

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

LATHROP: [RECORDER MALFUNCTION] if we can. Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop. I represent Legislative District 12 in Ralston, southwest Omaha. I am the Chair of the Judiciary Committee. On the tables inside the doors, you will find yellow testifier sheets. If you are planning on testifying today, please fill one out and hand it to the page when you come up to testify. There is also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. For future reference, if you are not testifying in person and would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the last workday before the hearing. Keep in mind that you may submit a letter for the record or testify in person but not both, and only those actually testifying in person at the hearing will be listed on the committee statement. We begin testimony with the introducer's opening statement, followed by proponents of the bill, then opponents, and, finally, anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We utilize an-- on-deck chairs immediately behind that testifier's table. Please keep the on-deck chairs filled with the next person to testify to keep the hearing moving along. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have any handouts, please bring 12 copies and give them to the page. If you do not have enough copies, the page will make more. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you will not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning, and when the light turns red, we ask that you wrap up your final thought. As a matter of committee policy, I would like to remind everyone that the use of cell phones or other-- and other electronic devices is not allowed during public hearings, although you may see some senators use them to take notes or stay in touch with staff. At this time, I would ask everyone to look at their cell phones and make sure they're in the silent mode. Also, verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. You may notice committee members coming and going. That has nothing to do with the importance of the bill being heard, but senators may have other bills to introduce in other committees or have other obligations. I'd like to have the committee members be-- introduce themselves, and we'll start with Senator DeBoer.

DeBOER: Hello, my name is Wendy DeBoer. I'm from District 10, which is northwest Omaha and the city of Bennington.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

CHAMBERS: Ernie Chambers, 11th Legislative District, Omaha.

WAYNE: Justin Wayne, Omaha, northeast Douglas County, District 13.

LATHROP: Assisting the committee are Laurie Vollertsen, our committee clerk, and Josh Henningsen, one of our two legal counsel. Our committee pages are Ashton Krebs and Lorenzo Catalano, both students at UNL. And with that, we'll begin with our first bill, which will be LB1095.

McDONNELL: Thank you, Chairperson Lathrop and members of the Judiciary Committee. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l. I represent Legislative District 5, south Omaha. LB1095 is a concept that was presented to me by Douglas County Board of Commissioners. It would broaden the current authority of Douglas County to provide the following programs and services for juveniles: intake alternatives, investigations and assessments, case management and supervision and placement and reentry. In the event Douglas County ever took this authority into practice, LB1095 would require the county board to provide an annual report to the Legislature indicating the juveniles served and the results of such services and programming. Please note, this report would redact the personal information of those juveniles. This bill is not a criticism of the State Probation, who currently provides the programs and services mentioned in the bill. LB1095 would simply allow Douglas County to provide alternate-- alternate programming and services for kids in the Omaha area who are in the juvenile justice system. Douglas-- Douglas County has no immediate plans to embark on the duties provided in LB1095, but it has been a discussion point over the years. LB1095 was introduced to continue that discussion. It is unrealistic to think Douglas County could provide the scale and scope of services offered by the State Probation. As previously mentioned, an important aspect of LB1095 is the reporting requirement. The Legislature needs to know the scope and outcomes of those programs. At the end of the day, we all want the best possible outcomes for the kids and adolescents in the juvenile justice system. Commissioner Rodgers is here to testify in support of this legislation, and I would be happy to answer any of your questions.

LATHROP: Senator Chambers.

CHAMBERS: Senator McDonnell, is this your priority bill?

McDONNELL: It is not.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

CHAMBERS: And we both know that we're a third of the way through the session. There's not any likelihood that this will go much-- you said it's to continue a discussion. I'm not going to, therefore, have a lot of questions to you or-- you or anybody else. But here's a statement that I appreciate that would have taken away the need to ask a lot of questions. Your last sentence: It is unrealistic to think Douglas County to-- could provide the scale and scope of services offered by State Probation, which is true. That would have led me into the type of questioning I do on the floor, but today I don't see the need for it, so that's why I'm not asking. It's not a lack of interest but just being practical and considering the time.

McDONNELL: I understand. Thank you.

CHAMBERS: That's it.

LATHROP: Very good. I see no other questions, Senator. We'll take the first proponent.

McDONNELL: Thank you [INAUDIBLE]

LATHROP: Are you going to stay or do you have to--

McDONNELL: I will-- I will-- yeah, I'm going to waive closing and go back to Appropriations Committee.

LATHROP: OK. Very good.

McDONNELL: Thank you.

LATHROP: I know you have some commitments over there. Thank you, Senator. Proponents' testimony, please.

CHRIS RODGERS: Good afternoon, Mr. Chairman, members of the committee. I want to thank Senator McDonnell for introducing this to start the conversation. My name is Chris Rogers, C-h-r-i-s R-o-d-g-e-r-s. It was at your October 17 committee field hearing at Metropolitan Community College on juvenile justice issues in general that we first brought up this concept about the concept of home-rule counties and giving us more policy authority over juvenile justice matters of county concern. Over the last ten years, we've work with the committee and Legislature and select agencies on initiatives such as the Juvenile Detention Alternative Initiative and pieces of legislation in various sessions afterwards to help move the juvenile justice system in the state forward. Along those same timelines, we've been working in the county to leverage private funds to begin to field and address gaps in the

system, begin the process of trying to consolidate services and meet the space needs to improve process and services, also increase our efforts to address and reduce racial and ethnic disparities in the juvenile justice system. Recently, at the beginning of this year, we brought on an administrator specifically focused on juvenile justice services to try to put us in the position to align and bring the services into existence that we need. Over the last few years, we've introduced some bills in the Legislature to try to get some research and some studies on home-rule counties here in Nebraska as they are set up in other states with-- with counties of big sizes such as ours. It's our hope that LB1095 will be the start of a conversation to begin this process about home-rule counties in Nebraska for two reasons. Senator McDonnell stated, you know, Probation. This is not about Probation, but Probation is such a major player that they have some stake in it. Our main point is to try to build on the actions that we've had over the last ten years and put ourselves in the position to address some foreseen services and needs that we're going to have in the future for programming, particularly in areas of data, and also to relieve the burdens from the 92 other counties in the state of Nebraska who are not addressing or don't have the issues to the concern that we do. So that's really our main concern, and our hope is to put this in the ether, in the ecosystem, and try to progress this to get up to speed with some other counties across the country. So with that, I'll be happy to answer any questions.

LATHROP: Senator Chambers.

CHAMBERS: Commissioner Rodgers, by you not being in the Legislature, the significance of priority designation may not be known by everybody, but each senator is allowed to have each session one priority bill. This is known as the short session of the Legislature, which means 60 days. If a bill is not prioritized, realistically, there is not much likelihood it's going to go anywhere. So I'll say to you what I said to Senator McDonnell. The fact that I will not ask you a lot of questions is not a lack of interest or concern, but I don't want to take the time when I know that it would not be serving a really meaningful purpose, so don't feel slighted.

CHRIS RODGERS: Oh, much, much respect, and note taken. And as I said, definitely understand you all's schedules. But I realize, as you said, that it's a short session and I don't expect any bill to pass on the first try. And I wanted to put this in the ether so, for those members that maybe have an interest and want to talk about it, that it can be on your radar screen. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

LATHROP: Very good. I don't see any other questions. Thanks for being here, Commissioner.

CHRIS RODGERS: Thank you.

LATHROP: Any other proponents of LB1095? Anyone here to testify in opposition to LB1095? How many people intend to testify on this bill, by a show of hands? OK. Welcome.

JEANNE BRANDNER: Good afternoon. Chairperson Lathrop and members of the Judiciary Committee, my name is Jeanne Brandner, for the record, J-e-a-n-n-e B-r-a-n-d-n-e-r, and I'm employed by the Nebraska Supreme Court Administrative Office of the Courts and Probation as the deputy administrator overseeing juvenile services. I am before you today to provide testimony in strong opposition to LB1095. I would like to note that we were not engaged in discussions related to the need for this bill or this specific intent. And Commissioner Rodgers and I had conversation earlier today at a meeting, so some of that has transpired since I wrote my testimony. But LB1095 provides authority for Douglas County to establish their own independent juvenile probation, providing intake alternatives, investigation assessment, and similar services that you heard the senator mention in his opening. Essentially, this bill would authorize the decentralization of juvenile probation with Douglas County operating independently of the rest of the state. Dating back to 1985, this Legislature unified probation services under the state within the judicial branch. Currently, Nebraska's Probation Administrator oversees a centralized state probation system that has authority over both adults and juveniles that are placed on a term of probation by the courts. Probation, by design, is an arm of the courts and works for the judiciary. By making this change, Douglas County Probation would not work for the judiciary, and there is a strong potential that relationships could be negatively impacted. This design allows for an equitable and consistent response for all justice-involved youth, strategic planning, and budgeting, in turn, allowing for cost sharing and savings standardization, unified initiatives, better collaboration, successful outcomes. While others may argue that local leadership would benefit in that they would be closer to youth and families being served, it is also important to note that juvenile probation does not operate solely from the administrative office in Lincoln. The Probation Administrator appoints a chief probation officer in each of the local probation districts, and those officers serve collaboratively with and for the county. At the local level, probation district staff not only supervise youth on probation, but they also participate in community planning, engage law enforcement,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

and connect with schools. As a reminder, in 2013, this Legislature called for major reform and reorientation of the-- Nebraska's juvenile justice system. The focus on this legislation was to see that youth were provided meaningful treatment. I'm going to skip some of the pieces of that talking about probation since I am nearing my end here. I do want to note some of the positive outcomes. In 2019, the Legislative Performance Audit stated juvenile probation is increasing the use of in-home and community-based services. And not only that, but probation has also been reducing costs. The last two years, the judicial branch has returned approximately \$10 million each year from cost savings specifically from probation. Money is one thing, but what about other results? Our juvenile recidivism rate dropped 2 percent from 24 in 2017 to 22 percent in 2018. In closing, the statewide centralized probation system has a strong foundation grounded in communities. Probation is committed to continued progress, in turn, resulting in long-term success for Nebraska's youth and families. Removing Douglas County from the centralized system will create inequity in efficiencies and challenge statewide collaborative efforts. I'm happy to answer any questions that you might have.

LATHROP: I do not see any questions. It doesn't sound like you have-- I'm sorry. Senator Chambers.

CHAMBERS: Just a comment.

LATHROP: No, that's--

CHAMBERS: Since I've comment to everybody else, the same to you, but since you're with the court, I-- I would just make the comment that I'm glad you put your position and the court's in the record. And I'm always reluctant to turn a judicial function over to the executive branch. So that's all that I will say to you all, so.

JEANNE BRANDNER: Thank you, Senator.

LATHROP: OK.

JEANNE BRANDNER: Thank you.

LATHROP: Thank you for your testimony. Is there anyone else here to testify in opposition? Anyone here to testify in a neutral capacity? Seeing none, Senator McDonnell has waived closing. We do have one letter for the record, however, from Larry Dix at Nebraska-- in a neutral capacity, at the Nebraska Association of County Officials. And that will bring to a close L-- our hearing on LB1095 and bring us to Senator Vargas and LB1148. Good afternoon, Senator Vargas. Welcome.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

VARGAS: Good afternoon, Chairman Lathrop. OK. Afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I represent District 7, the communities of downtown and south Omaha, in the Nebraska Legislature. Generally, LB1148 establishes procedural protections, including ongoing juvenile court oversight, for youth committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center, or YRTC. This is accomplished through a few changes. LB1148 provides for motion and hearing opportunities in the juvenile court to consider the treatment and care of a committed juvenile, as well as the ongoing utility of commitment placement. Two, LB1148 clarifies that youth shall be committed to a specific YRTC facility and that transfers between facilities are considered changes of placement, requiring notice and the opportunity for a hearing in the juvenile court. And three, that L-- LB1148 further specifies that a juvenile detention facility cannot be utilized as a YRTC, youth rehabilitation and treatment center facility. Now, as you all know, HHS Committee released their report, the big blue-- cosmic blue report on YRTCs to the Legislature just a couple of weeks ago. The changes in LB1148 are part of the recommendations listed in the report. Colleagues, we all know that these issues, how they've occurred, and we know the issues of how we treat children who are entrusted to the state are critical matters that need to be addressed. When we entrust our youth to the care of the state, we do so with the belief it will ultimately improve their lives, and those in their communities, and that they will be healed when they return. We have heard of too many instances of the trust being violated, and I believe I'm not alone in saying that that has to change. Now this requires not just an investment but ongoing oversight. That oversight should be at the 1,000-foot level with us in the Legislature in our elected positions, but it should also occur at the individual level in every case, especially when it comes to youth. Now what happened at Geneva over the summer was the result of too many of us closing our eyes to what has been occurring during the period of commitment. We ask, how didn't we know? But we also have a statutory structure where cases are functionally closed during a period of commitment. And the better question is, how could we know? What could we statutorily make sure that we have in place that ensures that we will have the structures to get the information? And the juvenile court that has committed a youth to YRTC in the first place is the most appropriate first checkpoint to ensure the youth's needs are being met and the goals of commitment are on track. When youth are committed to OJS for placement at a YRTC, they are made wards of OJS and should receive the same protections that other wards receive, such as ongoing juvenile court supervision of their treatment and care and

the opportunity for defense counsel and other legal parties to receive formal notice of any changes of placement to be heard by the court. We should empower the court and parties in individual cases to be a check on the quality of care youth are receiving so that things never reach a point again where it takes a surprise visit by state senators to discover and identify issues. Finally, many advocates for youth, including myself, believe that our statutes are already clear that a juvenile detention facility is not a YRTC and vice versa. However, in light of the Department of Health Human Services' plan for a new YRTC-Lancaster, it seems that we have more work to do to clarify this statutory difference and ensure that we're not mixing the two, which have different purposes, up with additional statutory clarification. Now it is my opinion that the agency should not open facilities in contravention of this law. Allowing this will only embolden the department and lend credibility to a plan that only stands to work against the best interest of children and that has been vetted by stakeholders-- that hasn't been vetted by stakeholders. The only thing I'll say is I think we've been briefed by the Chair of HHS. I-- I-- I want to state that in no means of what we're doing in isolated suggestion. This is an informed legislative statutory recommendation that I am making-- we are making comes out of this report, comes out of a lot of different circumstances, and I ultimately believe is-- is utilizing the existing structures we have in our government, specifically the courts, to ensure youth, juveniles in this system have the due process, the capabilities, and-- and the flexibility to do what is necessary in cases. So with that, I want to thank you, because I know this is not the first time you're hearing of some of these issues. And I'm happy to answer any questions. There will be people behind me that will be providing a little bit more information as to certain circumstances where this has come to light.

LATHROP: Very good. Any questions for Senator Vargas? I don't see any. Thanks for bringing LB1148.

VARGAS: Thank you.

LATHROP: We will take a proponent testimony at this time. How many people intend to testify on this bill? A little higher so I can-- we need to be able to tell the next introducer, so it looks like two? OK, three? Thank you. Good afternoon.

JULIET SUMMERS: Afternoon, Chairman Lathrop. Members of the committee, my name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here on behalf of Voices for Children in Nebraska to support LB1148. And I've done so much testifying on YRTCs this week, I'm-- I'm talking--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

talking funny. Thank you for the time and opportunity to do so here. A sensible juvenile justice system holds youth accountable in developmentally appropriate ways that promote community safety and operate on principles of fairness, transparency, and individualized planning. When the government acts in children's lives, we have to do so with due process and respect for their rights. Voices for Children in Nebraska supports LB1148 because it provides stronger procedural protections and direct court oversight for youth committed to the Office of Juvenile Services for placement at a YRTC. And of all the bills introduced this year regarding the YRTCs in light of the crisis that developed this year, we see LB1148 as providing the most immediate protections for youth placed at YRTCs now and in the future. The bill also cleans up some old areas of statute, contributing to confusion about the scope of the Office of Juvenile Services' authority, and we believe it provides a necessary judicial interface with LB49 and several other Health and Human Services Committee bills to bring statutory provisions regarding YRTCs into the new decade. I've outlined for you in my written testimony a little history of the YRTCs, because I think it's helpful to understand how these two facilities claim to play a role in our juvenile justice system. I won't read it aloud for you today, except to say that most recently, in 2013, LB561 reversed a prior course of-- a prior situation where a commitment to YRTC was truly the end of the road in juvenile court. The court would commit the youth to YRTC and close the case, and then all treatment and parole planning was under the authority of OJS. LB561, by contrast, required evidence-based treatment while at YRTC and kept juvenile court jurisdiction open during that period of commitment, but the provision in statute says explicitly for the purpose of reviewing reentry plans and maintaining the youth on intensive supervised probation afterward. So as a result of LB561, fewer youth are committed to YRTC each year. But despite those changes, it is clear from what happened over the summer, it's time to take the next protective step and maintain greater court oversight, not just of reentry planning and return to the community but throughout the commitment itself. And I've also outlined several provisions in the bill that we think do just that. So with that, I'd like to thank Senator Vargas for sponsoring LB1148, as well as this committee for all of your time and your commitment to Nebraska kids, families, and communities. I'd be happy to answer any questions.

LATHROP: OK. I see no questions.

JULIET SUMMERS: All right. Thank you.

LATHROP: But thanks for being here. Good afternoon.

CHRISTINE HENNINGSSEN: Good afternoon. My name is Christine Henningsen, C-h-r-i-s-t-i-n-e H-e-n-n-i-n-g-s-e-n. I'm testifying today in my personal capacity, but I do work for UNL's Center on Children, Families, and the Law. I direct a project there called Nebraska Youth Advocates, which focuses on training for juvenile defense attorneys, also creating a network of defense attorneys across the state, and also advocating on policy issues that push our juvenile justice system forward. For those reasons that I'm testifying in support of LB1148 in order to put the procedural protect-- protections and oversight in place, to elevate youth's voice in the decisions that so dramatically affect their lives, and to help avoid the situation that played out this last year in our state for the children that were in our custody. As part of my job, I receive calls from defense attorneys across the state. I received some calls in response to the situation at the YRTC-Geneva. The first calls I got were from here in Lancaster County. As the conditions deteriorated at that center, the tactic that was employed by DHHS counsel was trying to file motions to discharge youth from the facility, saying they were not amenable to treatment. What followed from that was that youth were placed in the secure detention facility in Lancaster County. When there were hearings set on that, then they were transferred back to Geneva, then to Kearney, so many, many placement moves in a short amount of time. The notice that was provided was not any sort of formal court notice but, rather, an email that was sent after the decision had been made to move the girls. In various stakeholder meetings in Douglas County and across the state, too, talked to many attorneys, defense attorneys and judges who felt like their hands were tied, that there was nothing they could do to challenge the unilateral actions of the department. And so I think this bill makes clear that the court does have oversight over that, the youth does have a right to have procedural percent protections in place, so that we can review the actions that our state does for our most precious commodity. I'd be happy to answer any questions that the committee has, and I thank you for your time this afternoon.

LATHROP: OK. I do not see any questions for you today.

CHRISTINE HENNINGSSEN: OK.

LATHROP: But thanks for being here.

CHRISTINE HENNINGSSEN: Thank you.

LATHROP: Next proponent. Good afternoon.

BRI McLARTY: Afternoon. Good afternoon, members of the Judiciary Committee. My name is Bri McLarty. I am here to testify in support of LB1148 on behalf of the Nebraska County Attorneys Association. I currently serve as a deputy county attorney in Dodge County, and my practice area is juvenile law, which includes all juvenile dependency and delinquency cases in our county. The association wanted to share its support for the bill with the committee and how implementation of the procedural safeguards and mechanisms included would assist in our prosecution and case management. I actually currently have three juveniles that are placed at the YRTC-Kearney facility and in the course of my testimony will share some anecdotal experiences about how the current system works, as well as how it could be improved if the bill were passed. First, the juvenile court is a court of limited jurisdiction, meaning that it only has the authority to act when that authority is expressly granted in the statute. Once committed to YRTC, the committing court doesn't hold review hearings and there's no statute granting it the authority to do so while the juvenile is committed to the care and custody of OJS and the department. The [INAUDIBLE] requirements that are currently in statute in 43-285 are limited to juveniles that are adjudicated under a (3)(a) dependency case. The current bill, as introduced, would explicitly require annual reviews and the authority for any legal party to file a review-- a review on a shorter interval. In a typical juvenile case, legal parties and team members review on a periodic basis. We do this to determine the appropriateness of the services being provided, progress being made by the juvenile, and the larger question of whether the juvenile court involvement is still appropriate for the rehabilitation of the juvenile. For example, one of my juveniles right now actually turned 18 while at the YRTC-Kearney. He's run repeatedly from the facility. He's refused to participate in the program and has maintained that he intends to continue his delinquent behavior once released. If he were released right now, he'd pick up adult charges and would be handled in adult court. However, we don't have any opportunity right now as the committing court to look at an unsatisfactory release or even to look at whether he should remain at YRTC. Under this bill, we would have that option. Secondly, the bill provides an oversight of the treatment plan for juvenile placed at YRTC. Currently, upon intake, the treatment plan is generated by the YRTC case manager with collateral information provided by the probation officer or anything from the prior court case. Now they do distribute monthly case plans to all legal parties, including the county attorney and the court, and these are discussed and treatment and progress are done at the family team meetings, but that's only where input can be provided. If we were to want to challenge any of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

the treatment plans or offer additional services, we have no recourse to do so. There's no hearing. There's no availability to evaluate whether or not what's happening is appropriate, whether additional services are needed. Right now, we have a child that has significant trauma. All legal parties are in agreement that he needs an evaluation to look at a possible PRTF placement, but we have no recourse to do so unless YRTC decides to do it on their own. So what we're looking for with this bill is the opportunity to provide consistency in case management in all of our juvenile cases. It would provide consistency in the oversight by the legal parties, and it would ensure that the juvenile court is providing the appropriate level of care in the appropriate placement for the benefit and successful rehabilitation of the juvenile. I'd be happy to answer any questions.

LATHROP: I don't see any questions, but let me see if I got the-- your take.

BRI McLARTY: OK.

LATHROP: It's not just mom and dad that are going to find out, and the court and the parents and the people that care about the youth, but the county attorney will, too, and you can intervene and say we want a review hearing, this isn't working.

BRI McLARTY: Exactly. In the case I referenced, it's myself, the guardian ad litem, his probation officer, his defense counsel. We all want this evaluation, but there's no way to do it. So the county attorney would also get the opportunity, and the court on its own motion can ask for review as well.

LATHROP: OK, very good. Well, we appreciate when the county attorneys come in on something like this.

BRI McLARTY: It's good to be back.

LATHROP: So thank you.

BRI McLARTY: Yes.

LATHROP: Thank you for coming in today. Anyone else here as a proponent? Anyone here to testify in opposition?

DANNETTE SMITH: Good afternoon.

LATHROP: Good afternoon. We have the CEO here today.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

DANNETTE SMITH: I don't know if that's good news or bad news, but I'm going to--

LATHROP: We'll find out in a minute.

DANNETTE SMITH: I'm going to take it either way. Is that fine?

LATHROP: Yeah. Well, welcome to the Judiciary Committee.

DANNETTE SMITH: Welcome. Thank you so much, Senator. Good afternoon, Senator Lathrop and members of the Judicial-- Judicial Committee. My name is Dannette R. Smith, D-a-n-e-t-t-e, middle Initial "R," S-m-i-t-h. I am the chief executive officer for the Department of Health and Human Services, DHHS. I am here to testify in opposition to LB1148. This bill calls for courts placing juveniles at youth rehabilitation and treatment centers, the YRTC's, to designate either Geneva or Kearney. It is-- it restricts DHHS's ability to change their placement. It also bars DHHS from using secure detention facilities as YRTC's or residential treatment facilities, and from using other public facilities or contracting with private facilities for YRTC youth. LB1148 would codify an-- an inflexible two-location approach that does not adequately serve the youth placed at the YRTC's. Instead, since October 2019, DHHS has been transitioning to a flexible three-campus system. Each campus is designed to meet specific and varying needs and-- of the youth and can be moved between campuses based on their individual circumstances. The Kearney campus serves as the intake entry point in the system. It is the intake center for all youth and it offers basic programming, treatment, and education. The Lincoln facility provides intensive programming and appropriate physical structure and security to youth with high needs. The Geneva campus offers a more supportive and home-like environment for females who-- female youth who are preparing to return to their families and reenter the community. DHHS's ability to use these campuses in different ways and to move youth between campuses is key to improving quality of the care and treatment that the agency provides. Precluding DHHS from using this Lincoln facility, in particular, would poorly serve the youth in the YRTC system. The Lincoln facility is designed to serve youth with high needs who are not responding to treatment in Kearney. The alternative that LB1148 would allow, that Hastings Regional Center or a licensed residential treatment facility in Nebraska, are not adequate substitutes. Space may not be available at these facilities and when needed, and specific facilities may not be-- will be unable to or unwilling to take our children. LB1148 also calls for court-- court hearings to review youth treatment plans, changes in placement, progress and treatment, and annual progress. Such hearings are

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

currently-- are not currently being conducted and would take additional agency, attorney, and court docket time. I thank you again for your con-- continued support. I'm available to answer any of the questions you may have.

LATHROP: Senator Chambers.

CHAMBERS: Ignore the frown on my face. Sometimes old people's face just falls into an expression. I have one question to put to you, ma'am. How are you doing today?

DANNETTE SMITH: I'm doing well.

CHAMBERS: Glad to hear it.

DANNETTE SMITH: Thank you.

CHAMBERS: That's all I have.

LATHROP: I do have a couple of questions as I listened to your testimony. So you have a problem with-- with the bill requiring or-- or having the court decide where-- where they're going. You just want them committed to OJS. Is that right?

DANNETTE SMITH: Yes.

LATHROP: And you also have a problem with or object to the idea that family would be notified if a youth moves from Kearney to Geneva, Kearney to Lincoln, from Lincoln to Kearney. Those movements, and to the extent they might require some notification of guardians or parents and counsel that would then potentially precipitate a review hearing, you have an objection to that as well.

DANNETTE SMITH: So I don't object to families and courts being notified. I don't object to that. I just don't feel that it needs to be in statute. I think that we should do that as a matter of practice.

LATHROP: Well, it's hard to understand why you'd object to it if we ought to be doing it as a matter of practice, but let me ask the next question. To the extent that-- that the bill provides for the opportunity for any of the notified to request a review hearing, you have an objection to that?

DANNETTE SMITH: I think what we want is for the court to participate and appropriately so. It needs to be more of a partnership, whether or

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

not it needs to be in law. I don't think it needs to be, but there does need to be participation.

LATHROP: Well, you heard the last testifier--

DANNETTE SMITH: I did.

LATHROP: --Ms. McLarty from the county attorney's office. She said we literally want-- we have a case up in Dodge County, we'd literally like to review it, everybody that's involved with that person, that youth would like to review it, but there's no statutory process for that to happen. To the extent that's included in this bill, do you have a problem with that, CEO?

DANNETTE SMITH: No.

LATHROP: OK. That's all the questions I have.

DANNETTE SMITH: Thank you.

LATHROP: Anybody else? Seeing none, thanks for being here.

DANNETTE SMITH: Thank you.

LATHROP: Anyone else here to testify in opposition? Is there anyone here in a neutral capacity? Seeing none, Senator Vargas, you may close. We do have two letters of support, one from Laura Opfer-- Opfer from the Nebraska Children's Commission, and Kris Whisenhunt from the National Association of Social Workers-Nebraska Chapter. Senator Vargas.

VARGAS: Thank you, members of the committee. Thank you, Chairperson Lathrop. Only thing I want to add and echo are the sentiments that we have-- we have real, genuine recommendations that are grounded in multiple points of data from the last several months, and one of the recommendations-- many of the recommendations that have to do with some due process, ensuring families and children have transparency and notification and say are in this, and-- and also making sure that we're setting a standard with-- with YRTCs not being secure detention facilities or not being utilized as YRTCs. The only things I want to clarify are you will see in different places in here we-- we put in the term "may" and not "shall." We are providing the ability for the court system to call several of these hearings in different circumstances, rather than requiring them to, so that we can make sure there is clear process available to the court system to make sure that there is balance in this. At times, we are here to ensure that things

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

are being followed. We pass statutes because we want to ensure that there are protections, not necessarily micromanaging. And I think that this is the right balance of ensuring that there are standards for due process while still allowing the Department of Health and Human Services to ensure the safety of these juveniles in YRTC's. With that, I want to thank the committee and appreciate your time.

LATHROP: I see no additional questions. Thanks for being here and for introducing LB1148.

VARGAS: Thank you.

LATHROP: I know you have to get over to Health Committee so we'll let you--

VARGAS: Right.

LATHROP: --we'll turn you loose. But thanks for being here. That will close our hearing on LB11-- LB1148 and bring us to Senator Cavanaugh and LB1169. How many people are going to testify on this particular, bill by a show of hands? One, two, three four, OK. Thank you.

CAVANAUGH: I'm sorry. I've got to grab my remarks. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. I am Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, and I have the privilege of representing District 6 in west-central Omaha. I am here today to introduce LB1169, which will create the Nebraska Integrated Juvenile Data Governing Body. This body will have the purpose of creating a data system that can integrate multiple data sets from different departments and programs. This--

LATHROP: Senator Cavanaugh.

CAVANAUGH: Yes.

LATHROP: Can you do a little bit louder?

CAVANAUGH: Oh, I'm sorry. Yes. This-- this body will have the purpose of creating-- I already read that. Sorry. This-- this will answer key questions about juvenile justice and the effectiveness of our existing interventions. There are several testifiers after me who will be able to give detail and answer any technical questions you may have, but I want to talk briefly about why this is so important. We heard many times over the interim while we were looking into this that data was needed. The data that is needed largely doesn't exist and where it does exist, it's hard to obtain or is spread across many systems so--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

so that it's virtually-- virtually impossible to put together. If an individual comes into contact with the juvenile justice system, the child welfare system, and has troubles at school, those data points all stay siloed away from one another. If there is an intervention-- intervention step along that way that has an impact on the outcomes of juveniles-- juveniles, we don't have a way to analyze that. This integrated data system will be able to tell us what works, what doesn't, and where we need to come up with new solutions. That means less kids falling into the prison pipeline and more kids leading successful lives. I urge the committee to advance LB1169 so that we can begin the work of ensuring every child in Nebraska has what they need to succeed. I also am considering bringing an amendment to the committee on this just to add one more entity to the governing body, which would be NeHII, Nebraska-- sorry, let me get the-- what the acronym stands for-- the Nebraska Health-- I apologize. It's not on here. Well, I'm considering bringing--

LATHROP: NeHII.

CAVANAUGH: --NeHII, yes. And I--

LATHROP: Right.

CAVANAUGH: But I have not talked to my collaborators on this yet, so that may or may not be coming to the committee. I also-- I apologize. I have a letter here from Judi gaiash--

LATHROP: gaiashkibos.

gaiashkibos. Thank you, Senator Lathrop-- Speaker Lathrop-- Chair-- Speaker--- I'm sorry.

LATHROP: Got a promotion today.

CAVANAUGH: You did, yeah.

LATHROP: OK. Any questions for Senator Cavanaugh? I see none. Thanks for introducing LB1169.

CAVANAUGH: Thank you. I will--

LATHROP: We will--

CAVANAUGH: I will not be staying to close.

LATHROP: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

CAVANAUGH: I [INAUDIBLE]

LATHROP: I appreciate that, appreciate you telling us-- [LAUGHTER]

CAVANAUGH: I-- yeah.

LATHROP: --to be perfectly clear. OK. We'll take proponent testimony. In a little bit, I'm afraid, I have a family commitment, so I'm going to have to be excused. But Senator Wayne, I think, will preside over the remainder of the hearings. Welcome.

ANNE HOBBS: Thank you. Hi. My-- my name is Dr. Anne Hobbs. It's A-n-n-e H-o-b-b-s. I'm the director of the University of Nebraska Juvenile Justice Institute. However, I am not speaking in that-- in that capacity. I'm speaking as an individual today. Thank you for the opportunity to speak in support of LB1169. This bill proposes an integrated dataset. Examining multiple-- or data that brings together multiple data points is necessary for making good decisions about our juvenile justice system and will help determine whether we serve youth well in the state in Nebraska. Nebraska has made some progress in reforming the juvenile justice system, but unfortunately our data integration efforts have not kept pace. In an ideal world, we would all work for what is best for youth and would share data one another-- with one another to improve services. However, since we do not live in an ideal world, I believe we need legislation. Right now, JJI works with and collects multiple data sets from the state of Nebraska. For example, we currently receive a dataset called the Juvenile Case Management System from the Crime Commission. This dataset tells us many things, like how many youth participate in particular programs, what age the youth is, but it cannot tell us the more in-depth questions, like whether or not a youth who enrolls in diversion has a subsequent law violation or whether or not there is minority representation. JJI merges data on court order-- court-- court filings in order to do this. I'm aware that the Crime Commission has been integrating or working on merging two or more datasets, but in a recent meeting they indicated it would be two years before this was complete. This current bill proposes integrating multiple datasets, including DHHS, education, court data, and I'm concerned about how long this may take the state to produce, given their current timeline. JJI is currently merging datasets now. Agencies are willing to share their data with JJI and the university because we're neutral. We have a 20-year working relationship. They are also willing because they understand our intention is to improve services for youth and promote evidence-based practices. In short, agencies are willing to share data because we are neutral, professional, and trustworthy. In addition,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

the university has resources far beyond what a state agency can provide, so we have faculty that are experts in assessment and trauma-informed care. We have servers with adequate space, so systems run faster. We have megacomputers for storage. We have programmers and graduate students using innovative technology. You may hear testimony about how costly this process will be, but I'll tell you from experience, I've worked on combining datasets with UNO School of Informatics and it was very cost-effective and we did this for years. Finally, housing an integrated dataset allows for continuity. Often, data integration efforts at a state level and when somebody retires or an agency changes direction, dataset maintained by universities generally become longitudinal datasets, so if you think of, like, the ed/health dataset that's been in place for I think 20 or more years. Do I need to stop or can I go until it's red?

LATHROP: You can go until it's red.

ANNE HOBBS: All right. [LAUGHTER] JJI has managed hundreds of datasets over the years and have-- we've been the lead on numerous studies for the Legislature, for private entities, for state agencies, on JDAI, for counties, and under federal grants as well, so the infrastructure is already in place. So I'd strongly encourage you to consider allowing an integrated data system to be housed within the university. Thank you.

LATHROP: Made it.

ANNE HOBBS: Just made it.

LATHROP: Any questions for this testifier? Seeing none, I can just say we appreciate the work you guys do--

ANNE HOBBS: Oh, thank you.

LATHROP: --and the importance of having good data to find out what works and what isn't.

ANNE HOBBS: Thanks so much.

LATHROP: So thanks for being here today. Next proponent.

LINDSEY WYLIE: Hello. My name is Dr. Lindsey Wylie and I'm a researcher at the University of Nebraska-Omaha, with expertise in juvenile justice, research design, and data analysis. Thank you for the opportunity to speak in support of LB1169. Please note that I'm currently speaking in personal capacity and not for the University of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

Nebraska-Omaha or the University of Nebraska. LB1169 creates the Nebraska Juvenile Information System, which will link individual youth data across multiple data systems for the purposes of research and evaluation. One of the projects that I dedicate my time to at JJI is examining the effectiveness of state-funded juvenile justice programs that involve linking multiple datasets to examine the trajectory of youth who participate in community-based, aid-funded programs. This includes data from law enforcement, the courts, juvenile probation, and detention facilities, so I've worked with these datasets for about four and a half years. An integrated-- integrated data system is an essential step in demonstrating how to best serve Nebraska youth in the child welfare and juvenile justice systems. Research demonstrates a significant overlap in child welfare cases and youth who are justice involved. Similarly, there's a relationship between educational predictors and outcomes, child welfare and juvenile justice. Currently, Nebraska data systems are not integrated and there is not a formal automatic process for linking youth across multiple systems. So what this means is that while we can generate descriptive reports using aggregate values, such as the racial or ethnic composition of a detention facility or how many youth are on probation in a given county or whether MIPs have decreased, it's more challenging to answer more complex questions that involve multiple agencies. If we had a data-- integrated data system, we'd be answer-- be able to answer the following questions. What is the strongest predictor of youth who enter YRTCs? Should prevention efforts focus on early childhood education, child welfare programming, or diversionary policies? What's the relationship between foster care placements and juvenile justice outcomes? Are youth with one to two placements as likely to be on probation as youth with ten. Is initiative X effective at reducing racial and ethnic differences across all system points? Although some agencies, like the Nebraska Crime Commission and others I may not be aware, are currently linking data, there have been-- and there have been other attempts in the past to integrate data, these efforts have been limited in scope for-- in some key ways. The first is scope. The common data system that is currently being worked on at the Crime Commission involves integrating juvenile justice outcomes such as court records, probation, and detention for youth served by community-based, aid-funded programs only. The common data system is limited in scope to just juvenile justice data without education or child welfare data. Another is technology. In the past efforts, the technology did not yet exist to match cases from multiple data systems, but the current technology will allow it. Another is efficiency. The current practice involves a time-consuming process of linking youth across separate data extracts, a process that may happen

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

to the same cases multiple times because the data that we link is not live data. An integrated data system would automatically link cases with a unique identifier prior to extract, allowing data and reports to be the most current. Yet another is expertise and neutrality. The University of Nebraska-Omaha Juvenile Justice Institute was created to answer the state's juvenile justice-related questions with a nonpolitical, neutral lens. In closing, LB1169 is an important next step for ensuring state-funded interventions and services are preventing and reducing negative outcomes for youth in our state.

WAYNE: Thank you. Thank you for testifying today.

LINDSEY WYLIE: Yes.

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

LINDSEY WYLIE: All right. Thank you.

WAYNE: Any more proponents? Seeing none, anybody here as an opponent, testifying as an opponent? Seeing none, anyone here in the neutral capacity? Welcome to your Judiciary Committee.

ED TONER: Senator Wayne and members of the Judiciary Committee, my name is Ed Toner, E-d T-o-n-e-r. I am the Chief Information Officer for the state of Nebraska. I appear today to testify in a neutral capacity on LB1169. I'm here to share my knowledge on developing a unified data system, such as Nebraska's Juvenile Justice Information System proposed in this bill. There are many, many challenges. And I'm not going to read through my testimony. I'll let you read through that. I'm here more if you have any questions. But just to give you a high-level introduction of just the difficulty of disparate data systems, and that's what we're dealing with here, as the previous testifier said, data sets are not integrated. That's a problem. To integrate disparate, different data sets is not an easy task. I also heard the word "live system." Live system makes it numerically more difficult to do. Normally, when you do this, it's a batch system overnight. There's three things that you have to do. It's ETL: extract, transform the data, and then load the data. Doing that live would be a very difficult IT task. The data acquisition, you have to first determine what's the structure of this data? What is the data dictionary? What does that field mean? Is that field restricted to just numeric data, to just alpha data? Is-- can you freeform that data into the field? And if so, your data is not accurate. In fact, it's the worst possible scenario. You get inaccurate results from that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

data. So is this data entry restricted is very important and a very time-consuming thing to even start a process like this. That could take years in itself. Transformation then is to say we're going to take the data with all these different structures and we're going to put them together into something we call a schema or a format. So we're going to make sure that we know that that data that is coming to us in that format means the right thing. And the last thing is load and, just really quickly, that's syncing all that data across all those systems and put it into one hosting system that is your source of truth. To make sure that that is accurate is-- is very difficult. In closing, just the handling of disparate data is extremely complex. Challenges faced during its initiation include uncertainty of data management, architecture, talent, getting data into the standard structure, syncing across data sources, getting useful information out of the data that you actually believe is true, validating that data. Skill availability is very, very hard to obtain in this-- in this area. Thank you for the opportunity for the testimony-- testi-- to testify. And I'd be happy to answer any questions you may have at this time.

WAYNE: Any questions about LB1169 and the public Wi-Fi?

ED TONER: I would be glad to address the public Wi-Fi if I could.

WAYNE: We're going to talk about that off the record.

ED TONER: No, could-- could I actually--

WAYNE: Not on the record, no. We'll talk about that off the record. That-- that-- that can get Senator Chambers going for about three hours here, so we're--

ED TONER: OK. I--

CHAMBERS: I did hear that.

ED TONER: I only have one statement. The Office of the CIO does not have anything to do with your public Wi-Fi. We are not-- we have no connection to your public Wi-Fi, nor do we ever-- have we ever during my administration-- during my time here. We do not manage that.

WAYNE: Thank you for that information. Any other questions?

ED TONER: But thank you for the question.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

WAYNE: Thank you for coming today. Next person testifying in a neutral capacity.

DON ARP: Senator Wayne, members of the Judiciary Committee, for the record, my name is Don Arp, Jr., D-o-n A-r-p, and I'm the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, commonly referred to as the Crime Commission. I'm here to testify in a neutral capacity on LB1169. The overall goal of this bill is laudable. Access to ever-increasing amounts of data gives policymakers and agency administrators powerful insights into program operations and the impact of current and future initiatives. Further, there is no more sacred mission than looking out for Nebraska's youth, especially those involved in the juvenile justice system. I'm testifying today to suggest the bill's goals are obtainable without a new system or a series of boards, given developments at the Crime Commission over the last 18 months. I'm also here to raise an issue based on the structure of the governing body and a statutorily mandated contractual relationship that exists between some of the involved parties. The Crime Commission is at the midpoint of its work on the Justice Data Transformation System, what we refer to JDTS. Currently 18 months into a 36-month Department of Justice-funded development grant, JDTS will bring all agency partners' data sources together for the purposes of applied data integration of predominantly deidentified data, but upon agreement with parties could be identifiable data. Think of JDTS as a justice data warehouse linking data sources across agencies. We received letters of support for this project from the Department of Correctional Services, the Nebraska Board of Parole, and the Nebraska Center for Justice Research. As the commission has worked on this project, it has received verbal support from Probation Administration, the Foster Care Review Office, Health and Human Services, and the Department of Education. In support of this effort, the commission has also secured data agreements with 51 law enforcement agencies for electronic ticket data, 102 law enforcement agencies for what's called National Incident-Based Reporting System data, or NIBRS, the Nebraska Department of Correctional Services, and we have a pending joint agreement with the Adminis-- the Administration of the Courts and Probation Administration. A recent linking pilot test of limited HHS and probation data sets took five seconds to run, resulted in 14.5 percent more matches than previously possible, and identified 37 more instances of simple matching than simple matching had before. As we work with the critical data partners, realizing the deliverables of LB1169 becomes possible. Within the next 12 months, those critical data relationships will be established and give JDTS access to the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

data needed to address juvenile service, juvenile justice research queries. There is also a technical issue that I'd like to bring to the committee's attention. Under this bill, the Juvenile Justice Institute serves as the manager of the Nebraska Juvenile Justice Information System and its director or designee serves on the board, in addition to three directors from the Crime Commission. The commission is required by statute to currently pay the Juvenile Justice Institute at the University of Nebraska-Omaha approximately \$300,000 a year to conduct program evaluation work in support of our community-based aid grant program. Herein, we believe there is a conflict. The structure of this bill is concerning as the commission directors sit on the governing body and could be in a place to direct staff on research and practice issues, possibly affecting the institute's work on the commission's behalf. This may complicate the relationship between the commission and the institute. Clearly, the institute is charged with managing the system and will conduct research on the dataset. Therefore, it's suggested that the sections requiring the commission to contract with the institute be removed from statute and the commission be given the authority to utilize the \$300,000 per year to secure program evaluation services through a competitive bidding process. I'd be happy to answer any questions you may have.

WAYNE: Any questions from the committee? Seeing none, thank you for coming today. Anybody else testifying in a neutral capacity? Seeing none, we do have letters of support: Lana Temple-Plotz from Children and Family Coordinator-- Coalition in Nebraska; Juliet Summers, Voices for Children; and Douglas County Board. We also have one letter in neutral from the Department of Health and Human Services. With that, that will close the hearing on LB1169 and we'll open the hearing on LB1112, Senator Kolowski. Welcome to your Judiciary Committee.

KOLOWSKI: Thank you. Mr. Chairman and members of the Judiciary Committee, my name is Rick Kolowski, R-i-c-k- K-o-l-o-w-s-k-i, and I represent District 31 in the southwest area of Omaha, the Millard area. The purpose of LB1112 is to change the definition of forensic exam to include preventative treatment of the sexual assault survivor for sexually transmitted infections and pregnancy. This change brings Nebraska's statute in alignment with the federal grant program definitions that are part of the current funding for this program. Currently, the sexual assault payment program definition includes exam rooms and medical personnel, medical equipment, and evidence collection and evaluation. The current language also includes testing for sexually transmitted infections and pregnancy but not treatment. If private insurance is available, it may be billed for the treatment. If the survivor doesn't have insurance, they may be billed personally.

For numerous reasons, the individual may not want their insurance billed for fear of repercussions. For instance, in the case where domestic violence is a factor or a family dynamic-- dynamics puts that survivor in jeopardy somehow, the survivor may have a very-- have very legitimate fears of what will happen if these charges show up on an insurance explanation of benefits or a bill to the individual. Adding the treatment to the definition doesn't mean the insurance billing will stop. In fact, if insurance is available and there is no threat of repercussions, I believe the insurance should be billed. However, in cases where there is no insurance coverage or there is fear of further consequences to the survivor if billed, the sexual assault survivor should not have to bear the cost of treatment. I believe testimony to follow will further discuss the current situation. In regard to the fiscal note, I understand a range of costs. With the variables involved, it is hard to estimate the cost of treatment for hepatitis and-- or HIV. These treatments are expensive. Does that mean we shouldn't treat that sexually assaulted survivor for a life-threatening infection? No, it does not. In my mind, it makes it even more imperative that we provide preventive treatment to-- to these survivors of such a violent and personal attack. Maybe in the case of a life-threatening infection, the charge of sexual assault should-- should be coupled with a charge of hate-- a hate crime or manslaughter or, at the very least, with an award for pain and suffering. We haven't even touched on the mental health cost related to sexual assault, but that's a discussion for another day and another bill. Returning to the fiscal note, treatment for these life-threatening and expensive infections will only be given when-- when medically necessary. Not every survivor will need this treatment. In fact, I would venture to guess to say that a low percentage will. I think the upper end of the fiscal note is a pretty far reach. If you look further into the fiscal note, to the comments from the Department of Administrative Services, you will note that near the end of the paragraph it states that due to the exam cap of the statute, if the treatment is considered part of the exam, the fiscal note indication of \$525,000 potential added addition-- additional cost would not occur. If the new provision of exams is over and above the current existing cap, then the \$525,000 estimate may be reasonable. The state of Iowa includes treatment in their definition. In the last three fiscal years, their expenses for prophylactic treatment have been between 400 and-- 5-- excuse me-- \$548,000 and \$674,000. That's in a range of where I-- I would expect in Nebraska, even though we have a million less residents, so the lower end of the fiscal note seems closer to reasonable to me. Bottom line is prophylactic treatment for sexually transmitted infections and pregnancy should be included in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

the definition of a forensic medical exam after sexual assault. I would urge you to support this bill and the survivors of sexual assault. Thank you.

WAYNE: Any questions from the committee? Seeing none, thank you for coming today.

KOLOWSKI: Thank you.

WAYNE: First we'll take proponents. Welcome to your Judiciary Committee.

ROBERT SANFORD: Good afternoon, Senator Wayne and members of the Judiciary Committee. My name is Robert Sanford, R-o-b-e-r-t S-a-n-f-o-r-d, and I am the legal director for the Nebraska Coalition on Sexual and Domestic Violence. I'm here today to express the coalition's support for LB1112. We are finding that once a survivor of a sexual assault has their first contact with medical providers, compliance with any necessary or suggested follow-up visits is poor among survivors of sexual assault. Because of this fact, the Centers for Disease Control and Prevention recommends STD treatment for sexual assault survivors at the time of first medical provider contact as a preemptive measure before any testing occurs. In other words, this treatment should be provided at the time of the forensic exam. Treatment prior to testing is what is referred to as prophylactic treatment. The recommendations include treatment for chlamydia, gonorrhea, and tri-- tri-- trichom-- "trich," I'll use that name, I can't pronounce the scientific name-- as emergency contraception. The recommendations further provide the treatment for Hepatitis B. HPV, and HIV should be considered on an individual patient basis after considering other information about the patient and what is known about the perpetrator. LB1112 is an important step in providing assistance to survivors of sexual assault. Senators took a step toward minimizing the financial impact of a sexual assault on a survivor when the Sexual Assault Payment Program Cash Fund was created. LB1112 seeks to expand the list of costs that can be reimbursed through this fund to include prophylactic treatment for STIs that is recommended by the CDC. It is a logical next step that is in the best interests of not only the survivor but the public as well. The Nebraska Coalition wishes to thank Senator Kolowski and we ask that you support LB1112 by advancing it out of committee for further debate. Thank you.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for coming today. Next proponent. Go ahead.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

MEG MIKOLAJCZYK: Do you want me to go ahead?

WAYNE: Yeah.

MEG MIKOLAJCZYK: OK. Good afternoon, Chairperson Wayne and members of the Judiciary Committee. My name is Meg, M-e-g M-i-k-o-l-a-j-c-z-y-k. I'm the state deputy director of Planned Parenthood North Central States, PPNCS. We provide, promote, and protect sexual and reproductive health through high-quality care, education, and advocacy in Nebraska, North Dakota, South Dakota, Iowa, and Minnesota. Planned Parenthood is a safety-net provider for the populations in Nebraska most in need of health services, and we operate two health centers here in the state. Every year our health centers provide essential services, including methods of pregnancy prevention and testing, treatment, and pre- and postexposure prophylaxis for STIs for more than 9,500 patients. We're grateful today to Senator Kolowski for introducing LB1112 and building upon Senator Morfeld's work around the Sexual Assault Payment Program by including payment coverage for preventive healthcare not previously included in the reimbursement plan. The World Health Organization asserts the provision of preventive services should be mandatory in order to properly treat survivors of sexual assault. "When caring for victims of sexual violence, the overriding priority must always be the health and welfare of the patient. The provision of medico-legal services thus assumes secondary importance to that of general health care services (i.e. the treatment of injuries, assessment and management of pregnancy and sexually transmitted infections). Performing a forensic examination without addressing the primary health care needs of patients is negligent." Although we do not formally track data regarding how many sexual assault patients are referred to or simply know to come to Planned Parenthood after a sexual assault and forensic examination. Anecdotally, our health center managers in Lincoln and Omaha have relayed that this is a somewhat regular occurrence. We see at least one patient per month, if not more, who do not receive prophylaxis STI treatments and the pregnancy prevention medication at the place of the initial examination, either because they are unable to pay, they have fear or the inability to run their own insurance, or the hospitals refuse to provide some of that care. Planned Parenthood prides itself on being available to provide care to any person, regardless of their ability to pay, no matter what. But people experiencing trauma need to be able to get their care, particularly preventive care following a sexual assault, as expediently as possible, as close to the encounter as possible to have the most efficacy with the treatment. And they need to do that without the cost of the crime being passed back to them, without them needing to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

arrange for additional travel or take time off of work to see another provider and again relive their own trauma. So we support LB1112 because we want all sexual assault survivors to be able to get their care without additional stress, time delays, or burden of covering associated costs LB1112 aligns Nebraska with best-- best practice and ensures Nebraska is not negligent when it comes to how we support and care for sexual assault survivors. And for those reasons. PPNCS asks the committee to support this bill and advance it to General File. Thank you.

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

TIFFANY JOEKEL: Chairperson Wayne, members of the committee, my name is Tiffany Joekel, T-i-f-f-a-n-y J-o-e-k-e-l, and I'm here to support LB1112 on behalf of the Women's Fund of Omaha. Sexual assault is the most highly underreported of violent crimes. In 2017, only 23 percent of sexual assaults were reported to law enforcement. We support LB1112 because we believe that cost should not be a factor in-- in that underreporting. We want to ensure that survivors know that when they come forward, we have a system built to support them and the critical law enforcement function that is a result of the sexual assault examination that's provided in a-- in a medical facility. The meds can be expensive, so the four most common meds that would be distributed under this bill would be antibiotics for STIs and emergency contraception. The-- the fiscal note shows they would cost \$262.50 on average. And then in addition, if medically necessary, patients could receive treatment for Hepatitis-- Hepatitis B and HIV, which are the more expensive courses of treatment. Those would not be administered to all. In many cases, there are a variety of reasons that providers would-- would speak with survivors and determine whether or not to provide those, but those would likely not be administered to all assault survivors. Pregnancy risk is actually fairly-- it's not uncommon among sexual assault. It's between 5 and 7 percent for one-time sexual encounters. This risk is especially high among adolescents because of their relatively low use of contraceptives. So it would be relatively routine to administer a pregnancy test in the course of a sexual assault examination, and the provider would evaluate pregnancy risk, provide informed consent, and then based upon that, provide emergency contraception or not. Because sexual assault is very prevalent among low-income people, we think this is incredibly important. In 2017, 44 percent of those reported sexual assaults had income under \$25,000 household income, so very low-income folks who would not be able to weather the cost of these-- this treatment. I would also say that we think this policy is in line with existing

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

state policy. We have an existing Crime Victim's Reparations program that does pay for medical costs associated with being a victim of a crime, a victim of sexual assault. But that program does require the patient to sort of be billed first and then submit paperwork after the fact. And we would say that there's already infrastructure exists-- that exists through the Sexual Assault Payment Program for healthcare providers to bill this program for the treatment. And so we would say we could make this one step easier for survivors and simply ask healthcare providers to bill the cash fund rather than first billing a survivor. If-- to address the fiscal note, these amounts could be capped, much like the existing-- existing exam fee and examiner's fee are capped in the bill, and we'd be open to that conversation, but we would ask that you consider this possibility and advance LB1112. Thank you.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for coming today. Next proponent. Welcome to your Judiciary Committee.

SCOUT RICHTERS: Thank you. Hello. My name is Scout Richters, that's S-c-o-u-t R-i-c-h-t-e-r-s, here on behalf of the ACLU of Nebraska. We would like to thank Senator Kolowski for bringing this legislation because LB1112 really aligns squarely with the ACLU's work to ensure that all people have access to things like comprehensive sex education, contraception, abortion, prenatal care and childbearing assistance. Access to contraception is critical to an individual's autonomy, their equality, and really their ability to participate in the social, economic, and political life of the state and of the nation. So given the time-sensitive nature of emergency contraception, access to it is especially critical in upholding these values. So ensuring that emergency contraception is paid for under the Sexual Assault Payment Program Cash Fund ensures that a survivor isn't forced to bear the cost of this medication. So LB1112 removes cost as a barrier to access, and also LB1112, and really, emergency contraception in general, upholds constitutional principles of bodily autonomy and personal decision making and really restores a survivor's sense of control that is stolen during a sexual assault. So as such, the ACLU offers its full support of the legislation and would urge the committee to advance the bill.

WAYNE: Thank you.

SCOUT RICHTERS: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

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

SCOUT RICHTERS: Thank you.

WAYNE: Any other proponents? Turning to opponents, any opponents? Anybody testifying in a neutral capacity? Seeing none, Senator Kolowski, you can-- Senator Kolowski waives closing. We do have a few letters. Letters of support: Joni Cover of Nebraska Pharmacists Association; Lisa Schoenberger; Linda Hughes of Nebraska Nurse Association; Marcia Blum, National Association of Social Workers-Nebraska Chapter. Opposition: Nate Grasz, Nebraska Family Alliance; Marion Miner, Nebraska Catholic Conference. And in the neutral, a letter: Anne Boatright, Nebraska Attorney General's Office. And with that, that will close the hearing on LB1112. Next we'll turn to LB1041. Welcome to your Judiciary Committee.

CHRIS TRIEBSCH: Thank you, Senator Wayne and members of the Judiciary Committee. For the record, my name is Chris Triebisch; it's C-h-r-i-s T-r-i-e-b-s-c-h. I am Senator Pansing Brooks's legislative aide and I am here today to introduce LB1041 on Senator Pansing Brooks's behalf, who could not be here unfortunately. Sen-- LB-- LB1041 was brought at the request of the Nebraska Association of County Officials and the clerks of the district court. Recent Nebraska Supreme Court orders allow for the review of transcripts in grand jury proceedings. LB1041 provides guidance and uniformity as to whether transcripts of grand jury proceedings are treated like public records and whether copies can be made. Under existing law, when a grand jury has been impaneled due to a death during apprehension or while in custody, a transcript of the-- of the proceedings is made available for public review. The definition of "public review" has been-- has been interpreted differently in different counties. The Lancaster County Clerk of the District Court, who will be testifying here this afternoon, will share an example of what happened when a request for copies was made in Lancaster County. This isn't just a large county issue. Clerks of the district court in Cedar, Hall, Sheridan, and other counties have experienced situations in which the public review requirement has created uncertainty. The clerks of the district court and NACO asked for this bill to help provide direction in how they should respond to requests for copies of transcripts. The green copy of the bill is intended to set out those procedures. The amendment that I have handed out, AM2325, would replace the green copy. It represents an agreement between county attorneys and the clerks of the district court. It removes a blanket reference to copies of a transcript being available for public review and instead adds finer detail and separate sub--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

subsections regarding how and when the transcript can be reviewed when a grand jury returns a "true bill" or when it returns a "no true bill." It add language-- it adds language prohibiting copies of a transcript from being made. This bill is intended to give guidance to clerks of the district court about what is a public record and what is not. Troy Hawk, with the Lancaster County-- the Lancaster County Clerk of the District Court, will follow and explain the reasons why the clerks of the district court are asking for this legislation. Jeffrey Lux, Deputy Douglas County Attorney, will then address the distinctions from the Bear Heels case and why reviews but not copies should be available. In closing, Senator Pansing Brooks would ask you to advance LB1041 with AM2325 to General File.

MORFELD: Thank you for your testimony. Traditionally, we do not ask legislative staff questions, so unless you want to answer questions-- no? OK.

CHRIS TRIEBSCH: Yeah.

MORFELD: Awesome. But we have some proponent testimony, so we'll start with them as well. First proponent. And how many testifiers do we have on-- on this bill? OK, so I'm seeing three in total. Thank you.

BETH BAZYN FARRELL: Good afternoon, Senator Morfeld, members of the committee. For the record, my name is Beth, B-t-h-- B-e-t-h-- excuse me-- Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials and I'm appearing in support of the bill and the amendment. We'd like to thank Senator Pansing Brooks for introducing the bill and the amendment on behalf of NACO and the clerks of the district court. We'd also like to recognize the partners that work with us on the bill, the County Attorneys Association, the Administrative Office of the Courts and Probation, and the Court Reporters Association. We will admit we do want to tweak the language just a bit in the amendment, just to make it very clear that what we're looking for is guidance in when physical copies are available to someone who comes in and asks for them. We're not looking at trying to eliminate public review, just when the copies can be treated as a public record. And you have our commitment to work with our partners to get that language addressed just exactly the way it needs to be. With that, I'll conclude my testimony and I'll offer to answer questions, but I think the experts that follow me are probably better able to do so.

MORFELD: Thank you very much for testifying. Any questions? OK. Seeing none, thank you. Next proponent testimony. Welcome.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

TROY HAWK: Thank you. Good afternoon, Senators. My name is Troy Hawk, T-r-o-y H-a-w-k, and I'm here on behalf of the District Court Clerks Association in support of LB1401 [SIC] and AM2325, which is offered today. We'd like to thank Senator Pansing Brooks for bringing this legislation on behalf of NACO and the Clerks Association, and thank you, Chris, for introducing this, this afternoon. There are several reasons the Clerks Association first asked Senator Pansing Brooks to bring this legislation. The first is that under existing law, as it was amended in 2016 by LB1000, when a grand jury has been summoned due to the death of a person while in the custody of or being apprehended by law enforcement, a transcript of the grand jury proceedings are then prepared and filed with the clerk of the district court, where it's available for public review. Since this amendment, several clerks, including myself, have had requests by individuals, media, and state officials to obtain a copy of that transcript for themselves. I've provided a listing of the counties that have had these types of grand juries and-- and approximately how often the transcript has been reviewed and how many times there have been requests for additional copies of that transcript. We reviewed the testimony on LB1000 and-- and saw that there was concern at that time about the intent of the language to exclude a copy from being made and distributed. However, that was never clarified in the statute and, due to the Nebraska Public Records Act, 84-712 and 84-712.01, our association has concern as to whether the transcript is considered public record and, therefore, a copy should be provided per the appropriate request. This statute would clarify whether that's available for-- for copies or not. In order-- in order to clarify this, our association has worked closely with the County Attorneys Association, and LB1041 and its amendment was brought to clarify that no additional copies of the transcripts or exhibits are to be made. The transcript is to be avail-- available for public review only. We're committed to working with the county attorneys' offices in the-- and Senator Pansing Brooks's office to clean up some of the language of the amendment to fully realize this intent. Another issue this bill addresses is additional language providing that the transcript is to be reviewed upon written request to the clerk of the district court, and that it shall be made in a reasonable time set by the clerk. The reason for this is one of our clerks had a request to review a transcript and part of the transcript, one of the exhibits, was a CD that she didn't have the software to play the information on that CD. This would allow the clerk additional time to obtain the software she needs or he needs to be able to allow the-- the public to review that information. We worked closely with the County Attorneys Association with this legislative bill and its amendment, and the County Attorneys

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

Association will discuss the parts of the bill that provide for the treatment of that transcript when a true bill is issued. Thank you for your time, and we request that you advance LB1041 and AM2325 to General File, and I'll answer any questions you may have at this time.

MORFELD: Thank you for your testimony. Any questions? Okay. Seeing none, thank you.

TROY HAWK: Thank you.

MORFELD: Next proponent testimony. Welcome.

JEFF LUX: Good afternoon. Senator Morfeld and members of the Judiciary Committee, my name is Jeff Lux, first name Jeff, J-e-f-f, last name Lux, L-u-x. I am a deputy Douglas County attorney testifying on behalf of the Nebraska County Attorneys Association in support of LB1041 as amended to AM2325. First off, we'd like to thank Senator Pansing Brooks and her staff, as well as the representatives from NACO and the Clerks of the District Court Association for inviting us to work with them on this bill. It addresses issues that the clerks have been having across the state with regard to certain grand jury transcripts that are made for public review. We believe this amended legislation addresses these issues by clarifying which grand jury investigations a public review of the transcript exhibits is authorized while also maintaining the integrity of the grand jury process. It continues the procedure for public review of copies of the grand jury transcripts and exhibits in in-custody-death grand jury investigations. And it also incorporates certain due process protections for indicted defendants suggested by the Nebraska Supreme Court in some recent case law. The Supreme Court in 2019 stated that it would seem that a defendant in a pending criminal prosecution would be the most natural party to demonstrate that the release of grand jury documents affects a substantial right. The parties noted in their arguments that 29-1407.01(2)(b) does not affirmatively require that the records be made public prior to the conclusion of a criminal prosecution following an indictment. Therefore, where a grand jury returns a true bill and the court proceeds to make grand jury records publicly available under 29-1407.01(2)(b), we see no reason why a party in a subsequent prosecution cannot move for a protective order. We, likewise, see no reason why a grand jury court or the trial court proceeding over the criminal prosecutions cannot consider a motion for a protective order and upon good cause shown, grant relief consistent with a party's right to a fair trial while still adhering to the statute which requires public review. So I think that this amended LB gets that done in in-custody grand jury cases. If there is a no true

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

bill, meaning that there's no indictment, no charges being filed, then a transcript will be made, as well as copies of the transcript and exhibit. Those will be available for public review. But nobody can take any of those documents with them after the review. In the case of a grand jury, an in-custody-death grand jury investigation that results in a true bill or an indictment or charges being filed, then pursuant to the, I guess, the dicta, or direction from the Supreme Court, it would allow the parties to that prosecution time to file a motion for a protective order asking the court to delay the release of that information until the conclusion of the prosecution. If none of the parties file a motion for a protective order, then, after the five days that they're given to file that, then it would be right back to creating a transcript and having it available for review. So that's basically the-- the-- how we're trying to kind of fix the inconsistencies around the state, still maintained the-- the grand jury process, the integrity of it, but allow for that transparency that we worked out a few years back to allow some transparency in the grand jury process for in-custody-death investigations.

MORFELD: OK. Let's see if we have any questions. Any questions? OK. Seeing none, thank you.

JEFF LUX: Thank you very much.

MORFELD: Other appropriate testimony? Any testimony in opposition to LB1041? Anyone in the neutral capacity? OK. We have no letters on this bill. That will end the hearing on LB1041, and we'll move on to LB1194 by Senator Walz. Senator Walz, welcome.

WALZ: Thank you, Senator Morfeld. Thank you, members of the Judiciary Committee. For the record, my name is Lynne Walz, L-y-n-n-e W-a-l-z, and I proudly represent Legislative District 15. I'm here today to introduce LB1194, a bill to change-- change the population threshold of a county to require a public defender. Currently a county having a population of less than 35,000 is not required to have an elected public defender and, instead, can have an appointed qualified attorney to serve as a public defender appointed by the county board. This bill would change the threshold from less than 35,000 people to less than 45,000 people in order to have an appointed public defender rather than an-- an elected public defender. This is an issue that has been brought to my attention by officials in my county, including our district court judge Geoffrey Hall, as well as county board Chairman Bob Missel and our county attorney Albert Glass. Part of the concern is that Dodge County is quickly approaching the cap which would require an election for the public defender. Ideally, we would like to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

have this to not only-- ideally, we would like this to not only-- to only affect Dodge County, but because we are changing the population threshold, this would also affect Lincoln County, Madison, and Scotts Bluff. Currently, Madison and Scotts Bluff both have public defenders, but Lincoln County does not. This would not mean those counties with public defenders would be out of a job, but the county board would have the option to do away with the position. There are some concerns that should Dodge County be forced to switch over to an elected public defender, this would increase the property taxes residents pay. When a public defender is elected, they are allowed to have as many staff as they need to handle the caseload, which raises costs through paying out benefits to more staff in addition to the cost of an election. If this legislation passed, Dodge County would continue to have the opportunity-- continue to have the opportunity to decide which decision would be more financially sound while assuring the needs of the community members are being met. Honestly, I have to tell you that this is not an area which I have a lot of experience. I can see the advantages and the disadvantages, but because this was an important issue to constituents in my district, I wanted to make sure that we have the opportunity to discuss and bring the option to the table. Thank you. And with that, I would be happy to try and answer any questions. But again, this is not something that I have a lot of experience with.

MORFELD: Any questions for Senator Walz? OK. Thank you, Senator Walz.

WALZ: Thank you.

MORFELD: Are you staying for closing?

WALZ: Sure.

MORFELD: Great. OK. Proponent testimony on LB1194?

OLIVER GLASS: Senator Wayne, who is briefly not here, other members of the Judicial [SIC] Committee, thanks for having me today. I simply want to talk to you a little bit about LB1194. My name is Oliver, middle initial "J," Glass, O-l-i-v-e-r J. Glass, G-l-a-s-s. I'm the current Dodge County Attorney. A little quick bit about me, I have been an attorney in the office since May of 2005. I was appointed Dodge County Attorney in July of 2011 and I've served as such ever since then. I believe one of the most philosophic-- philosophical beliefs that I have in life is justice and fairness for all. And I think if you quizzed any of my colleagues or those that work with me or those that know me, they would agree with that. That being said,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

there's a couple different facets of what I consider sort of a human factor and then, of course, sort of a more taxpayer savings factor regarding this bill that I'd like to discuss with you. As the county attorney, and sitting behind me is chairman of the Dodge County Board, Bob Missel, we take taxpayer money and the way that is spent very seriously. Obviously, we've been tested here lately as we've been dealing with flooding issues and generating funds to deal with that. That's been quite a-- quite an event in our-- in our county. But that being said, I thought I would start with just some of the human issues and some of the ways that I see things being affected in our county today. As you know, Dodge County by Nebraska standards is the sixth largest county in the state of Nebraska. We are not considered metro, but obviously the city of Fremont in Dodge County is closely situated to the metro area. What we have currently in Dodge County is obviously not a public-- public defender's office, but we have what I call basically just a rotating wheel, and what I mean by that is there's 40 or so attorneys that have their names in-- in or on the wheel to be appointed as court-appointed counsel. So Citizen X may be arrested for a crime and Attorney X is up next, and so that's the attorney that gets appointed on that person. Some of the problems that we have currently with-- with defense attorneys are many are unorganized and unprepared. Just like any other profession, there's good ones and there's bad ones. Many are unorganized and unprepared. There is a lack of communication with our office. Some don't even know who their client is until they get to court that day. Some fail to show up for court. Motions are not always filed in a timely manner. Frivolous motions are filed. Oftentimes they're tardy to court hearings and they will get there and say, well, you know, I haven't talked to my client, so now I need to ask for a continuance, all the time padding their bills and adding to their court attorney fees. I'm not saying all of them are like this, but there certainly are a handful that are. Court attorney fees in Dodge County, as the whole District 6 judicial district, recently went up to \$95 an hour from what was \$70--some an hour. And with that in regard, we see a lot of attorneys that are still padding their bills. What I'm asking for today is simply the opportunity to put before my county board in the upcoming years an opportunity to either prepare and establish an elected position or have that opportunity to be able to contract if there is a skilled, articulate, good, seasoned attorney that is interested in being a public defender. I think you would see that ultimately a contract would be less money than the other areas. And I know I have to stop, so I'll leave it at that. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

MORFELD: Thank you for your testimony. I-- I just have one or two questions. So it-- it seemed-- I just want to clarify a few things. So by contracting somebody, I mean, right now, people are obviously appointed to provide defense.

OLIVER GLASS: Yes.

MORFELD: By-- by the judge, right?

OLIVER GLASS: Correct.

MORFELD: OK. So are you saying maybe the county board contracting--

OLIVER GLASS: So what I'm saying in that regard is if--

MORFELD: --a public defender?

OLIVER GLASS: Well, you understand right now that we're like 1,800 people under the threshold--

MORFELD: Yep.

OLIVER GLASS: --to be able to create a contract for a public defender position.

MORFELD: So in the statute, it allows for a contract? I thought it had--

OLIVER GLASS: Not-- not for our level of population. At our 36-- 36,800, we do not have currently the opportunity to contract for the position. It can only be an elected position should we decide to go that route.

MORFELD: But this legislation would allow you to contract?

OLIVER GLASS: This legislation would allow us to either-- to seek either an elected public official--

MORFELD: OK.

OLIVER GLASS: --in regard to criminal defense or a contracted one. What we're asking for, or at least what I'm asking for, is the opportunity for either down the road.

MORFELD: OK. You are aware-- you're a county officer, correct, sir?

OLIVER GLASS: Yeah, I'm the county attorney.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

MORFELD: OK. And that's a county officer position?

OLIVER GLASS: I'm an elected position.

MORFELD: Yeah, and that's a county officer, so you're a county officer?

OLIVER GLASS: Correct.

MORFELD: OK. So are you aware that in our constitution it requires that all county officers be elected by the people? So the point that I'm getting at is, is that that would be an unconstitutional position.

OLIVER GLASS: Well, then-- then how is it that it is fair in our laws for Colfax County to do it, for Butler County to do it? It's because the pop--

MORFELD: I'm saying that there's--

OLIVER GLASS: It's because of the arbitrary number that's in place.

MORFELD: All I'm saying is the constitution requires that all county officers be elected, and right now there is litigation going before the court. So I'm just saying that I think that that's constitutionally suspect.

OLIVER GLASS: Noted.

MORFELD: Second, you brought up concerns about defense attorneys not coming in, being unorganized, unprepared, all those things. I mean, aside from constitutional concerns about county officers not being elected and the constitution requiring county officers to be elected, even though we currently have that right now, don't you think that having a full-time-- why should a public defender not be elected and your position be elected?

OLIVER GLASS: I suppose that's a matter of disagreement. And I'm not-- I'm not saying that--

MORFELD: It's not disagreement. I'm just asking what's the philosophy--

OLIVER GLASS: Right, right.

MORFELD: --or what's the difference?

OLIVER GLASS: Well, I mean, I suppose the-- the potential difference would be attorney X could get elected and attorney X may be an attorney that is unorganized, likes to fight everything, trial after trial after trials over things that could be settled, and then, therefore, we're costing the taxpayers more, more money, where if someone-- if-- if-- if individuals apply for the position to be contracted, that would give the county board leeway to do research into who is a good attorney, who does do good defense work, who is well organized and so on and so forth. Do you see the difference there potentially?

MORFELD: I guess. I mean, I think the point of having a person elected to a county officer position, particularly one I think we can all-- I mean, in your opening, you said transparency-- or, excuse me--

OLIVER GLASS: Fairness and justice.

MORFELD: Fairness and justice-- yeah, right there, justice and fairness. I think part of having a just and fair court system, particularly when it comes to criminal matters, is having balance--

OLIVER GLASS: I agree.

MORFELD: --you know, just having-- having somebody that's representing the people in the state in terms of the-- and then also having somebody who's representing the people that are defending themselves against the power of the state.

OLIVER GLASS: Right.

MORFELD: And I've always found it kind of strange that we elect all of our county attorneys and give them, kind of shield them, that ability, or that four years, anyway, to do their job and to do it to the best of their ability, but yet we don't have the same robust defense, in my opinion--

OLIVER GLASS: Right.

MORFELD: --and the same types of protections for the people providing the defense.

OLIVER GLASS: Well, if I can respond, I will tell you, you bring up a good point because it is very-- being a county attorney is not an easy job. And I may make a very unpopular decision and say not filing a drug bust--

MORFELD: Absolutely.

OLIVER GLASS: --because constitutional violations are present and I'm not going to file those, and then, of course, I have to deal with law enforcement and explain the situation, and that's why I bring up the justice and fairness. What we have in place now is good sometimes, if-- if the right attorney gets appointed on a case, and bad sometimes--

MORFELD: Well, if--

OLIVER GLASS: --if an unskilled attorney gets appointed on the case. So all-- all we're asking for here today is, hey, we understand we can have an elected position.

MORFELD: Yeah.

OLIVER GLASS: We'd like to have the opportunity to raise the thresh-- the population threshold so we can look at the whole picture and look at whether an elected position or a contract position would be more appropriate.

MORFELD: I-- and I get it. And listen, I've heard good things about you actually. I have a friend that works for you.

OLIVER GLASS: Oh, thanks. I appreciate that.

MORFELD: No, I [INAUDIBLE] And I have a lot of respect for county attorneys, just like I have a lot of respect for public defenders. They're both tough jobs. You're both going to be--

OLIVER GLASS: Absolutely.

MORFELD: You're both going to be on fire-- under fire for making certain decisions, right?

OLIVER GLASS: Right.

MORFELD: All I'm saying is, is that it's a little bit tough for me to understand, particularly-- there's a reason why we provide for an elected position at a certain population threshold. I haven't heard a compelling reason why we should have an elected county attorney with all the resources that come with a full-time elected position and we shouldn't have an elected public defender with that same protection, resources, and ability to provide the-- the rigorous defense in a community as large as yours, so.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

OLIVER GLASS: I guess my position would be with population growth and so on and so forth, in Fremont, as you know, we have what-- we had added-- oh, I don't remember-- 3,000 jobs at the chicken plant--

MORFELD: Yeah.

OLIVER GLASS: --looking at adding another 800 at another plant that expand-- that is expanding. You know, our population is-- I-- presumably going to go up.

MORFELD: Yeah, it's a great problem to have.

OLIVER GLASS: Yeah. Yeah, it's a great problem to have, you're right.

MORFELD: Yeah.

OLIVER GLASS: But--

MORFELD: OK.

OLIVER GLASS: Now I lost my train of thought.

MORFELD: No, you're fine. You answered-- you answered my questions.

OLIVER GLASS: Yeah. OK.

MORFELD: I-- I appreciate it. I would note that constitutional concern with the-- with the hiring. It's a-- it's a case that's before Lancaster County--

OLIVER GLASS: There you go.

MORFELD: --and then also Hall County, stating that all county officers are required to be elected pursuant to the constitution. And if you're appointed county officer--

OLIVER GLASS: Well, and I think in Nebraska, you have these three or four really big counties and then you have the rest of us.

MORFELD: Yeah.

OLIVER GLASS: And, you know, we'd just like to be afforded the same opportunity that our neighbors are afforded, Colfax, Cuming, Butler, etcetera.

MORFELD: Totally. Yeah, absolutely. Thank you for your testimony today. Do other people have questions?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

OLIVER GLASS: Yes, sir.

MORFELD: Senator Chambers.

CHAMBERS: I believe, and I could stand to be corrected, I had brought a bill that took away the authority of county attorneys to have something to say about who would be a public defender or a lawyer to represent a client. But at any rate, it was where the opponent, the county attorney, was going to have something to say about the defense side.

OLIVER GLASS: Sure.

CHAMBERS: So much in the way of skepticism about lawyers which I have--

OLIVER GLASS: Sure.

CHAMBERS: --and judges, and mine goes all the way to the top, to the Chief Justice, I don't think wearing robes makes a person any better.

OLIVER GLASS: I couldn't agree with you more.

CHAMBERS: I think it-- I think it does not make any difference what their title is. The difference is made by how they conduct themselves. The legal profession is aware that they are not held in high esteem. There is a preamble, as it's called, to the judicial code that says judges must avoid even the appearance of impropriety. In order to prevent-- or to maintain and retain the right to be a self-regulated activity, they have to set standards and follow those standards to maintain public confidence in the judicial system, so they talk about the judge having to avoid even the appearance of impropriety, and it goes down to the lawyers too. There is a maxim which says Caesar's wife must be above suspicion. And when I see a county attorney coming in here I don't care if he came right from a conference with Jesus and God and the Holy Ghost, and that prosecutor is going to be talking about what pertains to a public defender, that automatically makes me skeptical. And I have to hear much more than what you offered to agree with something like this. I'm just one vote.

OLIVER GLASS: Well, and it's hard to do in three minutes or whatever I had, but--

CHAMBERS: Well, you could have-- you could have ten years and you couldn't persuade me. You are the one that this person is going to contend against and you want to set the parameters for the one who's

going to meet you in the contest. That, I don't think, is appropriate. You should have sent somebody from the county board who wants to talk to us about, well, we're trying to save money--

OLIVER GLASS: Well, that and--

CHAMBERS: --and we-- this, that, and the other. But you are the county attorney. And Senator Morfeld knows you. I don't know you, so I don't trust you to make this kind of judgment. I don't have any objection to your coming here to present it. But I want you to know that my attitude is skewed against allowing the county attorney to have anything of substance to say about the office of the public defender, who is going to be his opponent. See, all you're interested in-- when I say you, now you're representing-- who are you representing?

OLIVER GLASS: The citizens of Dodge County, the state of Nebraska.

CHAMBERS: But, see, you're-- you're a prosecutor. And I've been watching prosecutors. I brought complaints against prosecutors. I got disciplinary action against somebody who'd been his buddy because-- he was the Lancaster County Attorney and his name was Gary Lacey, and he made statements out of school that could have had a negative impact on what a grand jury that was to be impaneled would do. Nobody brought the complaint. Nobody said anything. County attorneys didn't say anything, and it was obviously inappropriate, and I had to do what the Bar Association then should have been doing. It does not regulate itself. It didn't. And that's why they got a Counsel for Discipline with-- under the Nebraska Supreme Court. I was the disciplinarian. I rode herd on lawyers. I have the documents to show that I had com-- filed complaints and had lawyers disciplined, judges disciplined. I think that a man is nothing but a man. I don't care whether he says he's a lawyer, a judge, a doctor, or a thief. He, first of all, is a man. And I don't believe one man should be allowed to dictate the qualifications or the standards of a man who is going to oppose him. I'm concerned about justice, and justice wears a dollar sign. The poor are the ones who wind up in prison. And county attorneys have an easy time of it because these people cannot afford a lawyer. If the court appoints a lawyer, that lawyer just hits and gets because there is going to be no accountability at all. So they pick somebody who might spend time sitting in a chair, rocking like I am now because he's got no clients. So they get their heads together, the prosecutor and the judge, and they say, we've got old slim over there, he-- he doesn't know very much but he's a lawyer, so let him represent this person. Now that might be an overstatement. And I'm not going to put you through an interrogation, but I want the record to be clear from what

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

I have said openly, that I am not inclined to agree with the approach that's being taken here when the county attorney is the advocate for this particular action that we're being asked to look at. And you can respond however you want to. And as I say, I'm not going to interrogate you. But it wouldn't be, based on my opinion of what my duty is, appropriate for me to have these concerns and not lay them on the record. I want people to know where I am. I want them to know why I'm there. And if they want to contend or contest with me, then it's at least fair because they have been given what the law places great importance on, and that is notice. So however way you want to respond, you can feel free. And I'm not even going to contest with you on that. I'm just giving my opinion. You can give yours, and you don't have to be shy about it.

OLIVER GLASS: Thank you, Senator. Well, I will respond briefly, for the record. I'm not here as a county attorney necessarily. I'm here as a proponent for the county. And you're going to hear from the chairman of the County Board of Supervisors. And you said something that is very true. You said you don't know me, and that's true. You don't know me and I don't know you. I know a lot of things about you, but I don't know you and you don't know me. So before judging me and putting me into a pool of evil county attorneys, I don't think that's fair, sir, because you don't know me.

CHAMBERS: Now I can't let that go without a response--

OLIVER GLASS: Now I thought you weren't going to respond.

CHAMBERS: --because what you said, you-- see, you're a county attorney. You come here with a badge. You didn't come here as "Jim, who is interested in the law." You came here with a badge and you're talking about an activity which is going to involve you being contested against. So you're not just somebody who came here because you have an interest. You're the county attorney and your job-- and I don't care what you and anybody else says. Your job is to put people in jail. I hear people who represent the county attorneys here all the time. Anything that would give more justice to the poor, they oppose it. Anything that is against excessive punishment, they oppose it. So they have their approach, and I have mine. And you don't know me and nobody knows me. These people don't know me. They see Senator Chambers. I don't know you, and I don't want to know you, not that is a put down, but I don't make friends with people and certainly not white people. We're not going to socialize. We don't have the same friends. You're not going to come to my house for dinner. I'm not coming to your house for dinner. And the first thing somebody would

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

say if your daughter liked my son: You want your daughter to marry one? See, I deal with the realities of this society and you all don't. So when you come here and I'm here, that's what we're going to deal with. So say what you want to say, and I'm trying to provoke you to put things on the-- don't shake your head. Let him go ahead and say it. I want it out there, out of his mouth, and I will analyze every word, every syllable, and I will see things that apparently other people haven't seen in you, because I've seen some things in you right now by allowing you to just have your tete-a-tete. And you can respond again, and I hope you do, because we want a full record.

OLIVER GLASS: My only response is something I meant to say earlier, too, which is that if this thing would ever come to fruition, the county attorney is not going to be behind the scenes telling everybody what to do. That's a county board issue. That's all I have.

CHAMBERS: I have one question.

MORFELD: OK.

CHAMBERS: Are you going to be-- no, are you going to be the county attorney in that county forever?

OLIVER GLASS: No. I mean, I don't-- no, not forever, no.

CHAMBERS: Oh, so somebody--

OLIVER GLASS: I'll die at some-- I'll die at some point.

CHAMBERS: Let's say you're a 100 percent good, straight shooter.

OLIVER GLASS: OK.

CHAMBERS: OK. Now suppose you die tomorrow. They're going to have somebody else. Will you guarantee that that person will be a straight shooter like you?

OLIVER GLASS: Oh, I would never make that guarantee.

CHAMBERS: We should not make a judgment based on the qualities of the individual who happens to be there, because if it's a good individual, there is no guarantee that that would always be the case. If it's a bad individual, we should not make the judgment because that is not the basis on which we ought to make a policy decision. That's all I have.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

MORFELD: Any other questions?

WAYNE: I do have questions.

MORFELD: Senator Wayne.

WAYNE: I-- I am probably the only one who does do know you. I went to law school with you.

OLIVER GLASS: Correct.

WAYNE: I've known you for a while. So here my--

OLIVER GLASS: How are you?

WAYNE: I'm really confused though. So you guys don't-- I'm asking more about the process up there. The judges don't have like a list they work off of?

OLIVER GLASS: They do for public--

WAYNE: And there isn't--

OLIVER GLASS: --for public defenders.

WAYNE: And is-- there is not like a prequalification? So like in Douglas County, you can't work on, really, felonies if you've never worked on felonies, so you're prescreened of what cases you can even get on.

OLIVER GLASS: It's pretty arbitrary.

WAYNE: I mean, I guess some of-- that sounds more like a judicial problem than I think--

OLIVER GLASS: Yeah, it's-- it-- like I said-- like I tried to explain it earlier, Senator, it's basically just a rotating wheel of-- of public defenders. It's not necessarily crime specific. Now there is certainly some discretion used if there is someone accused of murder. I don't think our judge is going to appoint the guy right out of law school to that case. For the most part, though, and I'm not the judge and I don't speak for the judge, but for the most part, no, it's-- it's a rotation.

WAYNE: And so, I mean, I do agree with Senator Chambers in the sense that-- and Senator Morfeld-- I think there needs to be some type of elected position because you're an-- an inherent conflict for the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

simple fact that whatever contract would go in front of you, in front of the county board, you also have a duty to review that contract underneath your office. So you're an inherent conflict if this board were to decide to contract that office. And so I don't know how you rectify that, but I do think it should probably be elected or-- or appointed by the-- the judge. That's just where I'm at, so.

OLIVER GLASS: Thank you.

WAYNE: Thank you.

MORFELD: Thank you. Any other questions? OK. Seeing none, thank you very much.

OLIVER GLASS: Thank you.

MORFELD: Next proponent. Welcome.

BOB MISSEL: Good afternoon, Senators. Judiciary Committee, thank you for hearing this today. My name is Bob Missel, B-o-b M-i-s-s-e-l. I am the current chairman of the Dodge County Board of Supervisors. And, Senator Chambers, yeah, I probably should have spoke first because I will-- I'll address a little bit of the-- the cost side of it today. First, I just want to thank you for even considering it. As a supervisor, I've served on the board since 2004, so I've had the time and privilege to observe this process in our county. And I'd seen it both, both good and bad. As-- as our county attorney outlined, my wife Michele served in the capacity of a social worker for the state of Nebraska for 25 years, and-- and so I sat through a lot of conversations in regards to court-appointed attorneys and-- and the job that was being done. As-- as recently in a visit with our district judge, Geoffrey Hall, who has participated in this discussion with us, he made the comment that it is important to note that LB1194 does not remove or terminate any existing public defender in Nebraska. It simply gives county boards a fiscally responsible option to provide indigent citizens with high-quality legal representation at a manageable cost, and certainly that's part of what brings me here today. I've witnessed the escalating costs of-- of this legal service that we do provide as a county. Recently, it jumped dramatically, and we anticipate another significant jump as the-- as we had to increase the-- the price we pay. And for the size of our county, as-- as we looked around and we realized that there was this threshold out there of-- of 30-- 35,000, we thought, well, gee, we're-- we're pretty close to that. It would be nice to have that option as a county board to make that decision to look at do we-- do we want a public defender

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

that we've elected or would it be good to also have the ability to hire, and-- and that's really it in a nutshell. So I want to thank Senator Walz for bringing this forward, and I thank the Judiciary Committee for your time in considering it.

MORFELD: Thank you for testifying today.

BOB MISSEL: Thank you.

MORFELD: Any questions?

BOB MISSEL: Senator.

MORFELD: Senator Chambers.

CHAMBERS: You and I are politicians, aren't we?

BOB MISSEL: We are elected officials, sir.

CHAMBERS: We run for office, don't we?

BOB MISSEL: Yes, we do.

CHAMBERS: And some people-- I'm different from all politicians, but I'm a politician. I've seen members of the county boards, city councils, and the Legislature determine policies based on what is it going to do to property taxes. They're very property tax sensitive. I confront it all the time, not just with your county board. The Douglas County Board was here. They wanted a bill so that they could take over judicial functions and place it under the county board. So maybe they're rocking along, doing the right thing, then suddenly there's a tax revolt and they want the property tax cut, so those services that were to be performed in the same manner as when they were a judicial function have to be constricted so that not as much tax on property has to be paid. In other words, politicians are sensitive to which way the wind is blowing and whether it's a cold wind or a warm one or a hot one. Some things should be immune, to the extent possible where human beings are involved, to the influence of the whims and the vagaries of the public. Right now, the public loves Donald Trump, so he can refer to African countries and their little children here as "shithole" countries and why couldn't there be more people from places like Norway and Sweden. I come from Africa, my ancestry. How do you think I feel about him? And he has also emboldened the racists to come out and say what they actually think and feel. Well, you might ask me, if that's the way they think and feel, why not let them say it? Because words carry weight and they are important and people will be

influenced by them. So if white people like Rush Limbaugh and others who hold these positions advocate certain activities, there are people out there listening who will act on them, and this is why. They can hold some people responsible for fomenting violence when they had nothing to do with it. They can disavow violence, say that I believe like Dr. Martin Luther King. But they said other words that directly led to certain things. To show the power of words, there are certain words which the court recognizes as fighting words. Sometimes they turn out to be killing words. Now you might know nice colored people, not you, but you're here. This is the generic "you." You might know nice colored people who will laugh when you say the "n" word. And if it's said to me, then you'd get a different reaction. And the court would say that is a fighting word. It carries the same impact as if you struck the person. And if you have any sense at all, you know what you are inciting when you do that. You have incited to violence. So there are too many times when white people talk to each other and they have an etiquette of conversation. My job is to break through that etiquette because, although they wish they didn't have to do it, they had to create a political system where even black people can have some representation from somebody of their choice. But to show how white people have the final word when they don't like who black people elect, they'll change the constitution to have a say in whom black people will send to represent them. So when you come here, you are a member of a board which is political. It's intended to be. But you're also property tax rate sensitive, and my colleagues always bring that up. I am reluctant to allow a decision to be left in the hands of politicians when it relates to the kind of legal representation that the poor, the outsiders, the "other," those who are on the fringe of society, those who don't have family connections, those who live on the other side of the tracks. And I'm talking about a situation where everybody's white. I saw little white kids in the school I went to in elementary school. There were only about a dozen of us in the whole school, and I had to intervene to protect little white kids from other white kids, so what I'm saying applies even if it's a black politician on the county board. So with me having made clear my position, I'm going to ask you this question so we can have a conversation on the bill. What is the population of your county right now, if you know--

BOB MISSEL: 30--

CHAMBERS: [INAUDIBLE] you know?

BOB MISSEL: 36,800.

CHAMBERS: OK, and you want to raise the--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

BOB MISSEL: Threshold.

CHAMBERS: --population before certain thing becomes mandatory on your county.

BOB MISSEL: So we want to-- we want to change the threshold of the current statute to allow us the opportunity to consider appointing legal counsel.

CHAMBERS: OK. Now I'm going to bring it back to the way I asked the question.

BOB MISSEL: OK.

CHAMBERS: You want to raise the population level before you're required to do certain things. Is that right, or that's not a correct statement?

BOB MISSEL: I'm not following you, Senator, exactly.

CHAMBERS: OK. Then why don't we just leave everything where it is now?

BOB MISSEL: Well, we could. We could, but that, I guess--

CHAMBERS: Do you know if this bill is what we call a priority bill? Is it a priority bill?

BOB MISSEL: Well, it's a-- it's-- it's timely to us as we look to the future and see the costs that are escalating. And as a-- as a county supervisor and one who represents his constituents, I-- I'm mindful of-- of that cost. And you made the point earlier. Yes, you're right. I am sensitive to property taxes, absolutely.

CHAMBERS: Can I tell you that I like your style? And there's a song, then I'm going to stop. He's a smooth operator.

BOB MISSEL: Thank you, Senator.

CHAMBERS: And that's meant a comp-- in a complimentary way.

BOB MISSEL: Thank you.

CHAMBERS: I don't have any more questions. Thank you.

MORFELD: Any other questions for the testifier? OK. Thank you for coming today.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 6, 2020

BOB MISSEL: Thank you for the opportunity.

MORFELD: Yes. Any other proponent testimony? Any opponent testimony? Anyone wishing to testify in the neutral capacity? Seeing none, Senator Walz waives-- waives closing and [INAUDIBLE] and-- and that actually end-- we do-- actually, we do have a letter of support from Sara Kay, Nebraska County Attorneys Association, and no other letters. Thank you.

CHAMBERS: From-- wait a minute. I didn't get that. From whom?

MORFELD: Oh, no. Here's the letter: the Nebraska County Attorneys Association.

CHAMBERS: Thank you.

MORFELD: OK, thank you, and that ends our hearings for the day.