- and we follow states on certain things. If it's making a new felony, if it's making a new penalty, we do that very easily. But undoing something we did, trying this for a while, we'll see how it happens. I just-- I can see myself years from now, arguing in support of a bill to revert back to age 14 and facing some of the same people in this room, who will be opposing it.

McKINNEY: All right. Thank you.

WAYNE: Any other questions from the committee?

DeBOER: Oh.

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WAYNE: Senator DeBoer.

DeBOER: Since I've been on this, what are other states doing? By my count, it was nine states that have a younger age. And of those, multiple of them were 13.

SPIKE EICKHOLT: Right.

DeBOER: There were-- there's one, two, three that are 12. So we would be definitely in the minority there. Are these issues happening where, you know, we're hearing about kids committing pretty heinous murders at very young ages. Are those happening in other states?

SPIKE EICKHOLT: I assume so. You know, these, these things are horrible, obviously. I'm not trying to minimize the significance of them. They do get a lot of press and I assume they happen-- if they happen in other states, they also get press there, too.

DeBOER: How are they dealt with in other states?

SPIKE EICKHOLT: Well, you did mention that there are lower ages. And even though we remain opposed to the bill, what other states do, is they do have some exception for that minimum age for more serious crimes. In other words-- because LB620 does much more than murder. It does, really, any significant felony or even not-- even insignificant felony, for that matter. It exposes that-- those-- that window of youth to adult prosecution. I-- admittedly, I don't know what other states are doing to address this. Ms. Summers explained that if you look statistically, if you look in the, in the aggregate, we seem to be doing some things right in our juvenile system. Some of the reforms that we've made seem to be having an impact, on lower recidivism, lower youth involvement. I think, not this year but last year in the State of the Judiciary, the Chief Justice talked about that. And some of it is from, probably, what Senator Ashford started, with LB464 and some of the science and some of the reforms that he really led on, picked up by Senator Krist, and then Pansing Brooks, to sort of do what we've done.

DeBOER: OK. Thank you,

WAYNE: Senator Geist.

GEIST: Just listening to all this, I'm just wondering then, with, for instance, with this young 13-year-old who very deliberately planned and executed this victim in front of his family member. And then, the,

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the thought that the penalty for this individual is so light, compared to the value of the life that he took. It just seems there needs to be an alternative remedy. And I'm sure that's what this is about.

SPIKE EICKHOLT: Right.

GEIST: And maybe, a-- definitely, a one-off or a two-off or hopefully, not the beginning of a trend, but it does seem that we need an alternative to aging out at 19 for something that's this serious. Do you agree with that?

SPIKE EICKHOLT: I, I do. You know, we've supported bills that have extended the age of jurisdiction for juvenile court beyond 19. And I think Senator McKinney or Senator Wayne, excuse me, did a bill, actually, last year or the year before, that had it. And I can't remember if his bill actually targeted these types of serious felonies for those. That's one way to look at it. It was still allowed to have youth be treated as children, but like you said, not just have a 5- or 6-year term of jurisdiction for a court, have something more meaningful. I mean, obviously, nothing's ever going to undo the horror that happened to the family, regardless of the child-- the child's sentence of life in prison or not. But it is insulting, it is upsetting to have a child age out, years later. That's one way of looking at it.

GEIST: I certainly support the idea of redemption and that kids grow up and make better decisions. This one's pretty horrid. It's, it's up there and I'm, I'm just struggling with the-- if not this solution, what is a good solution? And anyway, thank you for your input.

WAYNE: I mean, in fairness, there are cases where 14-year-olds are charged in juvenile court, but the family say that's the wrong charge, too. So.

SPIKE EICKHOLT: Right.

WAYNE: I mean, that, that goes back and forth all the time. So where-- kind of the same question. Where is the ACLU or where would-- you probably can't answer. You probably need to go back and talk [INAUDIBLE]. But if there was a more narrowing of first-degree, second-degree, manslaughter, but the rest of the felonies are off the, off the table or--

SPIKE EICKHOLT: And that-- you know, that would be something, I think there'd be a lot more-- for the defense attorneys, particularly. I

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mean, we get the most serious cases. We appreciate the significance. The concern we have with the bill as written, is it captures so many felonies, so that's one thing. I think what you mentioned earlier to somebody in a question was also good. And that is, maybe, having a lower-level tier penalty scheme, if you will, for ages 12-14 or something like that or 15, similar to perhaps, what Senator Day's bill was, earlier. That would be helpful.

WAYNE: Thank you. Any other questions from the committee? Seeing none, thank you for being here. Next opponent. No, no, You got to, you got to fill out the blue testifier sheet. I'll get it afterwards. I left that part out when I was talking to you in the hallway. Sorry.

TRISTAN SCORPIO: Good day, everyone.

WAYNE: State your name and spell it for the record and we'll fill it out at the end.

TRISTAN SCORPIO: Yes, I'm city of Omaha general contractor--

WAYNE: You have to speak up because these are not very good mikes.

TRISTAN SCORPIO: I'm city of Omaha general contractor, 1701413. My first name is Tristan, last name Scorpio. So the Department. Justice--

WAYNE: Can, can you spell both your first and last name?

TRISTAN SCORPIO: Oh. T-r-i-s-t-a-n, last name, S-c-o-r-p-i-o. I registered my business and after registering, I would say that the Department of Justice reached out to me. They want me to develop, in about 10 different counties throughout, throughout Nebraska, work, work release housing for around 50 inmates, men and about 10 women. As a finisher in the construction industry when it comes to allocating funds towards the true solution, the, as you say, alternative remedy that what needs to be implemented, my real estate development construction contentials [SIC] allows me to complete the real estate, the real estate development project in a quarterly basis. What does that mean? If I get funded by next quarter, two quarters later, all facilities in nine different counties will be completed. And they will exceed structural compilities. They will support [INAUDIBLE] structures, they will support many different innovation to attract businesses and set a true platform that should be happening with the Department of Justice. Now, there's new revenue structures that I have created with the Department of Justice, with, with the Department of Justice that is designed to create jobs and create more revenue and

stop destroying the innocence of 14-year-old children. Yes, they commit murder, but how many times do they call Child Protective Services? How many times do they get their cries ignored? These are children. They can-- this is-- for the last few years, we're pushing let's make America great. But we can't get into a simple fist fight anymore. Children can't just get into a fight. So I have different bills that I wanted to create, that the state of Nebraska, hopefully, could adopt, that will conclude of making money. Children and people would gladly pay police department and law enforcement to do an arranged fight. People would pay for that video evidence. People would pay, like they do in other states, \$5 to do background reporting checks, like they do in Jacksonville, Florida. There's different ways of revenue structures that I've created for the Department of Justice and for Department of Corrections that all conclude, making jobs for the state of Nebraska, solutions for these victims and not continuously put them into a human trafficking situation. Because today, honestly, hearing what was going on, I am-- I just-- like-- children, you know, 14-years-old. They can't get into a fight anymore without their whole lives being ruined. And all for what? All because of something superficial. Children need to be children and we're destroying their innocence. Period. So that's just me and my opinion, especially when I present to you, as a general contractor, as someone who will be a licensed Class A general contractor, construction persons, for the state of Nebraska, I will create appropriate revenue structures that support the appropriate alternative remedy for your solutions. Thank you.

WAYNE: Thank you for your comments. Any questions from the committee? Senator McKinney.

McKINNEY: Thank you. And I don't know if this is a question. It's kind of-- you kind of hit on where I always kind of get on this topic or these topics. If the individuals who say they care about these kids and what they do or the victims and everything like that, then they would be strongly advocating, always advocating, that these kids don't grow up and live in poverty, their educational outcomes aren't horrible, their-- they have access to the basic necessities, they-- just all these things are met. Because that's what's missing here. These kids aren't born murderers. They're not born criminals. They are-- as, as much as you all people would like to not believe or believe, you're essentially born into a box: a box full of poverty, violence, addiction, drugs and all-- everything else. And it's hard to get out of that. And it's not to excuse the actions, because the actions can't be excused. But the, the, the fact is, if we eliminate

the environment in which breeds these type of situations, we don't have to do these type of things. But there is not a willingness from society to eliminate that box, to really eliminate poverty. We would rather spend almost \$1,000,000,000 to build a prison instead of putting \$1,000,000,000 into that box and changing that environment that will prevent the prison, all, all the way. And that's my issue, is these county attorneys come in here and advocate for these increases in penalties. They always say no. But very few times do you actually see them advocating to eliminate that box, eliminate that environment. And that is the problem. They don't really care about these kids. And I hate that they come in here acting like they do. And that's my issue. And I thank you for your testimony.

TRISTAN SCORPIO: It's that narcissistic feed they look for, so they had to create revenue structures that ensure that. And that's very prevalent in their actions, in their statements today. Just as a citizen, if they really wanted to do things, I would collaborate with them as a consultant. They can gladly pay me the consultant fee, because the revenue structures I've created, solely for the Department of Justice, is designed to stop taking 14-year-old children and meeting another person that's going to victimize them. That's all it is. You're taking them from one situation and saying, oh, well, just because your daddy touched you a little bit, just let it go. It's OK. And then, you snap, as a 14-year-old girl, because he wouldn't stop touching you. And then, you have now, a whole department of correction individuals who will touch you gladly and nothing's going to happen to you. And then when you're 19, we're still going to harass you and mess you because we can. So it's a constant reminder that, yeah, these kids did this, but what provoked them? Did we really provide the America great way of kids can get into a simple fist fight like kids anymore or no? If kids get into a fist fight, what happens to them? They turned into lifetime now criminals, for litigation purposes. It is disgusting for me as a person. I don't have children. But I wouldn't want to-- I would get my tubes tied, cut in a heartbeat if, if I had to raise my children with this potential obstacle for getting into a fist fight over Sally's hair was red versus pink. And you girls were having a girl moment? So that's, that's just me. So I create revenue structures. If they want to handle business and stop with the narcissistic ways of operational revenue structures of utilizing bill as a way to get in to victimize people, then yes, sir, Senator McKinney. I would be more than happy to step up to the plate and present them with the opportunity that would definitely make any person who has an accounting, commonsense knowledge, more than happy,

because it achieves a bottom line. Revenue structure, balance, making America truly great again, by implementing true ways of doing things. And that's just the bottom line for me, as it's really hard for me to see 14-year-olds as a victim. But for me, as a simple, hardworking person, their titles don't allow them to have to deal with the real reality of the real world people. They're not on the production lines, they're not on the farmers. They are socializing and utilizing the privilege of their titles.

WAYNE: Thank you for your--

McKINNEY: Thank you.

WAYNE: Thank you for your testimony today. Any more questions from the committee? Seeing none, thank you for being here.

TRISTAN SCORPIO: Thank you. It was by a grace of Jesus, because I was not expecting this, but it's-- end of the day, revenue structures.

WAYNE: Any other opponent? Any other opponent, opponent? Anybody testifying in the neutral capacity, neutral capacity? Seeing none, we have two letters for the record, one in support, one in opposition, and one mistake by Senator McDonnell by sending support. OK.

McDONNELL: Welcome to run those numbers, though. Thank you, Chairman Wayne, members of the committee. I know this is a difficult and a sad discussion. We've had people that have been murdered. The people that have committed those crimes are younger than 14. You know, what do, what do we, what do we do next? As County Attorney Kleine testified, you had one that was-- an individual that was 13 that, that, that planned and executed that individual. We are, we are faced as, I believe, with lawmakers and, and these decisions aren't easy. But I believe one of our, our main reasons for, for being here is for public safety. And how do we approach public safety? And I want to emphasize this bill does not automatically say that a 13-year-old has to be tried as an adult and go to adult court. That's not the case. It also talks about juveniles that are being detained within 24 hours of judicial-- 24 judicial hours, having that individual in front of a judge and what's the best avenue for that, that individual. We are here and, and it-- I don't ever want to forget those, those victims, the families that have come to us. And I believe you've all heard their pain, their stories and they want, they want justice. And at the same time, how do we look at that and make sure that that-- we're not throwing away an individual that made an awful, awful decision? But

still, there is those individuals that it wasn't just a moment. It just wasn't a mistake. It was a pre-planned and they planned that murder and they executed that person. And I know this committee faces this issues daily. Serving on Appropriations, we, we talk about, you know, dollars and we talk about how is that dollar going to impact our state in the, in the greatest, the greatest way. And how do we invest those dollars from our taxpayers? And I know this isn't an easy bill that I'm bringing to you. I appreciate the discussion today. I appreciate the people that have come and testified, subject matter experts. And I, also, will follow up with Senator McKinney on some of those statistics. But again, I believe we all, we all agree on this: one murder is too many. And how do we prevent that next person of possibly losing their life and, and put us in a better position as, as a community for our public safety? Here to answer any questions,

WAYNE: Thank you. Thank you. I'm not seeing any questions from the committee. We'll close the hearing on LB620.

McDONNELL: Thank you.

WAYNE: And that will close our hearings for the-- no. We got on one more, LB717, Senator John Cavanaugh. Welcome back to your Judiciary Committee.

J. CAVANAUGH: Thank you, Mr. Chairman. In trying to find-- thank you, Chairman Wayne and members of the Judiciary Committee. For the record, my name is Senator John Cavanaugh, Jo-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. And I'm here introducing LB717. I'm having the clerk distribute an amendment that contemplates the conversation I had with DHHS. And so, I'll try to be as brief as possible. I watched the last hearing and there's a lot of similar-- this, this is a, a different approach to the same issue that Senator McDonnell was attempting to address in the last bill. And so I don't need to really go into the details about why this is important. So I'll just kind of lay out the differences. What my bill does, what LB717 does, is creates a opportunity for the county attorney or prosecutor to transfer a case from juvenile court to adult court in the instances of a homicide. So a, a, a Class I-- let's see, I should look at the exact wording that we have here, but allows for the transfer for those individuals under the age of 14. So I didn't put a bottom age on it because I wanted to allow the committee to, kind of, put that boundary itself. And then additionally, the change here is it allows for those individuals, who are in juvenile court on a homicide, to have the jurisdiction of the juvenile court be extended to the age

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of 25. This would only apply to those individuals that are in juvenile court on homicides, regardless of what their age was when they came into the juvenile court. And it-- that's the reason for the amendments. The Department of Health and Human Services came and pointed out a problem with that requirement, which would have allowed for individuals 25-- up to the age of 25 to be held in juvenile facilities with other juveniles. And that doesn't seem like a good idea. And so that amendment that I circulated would solve that problem. And really, what I'm proposing here is a beginning of a conversation. So you heard the issues here about prosecutors need the discretion to file these cases in adult court. And then you heard, I think Senator McKinney asked County Attorney Kleine about if they ever choose not to file some. And he pointed out a case of a 14-year-old that they filed in juvenile court, based on the circumstances. And so what they're asking for in Senator McDonnell's bill is some sort of discretion. My bill offers that same discretion that they can pursue that transfer from juvenile court. And what my bill does is recognizes that we should approach younger people differently, which is what the law currently does. People under the age of 14 are not allowed to be charged in adult court, because we recognize that their brains have developed differently, that they-- so they should be treated differently by the, the system. And so what my-- the proposal I have here and I'm sure you'll hear opposition to it, probably from both sides on this one. But what it does is gives the court the option, the prosecutor to pursue the transfer and then the court that has jurisdiction over that rehabilitation, to make a determination if this case is one of the outliers. So it starts in juvenile court. If this is one of the so egregious cases-- and I don't see Mr. Dempsey here still, so I assume he's not going to testify on this one, but maybe I missed him. But I heard the case-- the story that he laid out and that did sound like a pretty egregious case and one that if it started in juvenile court, would be one that I would imagine a judge would find was cause to transfer to adult court. And so, I'm just trying to find-- make another proposal, an option, that this committee could use to address some of these issues. I would say that the proposal of taking the jurisdiction up to age 25 in this bill is really a discussion point and not even-- aside from the amendment that I've got here, not ready for implementation. If we were going to implement an expansion of the jurisdiction, it would probably take more work than this bill has undertaken. That said, I wanted to make sure that this-- the committee had every option in front of it when discussing how to address this issue. So I'd be happy to take any questions.

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WAYNE: Senator DeBoer.

DeBOER: What's the practical difference between starting a case in juvenile court and charging it in adult court? Right. So both of these bills-- the last bill was it starts-- it can be charged, originally, in adult court and can be taken back to juvenile court. This one is, it starts in juvenile court, but can be taken up to adult court. So what's, what's the difference?

J. CAVANAUGH: Well, that's a very good question. Thank you, Vice Chair DeBoer. And so, I think that there's a certain amount of momentum. You know, that you have to-- even though the burden is on the state, in a transfer hearing, to deter-- to establish why the case should not be transferred from or should remain in adult court, that same burden is in juvenile court, where they would have to have the burden to prove why it should be transferred from juvenile court. But even with that standard, I think that judges look at things a little differently if you're asking them to make a change. They're going to be a little bit more hesitant, hesitant to make a change than they are to leave it as is. And so this would basically, even though the burden is on the state in both cases, I think that it would raise this-- the raise-- well, it would raise that burden a little bit and decrease the likelihood of a transfer. And so, we would only be transferring the most egregious ones. If you're starting with original jurisdiction in adult court, I think that you're going to find cases that would stay in adult court, even if they had started in juvenile court, would not have been transferred to adult court. And it is ultimately having the court that has the expertise on what services are available, has experience-- more experience with these individuals being young people, to make the determination about whether juvenile court is the right place for them, as opposed to a district court judge who's seen all kinds of other cases and has less experience.

DeBOER: So it's a little bit of a burden shift, do you think, that's the key difference?

J. CAVANAUGH: I think-- not, not on paper it's not. But it would be in effect

DeBOER: In, in practical.

J. CAVANAUGH: I think that-- probably true.

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DeBOER: We've been doing a lot of de facto de jure today. OK. Thank you.

WAYNE: Senator McKinney.

McKINNEY: Thank you. Senator Cavanaugh. Something I was sitting here struggling with and it's not like these are the same things, but what I struggle with is if a 14-year-old is caught with a bottle of alcohol, we treat him as a kid and a minor in possession. But if that same 14-year-old the next day, ends up committing the offense of murder, we say that, that, that 14-year-old is an adult and we need to treat him as an adult. So why is it one day, this 14-year-old could be treated as a minor, but the next day we want to say, oh, now this 14-year-old, because of this, is an adult. Doesn't really make sense.

J. CAVANAUGH: Yeah. I would agree with that statement. And I would say, I mean, we have a long history of that, that bifurcation that is not necessarily the right thing to do. I guess my answer would be I'm not seeking to solve that problem at the moment, but I think that there is a logic to starting all cases in juvenile court and treating kids as kids, until we've established otherwise. And certainly, kids engage in adult conduct. And that's one of the reasons we charge them as adults. But I think we are too quick to say, by virtue of the fact that they engage in adult conduct, that they should be treated as adults, because we are not fully considering the fact that their brains are different. And I think the science shows the brains are different until 25.

McKINNEY: Because something else I struggle with is they testify and say, oh, these younger kids are being put up to do these crimes by older people, which means they're being manipulated and talked into doing these things. So it's possible that they don't even understand what they're doing, because they're being manipulated. But on the other hand, we want to say they acted as adults. So how can they-- do you understand? Like, it doesn't make sense that they argue these kids are being put up to do these crimes due to manipulation or peer pressure, but then say, oh, but they're an adult, too. It doesn't make sense.

J. CAVANAUGH: Yeah. I think in the argument that kids are being manipulated, I would say that another way to say that would be that kids are being victimized--

McKINNEY: Exactly.

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J. CAVANAUGH: --and, and, and used to commit crimes. And then they're being penalized in the criminal justice system. So they're getting, basically, whacked twice for something. And, and I'm, I'm not advocating that a kid who, even in that situation, should not be in the, in the system and have the services. I'm just saying that we should take a look at them, from the perspective of the juvenile court, first. And then, make a determination if it's one of these circumstances that should be handled in adult court.

McKINNEY: All right. Thank you.

WAYNE: Any other questions? Seeing none, thank you for being here. Are you going to be here for closing?

J. CAVANAUGH: I will stay. Yes.

WAYNE: First proponent. First proponent. Spike, proponent? No. Mr. Kleine, proponent? OK. We'll move to opponents. Opponents. Both sides sit down.

DeBOER: Uniting sides.

WAYNE: Welcome back, Mr. Kleine.

DON KLEINE: Thank you, Don Kleine, K-l-e-i-n-e, Douglas County Attorney. Also, remember the County Attorney's Association, I'm here as a representative. And I, I would agree with, with Senator Cavanaugh that this, I think, to me, looking at it, is more of a discussion bill. Because I don't see how that could even be implemented at this point in time with the passing. I think there needs to be a lot of talk about that. When you talk about changing the age of majority, allowing the juvenile court to have jurisdiction until people are 25, juvenile court doesn't even have the ability to handle that at this point in time. So I'm, I'm opposed to this bill as it's written. I understand that there's been-- there's always been a question about jurisdiction of juvenile court being extended, especially when we have people that are 16 or 17 years old. It takes a while to do the case-- their case-- adjudicate their case. And all of a sudden, their-- the court can't even do anything with them anymore because of their-- they've, they've term-- termed out. So I understand that part of it. And I would be happy to be part of a discussion about that. I disagree with the idea of starting cases in juvenile court in totality. I don't think that's a good idea. I think leaving the discretion with the county attorney's office to make that determination and then a judge

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in the district court can, can overrule that and send it to the juvenile court is a better way to go, because of the kinds of cases that we're talking about here. So I'm, I'm opposed to this as it's written. I don't think it's realistic at this point in time, but be happy to be a part of any discussion about changing that jurisdictional time. I'll be happy to answer any questions.

WAYNE: Senator DeBoer.

DeBOER: Just keeping my streak.

DON KLEINE: Sure.

DeBOER: All right. So I asked Senator Cavanaugh on this question. I'll ask you, as well. What do you think is the practical difference? Because it seems like, you know, if the burden is always on the state to show that it either shouldn't leave juvenile court or shouldn't go to juvenile court, what is the practical difference between where it starts out? You say it should--

DON KLEINE: Or should be, or should-- the burden would be on us, also, if it wasn't juvenile court, to have it come back to adult court.

DeBOER: That's what I'm saying. So like, what-- you say they shouldn't all start in juvenile court. He says they should all start in juvenile court. But if the burden is always on you to either get them out of or keep them in juvenile court, what's the difference between where they start? Why does it matter where they start?

DON KLEINE: Well, I think it's, it's very important as to where they start because of the nature of what we're talking about here. The juvenile court normally doesn't handle first-degree murder cases or second-degree murder cases or--

DeBOER: Sure.

DON KLEINE: --those kinds of things. They don't even have-- they don't deal with the elements of those crimes. They don't deal with all of [INAUDIBLE].

DeBOER: But if they-- but they handle the transfers, rather, they start there. OK. Maybe that's the difference. Who handles a transfer-- if it starts in juvenile court, who hears the hearing on the transfer?

DON KLEINE: The juvenile court judge does.

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DeBOER: And if they start in adult court, who hears the hearing on the transfer?

DON KLEINE: The district court judge would hear-- have the hearing.

DeBOER: OK. So that's the difference.

DON KLEINE: Yes.

DeBOER: That's what I wanted to know.

WAYNE: Sorry. There is no transfer up right now. I just wanna make sure I'm clear here. You can't start in juvenile.

DON KLEINE: There is a transfer from adult court to juvenile court.

WAYNE: Right, to transfer it down.

DON KLEINE: Well but I [INAUDIBLE].

WAYNE: But we don't, we don't currently-- yeah. But

DON KLEINE: Sixth floor [INAUDIBLE].

WAYNE: Sixth floor, third floor, yeah.

DeBOER: All right.

WAYNE: So, yeah. It's only one way right now.

DeBOER: So it's only one way. So there would be no transfer to adult court from juvenile court. Got it.

DON KLEINE: Yeah, because it started in adult court.

DeBOER: So if there were a mechanism to go from juvenile court to adult court, then would there be any practical difference between starting in juvenile versus starting in adult?

DON KLEINE: I think there's a difference because the district court handles those, those more serious cases honestly, than the juvenile court does to begin with. And so-- and the district court's aware of what services are available in the juvenile court system. You know, they could put people-- they could put a juvenile on probation.

DeBOER: So.

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DON KLEINE: And they are well aware of what the, the juvenile probation officer has, as far as abilities to, to provide services for that juvenile.

DeBOER: So are you saying they should all start in adult court?

DON KLEINE: That's-- you know, I think we should have the jurisdiction, jurisdiction-- we-- I sent cases to juvenile court all the time.

DeBOER: So you're not saying they should all start in adult court?

DON KLEINE: No.

DeBOER: No, you're saying--

DON KLEINE: I'm not. But I'm saying the discretion should be, to begin with, with the county attorney. And then, if we do it in adult court, then the judge has the ability to overturn our decision and send them to juvenile court.

DeBOER: What is the practical, the practical difference between you deciding this should start in juvenile court and you deciding it should start in adult court, but the judge deciding it should start-- do you think the judges give deference to your decision, I guess.

DON KLEINE: Well, I suppose if it starts there-- there's a statute that says, here is what a judge is to look at--

DeBOER: Yeah.

DON KLEINE: --to make a determination as to whether this case should be in adult court or should be moved to juvenile court-- criminal history, background--

DeBOER: How often does, how often does a judge, like, percentage-wise, if I have a transfer motion, how often does that transfer motion down to juvenile court get to hap-- get--

DON KLEINE: I-- I'd probably say eight out of ten times, it's going to stay in adult court.

DeBOER: OK. OK.

DON KLEINE: But there are times that they transfer.

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DeBOER: So there seems to be like, a kind of a deference given to the county attorney for determining whether it should be an adult or juvenile court. Or do you think-- it's just that you tend to put--

DON KLEINE: Well, they know, they know we send cases to juvenile court, too. So I think that sometimes they understand why we made the decision.

DeBOER: Got it. Got it.

DON KLEINE: So.

DeBOER: Yeah. All right. Thank you.

DON KLEINE: Sure.

WAYNE: I will say, in fairness to Mr. Kleine, the cases that are typically in adult court and they would fight-- and this is Douglas County and I would say Sarpy, too, in deference to Lee Polikov, just because I practice in both. They are usually crimes of, of violence that stay in-- stay. So-- or-- I don't know. Is robbery considered violence? I always get that one confused. But anyway, but yeah.

DON KLEINE: We also have those other alternatives. That's why you have young adult court. That's for young people that don't maybe fit in the juvenile court system. And we still don't want them to get a penalty. So they go and they send them to young adult court. And they have the opportunity to go through a process that allows them not to get convicted of a felony. So there's other-- there's even other alternatives that we have. [INAUDIBLE] diversion.

WAYNE: Very true. But that's unique, that's unique to Douglas County. Sarpy County and Lan-- like, there are counties that just don't have the resources.

DON KLEINE: Right.

WAYNE: Any other, any other questions? Senator McKinney.

McKINNEY: Thank you, Mr. Kleine. So the logical-- the, the thing that I'm struggling with and I'll probably forever struggle with it, is that a juvenile could be here one day or the same day and get caught with a bottle of alcohol and be charged with a minor possession and we treat him as a minor because he's a kid. The kid could cross the street and kill somebody and then, we say, oh, now that minor is an

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adult. That is the problem. It's that, although murder is serious, we're selectively picking when to treat juveniles as juveniles, in my opinion. Why is that?

DON KLEINE: Well, I think we agree on one thing, that murder is serious. And that's probably the reason, because of the nature of the-- of what happened. It's, it's-- what kind of activities take place. If somebody's spraying spray paint inside of the building--

McKINNEY: But the--

DON KLEINE: --[INAUDIBLE] criminal mischief, I'm going to send that case to juvenile court. If somebody takes a gun and shoots 20 times into a house and kills a 16-year-old girl who's dead there, then that's a different story, that kind of activity, that act of firing a gun into a house.

McKINNEY: Yes, the act is bad. I'm not arguing that the act isn't bad, but the circumstances in which that juvenile has come-- came from is still the same, regardless if they spray paint a wall or steal a bottle of alcohol. The, the circumstances that you would evaluate for that juvenile are all still the same. The juvenile could potentially experience traumatic situations, grew up in poverty, all type of things. That-- what I'm saying is the same juvenile that we treat as a juvenile with the same circumstances, we don't want to treat that juvenile as a juvenile when they do something else. And that's the problem.

DON KLEINE: But having a bottle of alcohol versus having a, a gun with a high-magazine capacity and shooting it into a house and killing somebody are totally different situations.

McKINNEY: But I think you're missing the-- but I think--

DON KLEINE: No, I'm getting the point.

McKINNEY: --what you're missing is the mind, the mental. Even the science says it. They're not-- and I don't know if you'll ever get it, but it's a difference. And although the crime is bad, I'm not arguing that the crime isn't bad. Kid is still a kid. That's the problem. That's why we have laws that say you can't drink alcohol until you're 21. You can smoke tobacco until you're a certain age. You can't drive a car until a certain age. We have all these things and then throw it out the window just because something is horrible. Although it's,

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it's-- we want accountability, we can't just say forget the science on, on these only.

DON KLEINE: Sure. And, and if that 14-year-old, after they're examined by somebody that says, they, they couldn't-- they didn't even know what the difference between right or wrong was or they didn't [INAUDIBLE]--

McKINNEY: But, but why not allow them to--

DON KLEINE: --in their actions then we would say they weren't responsible.

McKINNEY: --But why not allow them to be evaluated in juvenile court first?

DON KLEINE: Why?

McKINNEY: Why not?

DON KLEINE: Well, because I don't-- I think because of what they did.

McKINNEY: What are you scared of to allow them to get, get evaluated in juvenile court first? What are-- what do you fear?

DON KLEINE: Well, I'm not scared of anything.

McKINNEY: Do you fear something?

DON KLEINE: No. I, I want to hold somebody accountable and responsible for the 16-year-old who's dead in a house, who's laying there and somebody comes outside and shoots 20 times into her house.

McKINNEY: So why not-- but in, in those situations, you still could most likely get that kid transferred to adult court. So what do you fear in allowing that kid in that situation to be evaluated first?

DON KLEINE: Well, they really won't get evaluated by the juvenile court. They will just be in juvenile court. They'll, they'll probably enter them that responsible plea or not guilty plea and the case will get set for trial. Why-- so why not start at the adult court where it belongs and so that we can, we can get through that case?

McKINNEY: Because we got to treat kids as kids.

DON KLEINE: What's that?

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McKINNEY: We got to treat kids as kids. Thank you.

DeBOER: Yes. One more.

WAYNE: OK. Senator DeBoer.

DeBOER: Sorry. One more short question.

DON KLEINE: Yeah.

DeBOER: Now that I understand the situation, let me ask you, would you object to-- if we created a mechanism for transferring to adult court for, say, 12-14-year-olds? Keeping what we have now and then, creating a mechanism to get to adult court. So like a 12-14-year-old, so that the prosecutor could motion for a 12-14-year-old to go through a hearing to be moved to adult court, as opposed to-- do you see what I'm saying?

DON KLEINE: I don't, I don't understand why you think it has to start in juvenile court. I mean, I think the discretion should be with the person whose responsibility it is to prosecute people that commit crimes, to determine what court they want to start that in, for the reasons-- whatever reason that might be. And then the-- a judge could look at that and make that decision to transfer.

DeBOER: I'm trying--

DON KLEINE: But that's my-- that's our job.

DeBOER: --I'm trying to find a, kind of, a middle ground between all these different things, so that's why I'm trying to understand where the pressure points are. So some folks would say nobody under 14. I have a little nervousness about that. And you're saying, anybody in your discretion, from 12-14. I'm saying is there a third way, a middle way, that would say, 12-14-year-olds start out in juvenile court, as they would under the status quo now, but there would be an option to let the court review the case and have the court decide if it could go up to adult court, which, yes, is not your discretion. But for that very narrow window of age or maybe it's ten or 11 or whatever it is, for that narrow window of age, that there's a new mechanism that gets created to move them up to adult court, so it's kind of a middle way between the various positions. Is that something that-- is there something I'm missing there that would make that not work?

DON KLEINE: I don't think it's a good idea.

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DeBOER: OK. Because you think that it should stay with your discretion or is there some other mechanism?

DON KLEINE: Yeah. I think it should stay with our discretion. That's what my, my job is, that I'm, I'm sworn to uphold the law and file felony cases that occur in--

DeBOER: Yeah.

DON KLEINE: --Douglas County. And so that's where I--

DeBOER: Would you like it better than, than what we have now, though? If your choices were we keep everything as it is now or there's a 12-14-year-old age range, in which we keep it as it is now, but you could petition to move it up to adult court after it got filed in juvenile court?

DON KLEINE: Well, I suppose, you know, quite frankly, a lot of those things, if we had a committee that looked at the 12-14-year-old and made a decision, but that's-- I have to make tough calls and tough decisions--

DeBOER: I get it.

DON KLEINE: --just as a district court judge does--

DeBOER: I get it.

DON KLEINE: --or the juvenile court, also. So I, I think that's where it belongs. And then, I have to answer to people every four years. If people don't like the decisions I've made, they can get somebody else in office.

DeBOER: Would you agree that it's a middle way, though, or is there something really stupid about it that I just haven't figured out yet?

DON KLEINE: Well, I think the expertise of where that case should go belongs with the county attorney to begin with. And like I said, the district court judge has the ability, per statute, to say, you know what, client, I don't agree with you. This case belongs in juvenile court and they can send it up there.

DeBOER: OK.

DON KLEINE: OK.

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DeBOER: Thanks.

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

DON KLEINE: Sure.

WAYNE: Next opponent, opponent. Welcome back.

WILLIAM RINN: Good afternoon. Chair Wayne, members of the committee, my name is William Rinn, W-i-l-l-i-a-m R-i-n-n. I am the chief deputy with the Douglas County Sheriff's Office, Administration Division. I'll try to keep my comments brief. We are supposed to LB717, more in the aspect of just the ability for programming. With regard to develop-- development of individuals, we, we heard some testimony earlier about, thankfully, the one-off aspects of the 12 and 13 year olds that are getting involved and yet, those are small circumstances and few and far between. And we're, we're thankful for that. But as you push that needle of development to the other side of the spectrum, where, you know, there is plenty of literature out there, that, that full development doesn't like, take place up to and including the 25th year. Those are not in debate. However, as you move further on the needle up that way, they certainly have many more abilities to have-- cognitive abilities that are fully functional or darn near functional. Military service, marriage, children, you name it. Some of them are-- work for me. I have people in the academy that are 21, 20 years old, so-- and we're talking about one-off behavior. I think Senator Cavanaugh is, is very genuine and accurate with being this specific to those serious crimes. So we certainly appreciate that, because that puts things in, in a much better perspective. Our, our basic objection has, has not to do with the spirit of this, because it's certainly well-intended, it's more about programming. And I think it's-- the County Attorney kind of got into that, is, is I don't think-- as the Douglas County Sheriff's Office is predominantly responsible-- not predominantly, by statute, responsible for the court system, the juvenile court system and all that. We're just not situated, at this time, to handle those cases. And there will be more adults, potentially, in that up-to-25 range than there will be juveniles in that 12-- 12-year-old range. So maybe it's more of a discussion bill that we can get into.

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

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WILLIAM RINN: Thank you.

WAYNE: Next opponent, next opponent. Any body testifying in the neutral? Man, I love it. I love it when agencies are in the neutral. Welcome back.

BO BOTELHO: Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Bo Botelho, B-o B-o-t-e-l-h-o. I'm general counsel for the Department of Health and Human Services. I'm here to testify in a neutral capacity to LB717. DHHS would like to thank Senator Cavanaugh for bringing the amendment forward today. Three primary factors need to be in place for a YRTC to be successful: physical structure, staffing and programming. The YRTCs do not currently have the structure, staffing or programming necessary to accept individuals over the age of 19. The YRTCs can take youth as young as 14 years of age. It would be challenging to maintain the separation of younger children and individuals above the age of 19, resulting in a very unsafe environment. The proposed amendment would prohibit courts from committing individuals over the age of 19 to the YRTC, ensuring individuals committed to a YRTC by a court are discharged on or before their 19th birthday. It would not allow the court to place an individual in the custody of DHHS, Child Protective Services under these circumstances. We, again, thank Senator Cavanaugh for entertaining our concerns and his willingness to bring forward an amendment. DHHS respectfully requests the Judiciary Committee take these concerns into consideration when deciding whether to advance LB717. Thank you for the opportunity. I'll answer any questions if I can.

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

JULIET SUMMERS: Good evening. Chairman Wayne, members of the committee, my name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm the executive director of Voices for Children in Nebraska, appearing here in the neutral position on LB717. You've heard much of my testimony regarding this bill as it applies to other bills today. But, you know, we're here to say that as a society, we all benefit when youth are able to turn their actions around into healthy adulthood and our communities suffer when we give up on young people, still in the process of development. We recognize that LB717 seeks to address concerns, specifically, about very young teenagers charged with the most serious offenses, first and second-degree murder. We're here in the neutral today, because we generally support one of the bill's

provisions but oppose the other. Something that hasn't, perhaps surprisingly, arisen yet today, as we've had these conversations that I know this committee has heard in other bills, is the mental health crisis that our young people are facing right now as we come out of the pandemic. We know that more than what-- well, gosh, I got to get my data right. More than four in ten young people, in 2021 and 2022, felt persistently sad or hopeless. More than one in five seriously considered suicide. I think we cannot hold those numbers and, and the, the recognition that our young people are facing this mental health crisis separate from a conversation about a bubble and youth violence, because it is tied to the same underlying factors. And the tragedy of that crisis that we're in right now, should not bend us off track from the understanding that even the kids who did the very worst things are not yet fully formed. I think Senator Geist said it earlier there. There's opportunity for redemption. They are human works in progress and they are capable of immense change and growth. So because of that capacity, Voices for Children opposes the provisions of LB717, which would allow transfer of cases from juvenile court to adult court for 11-, 12- and 13-year-olds, regardless of the nature of the underlying allegation. These are children in elementary and middle school. At the same time, recognizing the really grave nature of the particular charges at issue, we cautiously support the provisions regarding extended juvenile court supervision, but we do recognize this, this has to be simply a jumping-off point. There are a wide range of nuances involved in applying juvenile court jurisdiction to young adults. And so we would recommend formation of committee or, or interim study process to really examine that and consider what a young adult court would look like in Nebraska, as an alternative middle ground mechanism for situations like this. With that, I'll wrap up. It's late enough. But I'm-- we're very grateful to all the members of this committee for your commitment to ensuring our justice system is right, both for kids and communities. So thank you for your time. I'd be happy to answer any questions if I can.

WAYNE: Any questions from the committee? Seeing none, thank you for being here. [INAUDIBLE]. Welcome.

SPIKE EICKHOLT: Thank you. Good evening, 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 Attorney Association in a neutral capacity. Both my clients, when we discussed this bill, we didn't quite know how to approach it. There are some good things about it. But ultimately, the proposal to lower the age of adult prosecution, even for serious crimes, is something that we are

just reluctant to support. But I think this is-- this has some good proponents. It does limit it to class-- or to first-degree and second-degree murder. It does provide for an option to start or not option, but it does provide that those cases are started in the juvenile court and need to be transferred to district court. And there were a couple of questions about that, so I think I might just take my effort in answering why that distinction might be important. For this kind of offense, the district court judge is the judge that decides whether it goes to juvenile court. District court judges aren't ever juvenile court judges. County court judges actually are around the state, but they don't decide the decision whether it goes to juvenile court or not. Something, I don't know if you call it home field advantage or whatever, but a juvenile court judge looks at a defendant or a juvenile, I think, a little differently than a district court judge looks at a defendant or juvenile. If you're a hammer, then everything looks like a nail. Right. So the district court judge typically imposes a punitive sentence. Even a probation term is a punitive sentence. But a juvenile court judge looks at that youth and juvenile court judge is well aware of what sort of options he or she have to sort of impose to try to rehabilitate that youth. And I think you just have a slight advantage that way. I think, also, the way that things are is that if the prosecutor has a decision now to charge in adult court or, or juvenile court, then I think, in some respects, the judge is going to follow that lead. Right. This case is in district court. The prosecutor has made that decision. The judge, perhaps implicitly or subconsciously, might honor that. So that's, that's the focus. It provides that, for children younger than 14, for serious crimes, they ought to start in juvenile court. And the extended jurisdiction, frankly, is something that we just discussed in the last bill. I find it-- well, not-- the prosecutors opposed the last bill, because part of the reason was-- or they supported the last bill because 19 is too soon for them to age out, yet this bill would extend that and they're opposed to that. And I'm not trying to be just petty about it, but that's just an observation that I just found kind of frustrating. I'll answer any questions if anyone has any.

WAYNE: Any questions? What if we did a hybrid?

SPIKE EICKHOLT: Well, I mean, that's--

WAYNE: I do want to get out of here. But what if we did a hybrid, where we have-- what if we took a-- what if we created a three-court panel like we do for a fact-finding for a death penalty. Put at, we'll say 10-14-year-olds and you still have an option to waive out. But we

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put, maybe, on that panel, a juvenile and-- one juvenile, one district and the third can be picked and we do a hybrid.

SPIKE EICKHOLT: I think that would be good. I mean, that's better than what we have now, because now the district court judges do it.

WAYNE: Well, maybe we start out as a pilot program for our, our, our more violent ones and see how that goes. But I just-- I do agree with you that we have more and more prosecutors who are becoming judges. We see it in our sentencing, longer and longer sentencing. And I do agree with you that they don't know all the services and what can actually happen in juvenile, because it's just a different world. I was in Education yesterday, doing a school system that DHHS runs for our juvenile kids. They have a-- they have their own school system. So it is complex. But I don't know. The voices brought that up. That sounds like it might be a-- give them both authority under juvenile and-- we would have to do it with a county court. Oh, I guess we'd have to have a third, via county court, I guess. I don't know. I'm thinking about it. We got things to go to tonight. Any other questions? Seeing none, thank you for being here. I like this [INAUDIBLE]. Any other neutral testimony? Seeing none, none, two letters of-- two letters for the record, one in support and one in opposition. And Senator Cavanaugh waives closing. No, he doesn't. He's here. Go ahead, Senator Cavanaugh.

J. CAVANAUGH: I would be happy to waive, but thank you, Chairman Wayne and members of the Judiciary Committee. And I will try and be as brief as possible. Just for a clarifying point, we do-- you can transfer from juvenile court to adult court, you just can't do it for anybody under 14. So that's-- there are transfers from juvenile court to adult court for certain offenses that have coextension jurisdiction. So there is a mechanism. And I know this because one of my other bills has some language in there that address-- addresses that. And so this would be-- allow to extend that juvenile transfer-- so this bill would establish original jurisdiction in juvenile court, with the potentiality to transfer to adult court. And this is-- you all sat here for these last two hearings, an extremely complicated issue. And I don't-- I'm not sitting here telling you I have the answer. And I'm not even telling you this is the right answer. But I brought a bill that I thought would be an opening part of this conversation, which allows for a middle road between what we have now and say, Senator McDonnell's bill, which would allow for that original jurisdiction. And it, and it, it strikes that balance, I think, of saying we recognize-- we set apart these under 14 kids for a reason. They are

different, their brains are different, they're younger. And so it continues to recognize that, but still allows for that jurisdiction in adult court, by creating a mechanism that doesn't currently exist. So it is a step in that direction. I do have the part about the extended jurisdiction to-- for the homicides to the age of 25. I put that in there just for the homicides, because of exactly what Mr. Eickholt just said, sometimes people say, juvenile court jurisdiction is not long enough for these kids to be in here. We need to put them in adult court so we have them for longer. I put that in there. I honestly-- I don't think that this bill accomplishes the objective of making a functional system of up to 25. I agree with what, I think Ms. Summers just said, is that we need to do, maybe, a study a little bit longer. But I do, I do think there's merit in extending that jurisdiction of juvenile court, for-- at least for certain offenses. So I'm happy to continue the conversation with the folks who come and testified on this bill, with anybody on this committee. But I just wanted to make sure this committee had multiple options in front of them, if they chose-- if you chose to address this issue. So I'd take any questions, if there are any.

WAYNE: Any questions? Seeing none, thank you for being here.

J. CAVANAUGH: Thank you.

WAYNE: And that will close the hearing LB717 and the hearings for today.