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Judiciary Committee  
February 22, 2018

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[LB927 LB981 LB1051 LB1086 LB1112]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 22, 2018, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB927, LB091, LB1051, LB1086, and LB1112. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: Ernie Chambers.

SENATOR EBKE: Good afternoon. Welcome to the Judiciary Committee. My name is Laura Ebke, I chair the committee, from District 32. I think the first thing I'd like to do is have my colleagues introduce themselves.

SENATOR HALLORAN: Good afternoon. Steve Halloran, District 33, which is Adams and part of Hall County.

SENATOR PANSING BROOKS: Patty Pansing Brooks from District 28 right here in the heart of Lincoln.

SENATOR KRIST: Bob Krist, District 10, Omaha, Bennington, and some unincorporated parts of Douglas County.

SENATOR EBKE: We skipped one.

SENATOR CHAMBERS: Ernie Chambers, District 11, Omaha, Nebraska.

SENATOR BAKER: Roy Baker, District 30, Gage County, part of southern Lancaster County, a little bit of Lincoln.

SENATOR HANSEN: Matt Hansen, District 26, northeast Lincoln.

SENATOR EBKE: Okay. So assisting the committee today are Elice Hubbert, who is pinch-hitting today for us for our regular committee clerk. Our legal counsel is Tim Hruza. Committee pages today are Rebecca Daugherty from Doane University, and Sam Baird from the University of Nebraska. On the table over there you'll find some yellow testifier sheets. If you're planning on testifying today, please fill one out and hand it to the page when you come up to testify. This helps us to keep an accurate record of the hearing. There's also a white sheet over there. If you don't wish to actually testify but would like to have your position on a bill recorded, you can sign

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

in there. We don't have many hearings left but, for future reference, if you're not testifying in person on a bill and would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the day before the hearing. We'll begin bill testimony with the introducer's opening statement. Following the opening statement we'll hear from proponents, then opponents of the bill, followed by those speaking in a neutral capacity. We'll finish with a closing statement by the introducer if he or she wishes to give one. We ask that you begin your testimony by giving us your first and last name and spelling it for the record. If you're going to testify I ask that you keep the on-deck chair filled, which are these chairs at the front that have yellow signs on them. That gives me a sense of how many we have left to go and it helps to speed up the transition between testifiers. If you have any handouts, please bring at least 12 copies up and give them to the page. If you don't have enough copies, the page can help you to make more. We'll be using a three-minute light system. When you begin your testimony the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on we ask that you wrap up your final thought and stop. We do have a timer going and at 3 minutes and 30 seconds a beeper goes off. As a matter of committee policy, I'd like to remind everyone the use of cell phones and other electronic devices are not allowed during public hearings. If you need to take a phone call, please step outside. Senators may use their phones to take notes or stay...to...or to stay in contact with their staff via text messaging and other messaging systems. At this time, I'd like to ask everyone to take a look at their cell phones and make sure they are on silent mode. Also, verbal outbursts or applause are not permitted. I don't know if that's going to be a problem today. Such behavior could be cause for asking you to leave the hearing room. One more thing: You may notice that people come and go. Senator Chambers just told me that he has a bill in another committee so he may not be around or he may be back in, in a little while. So don't take it personally if people come and go during the hearing. It has nothing to do with that but, rather, other places they need to be for a while. So with that in mind, we'll get started. LB1051, Senator Pansing Brooks. [LB1051]

SENATOR PANSING BROOKS: Thank you, Chair Ebke and fellow members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I am here to introduce LB1051 today to provide for court procedures and rules related to the petition process established in LB122, which we passed unanimously last year and Senator Baker was kind enough to prioritize. Under that bill we established that a caregiver, whether related or not, may not arbitrarily deny visitation between an adult resident of a home healthcare facility or residential dwelling and family members of that resident. If a family member is being denied visitation with a resident, the family member may petition the court, the county court, to compel visitation with the resident. The court has the power to compel visitation unless it finds that the resident, while having the capacity to evaluate and communicate decisions regarding visitation, expresses a desire not to have the visitation with the petitioner. Or if visitation is not in the best interests of the individual then the court can deny that visitation. During the last interim I was approached by

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

Judge Todd Hutton, Court Administrator Corey Steel, and various members of the NS...the Nebraska State Bar Association about providing judges and attorneys with guidance in statute regarding rules and procedures for the petition process that's created in this bill. They thought these court procedures needed to be provided in statute rather than in the court rules. LB1051 sets forth county court procedures and practices relating to the filing of petitions, including guidance on factors to consider when determining whether visitation has been arbitrarily denied. It also provides definitions of "caregiver"; "guardian ad litem"; "isolation"; and, "visitor". The changes in LB1051 are intended to provide clarity to the courts, petitioners, and others regarding the petition process to make it easier for all parties. The changes are also intended to harmonize the petition process with other existing statutes and rules set forth by the courts. I've provided a letter from Corey Steel, who couldn't be here today from the Court Administrator's Office. We have other testifiers who will be able to answer any questions you might have. And in closing, I will ask that you advance LB1051 to General File. It is my hope that this bill might be a consent calendar item for this year on behalf of the courts. With that, I'll be happy to answer any questions you might have or refer the technical ones to the people behind me. [LB1051]

SENATOR EBKE: Senator Krist. [LB1051]

SENATOR KRIST: Thank you, Chair. Senator Pansing Brooks, could you turn to page 2 and really it starts with line 27: It's the intent of the Legislature that, in order to allow family member petitioners to remain connected. [LB1051]

SENATOR PANSING BROOKS: Where, what, oh, line 7? Sorry. [LB1051]

SENATOR KRIST: 27. [LB1051]

SENATOR PANSING BROOKS: Oh, 27, sorry. []

SENATOR KRIST: Page 2, starting with... [LB1051]

SENATOR PANSING BROOKS: Okay. [LB1051]

SENATOR KRIST: ...line 27: To remain connected, a caregiver may not arbitrarily deny visitation to a family member petitioner of the resident, whether or not the caregiver is related to such family member, comma--and here's my problem with that paragraph--unless such action is authorized by a nursing home administrator pursuant to Section 71, what is that, 6? [LB1051]

SENATOR PANSING BROOKS: 6021. And... [LB1051]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

SENATOR KRIST: So it looks to me like, if I'm reading this just pure language, unless 71-6021 has some special provision that I'm not seeing, that a nursing home administrator could indeed say, no, you can't see that person. Am I reading that wrong? [LB1051]

SENATOR PANSING BROOKS: I looked up that section and, of course, I need to look at it again. Okay, so there are people...I'm happy to look it up right now and remind myself and refresh myself, I'm sorry,... [LB1051]

SENATOR KRIST: No, that's okay. [LB1051]

SENATOR PANSING BROOKS: ...as to what that... [LB1051]

SENATOR KRIST: If someone is going to answer it, that's fine. [LB1051]

SENATOR PANSING BROOKS: Yes, they will... [LB1051]

SENATOR KRIST: Okay. [LB1051]

SENATOR PANSING BROOKS: ...answer it. [LB1051]

SENATOR KRIST: All right. [LB1051]

SENATOR PANSING BROOKS: Or I will answer it upon my return for the closing. [LB1051]

SENATOR KRIST: Thank you. [LB1051]

SENATOR PANSING BROOKS: Thank you for bringing that up. I appreciate it. Any...?  
[LB1051]

SENATOR EBKE: Other questions? I see none. [LB1051]

SENATOR PANSING BROOKS: Okay. Thanks. [LB1051]

SENATOR EBKE: First proponent. [LB1051]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

SUSAN SPAHN: Good afternoon, Senator Ebke and members of the committee. My name is Susan Spahn, S-u-s-a-n S-p-a-h-n, and I'm an attorney in private practice in Omaha, Nebraska, and my practice is almost exclusively pro...in probate, estate and trust and guardianships and conservatorships for over 25 years. And I'm also on the commission, the Supreme Court's Commission on Guardianships and Conservatorships that Chief Justice Heavican formed effective January 2013. Last...and I'm also a member of the legislative committee for the Bar Association and on its house of delegates. And last year the Bar Association supported LB122 and we continue to support LB122. And the changes that have been recommended are to help implement LB122 and also to provide some consistency across the court so that they're all operating under the same template for procedural. And for your question about page (sic--line) 27 on page 2 about Section 71-6021, because that language didn't change, it's the same LB122 language, I didn't specifically spend time looking at that issue. So that's why I'm not really prepared to answer your question about why that was carved out. [LB1051]

SENATOR KRIST: Okay. [LB1051]

SUSAN SPAHN: But I would point out that one thing that the bill does do is it puts the bill, the statute, to be within the umbrella of the Nebraska Probate Code rather than where it is currently. The reason why that change is recommended is because appeals would be directly to the Court of Appeals under 30-1601. That allows for appeals to be taken to the Court of Appeals, who also receive, under that same section, guardianship and conservatorship appeals. And cases under this type of action are going to be more akin to guardianship appeals than any other type of appeals. So you're getting it to the right court immediately, not going through district court and then to Court of Appeals. The changes that are being recommended in LB1051 setting forth that template for procedure will also facilitate the drafting of forms so that pro se individuals who are being denied visitation would have a form available that they could fill out without needing to hire an attorney. So it makes the law will be more accessible to everyone and that's one of the reasons for the proposed changes. The other, probably one of the more important reasons for the changes in our world is that the level of proof is now identified to be a preponderance of the evidence. Under guardianships and conservatorship statutes it's clear and convincing evidence before you can have a guardian or conservator, which is a pretty high burden of proof. This one is a lower burden of proof, just a preponderance of the evidence, so the petitioner coming in here doesn't have quite the high burden of proof that they would need without, you know, clearly identifying that it's the lower level of proof. And those we...I'm ready to answer any questions if you have any. [LB1051]

SENATOR EBKE: Questions? I see none. Oh. [LB1051]

SENATOR KRIST: No, I'll waive. Thank you. [LB1051]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

SENATOR EBKE: Okay. Thank you. [LB1051]

SUSAN SPAHN: Okay. Thank you. [LB1051]

SENATOR EBKE: Are there any other proponents? Do we have any more proponents? Going once. Do we have any opponents? Do we have any neutral testimony? Senator Pansing Brooks,... [LB1051]

SENATOR PANSING BROOKS: Hey. [LB1051]

SENATOR EBKE: ...it's got to be a record for you. [LB1051]

SENATOR PANSING BROOKS: Not bad. [LB1051]

SENATOR MORFELD: No party? [LB1051]

SENATOR PANSING BROOKS: Hey, come on. (Laughter) [LB1051]

SENATOR EBKE: And we have... [LB1051]

SENATOR PANSING BROOKS: This is what I want you to remember about me. [LB1051]

SENATOR EBKE: (Exhibit 1) We have one letter from Corey Steel, State Court Administrator, in favor of the bill, and no opponents. Okay. Senator Pansing Brooks. [LB1051]

SENATOR PANSING BROOKS: Okay. So, Senator Krist, I found last year when we passed that bill I found my testimony that we added a reference to Nebraska Statute 71-6021 because that section of statute already provides procedures to be able to appeal the refusal to access to a nursing home. And so we decided at that point not to interfere with that process. So 70-...71-6021 says: Notwithstanding the provisions of 71-6019, the administrator of a nursing home may refuse access to a nursing home to any person if the presence of such person in the nursing home would be injurious to the health and safety of a resident or would threaten the security of the property of a resident or the nursing home or if the person seeks access. But they've got a whole process for that anyway. So that's why they had come to us last year and said, please refer to this statute. Now somebody may have qualms with that procedure but we didn't touch that last year and refer to it because the nursing homes asked us to keep that process in place. [LB1051]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

SENATOR KRIST: May I? [LB1051]

SENATOR EBKE: Yes, please. [LB1051]

SENATOR KRIST: Thank you. So, obviously anytime you open up a statute, then there are...we've seen that several times. [LB1051]

SENATOR PANSING BROOKS: Yeah. [LB1051]

SENATOR KRIST: I've seen it several times in this year and on my bills. And so I think I had the same question and we answered it this way, by referencing 60-...6021. Just for potential for Exec and then also to justify the consent calendar, I'd like to know what the burden of proof is on that particular action in 6021. [LB1051]

SENATOR PANSING BROOKS: Okay. [LB1051]

SENATOR KRIST: Is that... [LB1051]

SENATOR PANSING BROOKS: But that's not a change to our statutes, right? [LB1051]

SENATOR KRIST: No. I know. [LB1051]

SENATOR PANSING BROOKS: Okay. [LB1051]

SENATOR KRIST: But keep getting notes from legal counsel so I look like I'm smart.  
(Laughter) [LB1051]

SENATOR PANSING BROOKS: I have the notes. [LB1051]

SENATOR KRIST: Appeal goes to the department then. [LB1051]

SENATOR PANSING BROOKS: Pardon me? What did you just say? [LB1051]

SENATOR KRIST: The appeal goes to the department. He just answered my question. So...  
[LB1051]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

SENATOR PANSING BROOKS: Yes. [LB1051]

SENATOR KRIST: ...I'm...I'm fine. Thank you. [LB1051]

SENATOR PANSING BROOKS: Okay. Good. Thank you. How easy for us to solve all that. [LB1051]

SENATOR EBKE: That's right. Any other questions? Okay. Thank you. [LB1051]

SENATOR PANSING BROOKS: Thank you. [LB1051]

SENATOR EBKE: This closes the hearing on LB1051. We will begin--I see Senator Wayne is here--with LB1086. Welcome, Senator Wayne. [LB1051 LB1086]

SENATOR WAYNE: Thank you, Chairwoman Ebke and members of the Judiciary Committee, my favorite committee. I am Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent District 13, which is north Omaha and northeast Douglas County. This is a bill that one should not have to introduce. However, a recent case that I currently have on appeal right now made me introduce this. What I will tell you is that in the case that I represented the individual, the mother had a child who had drugs in the system. So the state immediately removed the child from the home. The state proceeded, even with affidavits from mother, caseworker, and everybody else, to do background checks that they do in any type of prosecution of neglect, and discovered that this woman was previously married in Alabama over ten years ago and had her rights terminated in Alabama and proceeded to file against the father, although caseworker, mother, everybody signed affidavits saying my client was the father. Nebraska has a strong public policy of family relationships, and although everybody knew, one, that this person has been estranged from her husband over ten years, they're still a legal father in Nebraska. Why this became an issue is because when the child is in the Department of DHHS's custody, they do not have to make that child available for DNA testing although my client would have paid for it. Any other case we have disestablishment paternity, disestablish statutes where a person who doesn't believe that or believe that their child, this child maybe is not theirs or is theirs, there's specific things already outlined in how you disestablish paternity and reestablish paternity. But in this case, and the statute is clear, in order to disestablish paternity you have to have DNA testing. Well, since the child was in the custody of DHHS, we can never get to that statute nor could we ever get a way into court because the child was made...never made available. So I'm just going to read to you the e-mail that I got back from DHHS as we were negotiating this or trying to at least get the child available: It is DHHS's position that the child can only have one legal father, regardless of biology. If there is a legally recognized father--birth certificate acknowledgment of paternity, child support order, marriage to a mother, or court order--DHHS treats that as, in juvenile court,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

the only father that exists. The only time DHHS will help establish paternity is if there's no legal recognized father. In the case like yours...and they go on to tell me how to disestablish paternity. But again, the prima facie case to disestablish paternity is DNA testing. I can't DNA test because the kid is in the state's custody and the state won't make the kid available to DNA test. To make matters worse, this child has now been since adopted and the state is continuing to pay money every month to that family to take care of that kid when there is a willing, able father who attended court multiple times saying, I am the father, but still could not have DNA testing. So this is very simple. If there is a kid within DHHS custody and there is an affidavit saying that this person is the father, all we're asking is that DHHS make the kid available and that the person who is requesting the DNA test pay for the test. This is very simple. You would think you wouldn't need a statute to do this, but I have later found out in multiple cases in juvenile court some judges order it, some judges don't, but many of them have taken the position, we have legal father, we really don't need to know who the real father is. So with that, I'll answer any questions. [LB1086]

SENATOR EBKE: Senator Krist. [LB1086]

SENATOR KRIST: Just repeat that statement again, that DHHS doesn't think that biology has anything to do with establishing who the real father is? [LB1086]

SENATOR WAYNE: Correct. That's based off of case law that says as long as there's a legal father that's all that matters. [LB1086]

SENATOR KRIST: So, Senator Wayne, if the judge would order it, would that override the DHHS policy, regulation, or whatever they're hanging their hat on? [LB1086]

SENATOR WAYNE: Well, they could be found in contempt for not following the order, so, yes, they would be able to. But because case law is clear that once you have a legal father you don't have to do anything else, even the judge is not probably technically allowed. Now that some judges are doing that, there's an argument they're not following the law. They're following the equity portion of the law of they're trying to be equitable. But it's clear in case law that all we have to have is a legal father. And that's typically okay if the mother and father communicate with each other or have some type of way. But in this case, the child is removed from the home and there's no way to compel DHHS to just make the child available. [LB1086]

SENATOR KRIST: Did DHHS at any time tell you why that child could not be made available? Is that statute someplace or is that a regulation? [LB1086]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

SENATOR WAYNE: It's a regulation but, more, it's more about case law that Nebraska has a strong public policy of family relationship. So if a child is conceived during marriage or born during marriage, the presumption is that the married couple are the parents. The only way you can overcome that, according to statute, is through DNA testing. That is a specific DNA disestablishing of paternity statute that Nebraska has outlined. But again, if you don't have the child, you can't do DNA testing so you can't even get into court. [LB1086]

SENATOR KRIST: And to complicate this particular issue, what you're telling is us that in the meantime the child has been adopted and that it's still basically on the public payroll... [LB1086]

SENATOR WAYNE: Correct. [LB1086]

SENATOR KRIST: ...when there is a biological real father, maybe, but we don't know that because he hasn't been tested, the child hasn't been tested. [LB1086]

SENATOR WAYNE: Correct. [LB1086]

SENATOR KRIST: Lovely. Thank you. [LB1086]

SENATOR EBKE: Other questions? Senator Halloran. [LB1086]

SENATOR HALLORAN: Thank you, Chair Ebke. So would that dissolve the adoption? I don't understand. [LB1086]

SENATOR WAYNE: That's an appealable issue. And the individual whose case this involved was coming down here but we had some weather issues. He couldn't make it. But on appeal right now I'm going to try to deal with that issue. His goal was to make sure it doesn't happen to anybody else, and that's my goal. Just to give you a little more background on this, he is an immigrant from Africa. And if you know anything about the culture of Africans, their bloodline means more than what we see in Judeo paternity. They believe that their ancestors, many of them, can still talk to you. And the reason that you're born here today is because of them and so you can pray to them and talk to them. And this is literally not just taking, removing a child. It's...there's a religious part that he's struggling with now because his child is taken from him and he did everything right. And the funny thing is, is I was contacted...not funny but the interesting part is I got involved in this case because I'm elected. They asked me is there anything I can do. The only thing I could do is represent him because statutorily there's nothing we could do at the time. [LB1086]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

SENATOR HALLORAN: So is it his goal to dissolve the abortion (sic)? [LB1086]

SENATOR WAYNE: His goal was to have his child, but his secondary goal is that we...this should never happen to anybody else, that if you think about the situations you can be involved in, you have domestic violence people who left their state and came here and are still going through a lengthy divorce but maybe have a child here, are we really going to say now that, in this case, if that child is removed we can never know who the father is or the father has to go back to the guy in California who may have beat the woman? I mean there's multiple reasons why, just make the kid available and do a DNA test. And the statute is specific. It won't cost anybody anything. The person who wants it has to pay for it. And we're only talking about kids in custody. (Inaudible) juvenile, the court of juvenile, sorry. [LB1086]

SENATOR EBKE: Other questions? I don't see any. [LB1086]

SENATOR WAYNE: It's a bill you wish you'd never had to write. [LB1086]

SENATOR EBKE: (Exhibit 1) Understand. Do we have any proponents for LB1086? Do we have any opponents of LB1086? We do have one letter from Matthew Wallen, director, Division of Children and Family Services, Nebraska. Do... [LB1086]

SENATOR KRIST: Is that in opposition? [LB1086]

SENATOR EBKE: Huh? That was opposition, yeah, in opposition. Do we have any in the neutral capacity? See nobody. Do you want to close? Could have just stayed sitting there. [LB1086]

SENATOR WAYNE: I just didn't...I'm not answering any questions but I did not get the copy of that letter from...in opposition. But if we have a strong public policy that family means something,... [LB1086]

SENATOR EBKE: I'll get you a copy. [LB1086]

SENATOR WAYNE: ...we can't...and the state already has custody of the individual or they're in juvenile services, we're already paying for it. Let's make sure that they're with the right family. [LB1086]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

SENATOR HALLORAN: Can I ask one more question on the adoption issue? How long has the child been under adoption? [LB1086]

SENATOR WAYNE: December of...December 10 of 2017, recent, very recent. [LB1086]

SENATOR EBKE: And to be fair, the letter doesn't appear to say opposition. It raises a lot of exceptions and I don't...I don't have a copy of the e-mail that it came through. If it came in via... [LB1086]

SENATOR WAYNE: I can...I... [LB1086]

SENATOR EBKE: ...hand delivery so. [LB1086]

SENATOR WAYNE: ...I can add an amendment for parents who are already terminated. I just saw that. I wish we could have that conversation ahead of time, but those are simple things. [LB1086]

SENATOR EBKE: Neutral? Okay. The director says that it's neutral. [LB1086]

SENATOR WAYNE: And those are things that I can work on as far as limiting it. Again, when I wrote this bill, it was hard to even write as who could fathom that you won't allow a child to be DNA tested in a situation like this? [LB1086]

SENATOR MORFELD: Chairwoman Ebke. [LB1086]

SENATOR EBKE: Yes. [LB1086]

SENATOR MORFELD: Is it okay if I submit this to Senator Erdman for his opinion on whether it's neutral? [LB1086]

SENATOR EBKE: On neutral? Yeah, you go right ahead. [LB1086]

SENATOR MORFELD: Okay. (Laughter) [LB1086]

SENATOR EBKE: Other questions? [LB1086]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

SENATOR WAYNE: Quickest hearing so far. [LB1086]

SENATOR EBKE: Okay. Thank you. [LB1086]

SENATOR WAYNE: Thank you. [LB1086]

SENATOR EBKE: This closes the hearing on LB1086. We will now open the hearing, if Senator Howard, Senator Vargas isn't here, we'll just stand at ease for a moment or two. [LB1086]

SENATOR KRIST: We just have two left?

SENATOR EBKE: We have three left. We have Senator Baker. You ready? Go for it. Going to be efficient. I did this one day. I got here 2 minutes late and we sat there for 30 minutes.

SENATOR KRIST: We lost our quarterback. Call in the full ones.

SENATOR EBKE: Okay. We're going to open the hearing on LB981. Senator Baker. [LB981]

SENATOR BAKER: Thank you. My name is Senator Roy Baker, R-o-y B-a-k-e-r, and I represent District 30. I was at a Lancaster County legislative retreat a few months ago and Lancaster County Defender Joe Nigro was there and he had several good ideas and one great idea he had that we didn't get together in time to get introduced this year but it...I hope he does with someone else next year. But this was another idea that I liked so I asked, I asked him, he didn't seek me out, I asked him if he wanted to do some of those things, wanted me to take a crack at getting some of these things done. So LB981 seeks to accomplish two positive changes in the area of juvenile justice. The first change would require prosecutors to initially file Class IIA felonies in juvenile court. Nebraska is unique in allowing some felonies in adult court for juvenile court at the prosecutor's discretion. Currently, Class III, Class IIIA, and Class IV felonies must initially be filed in juvenile court. This bill would expand this to include Class IIA felonies to those offenses which must originate in juvenile court. Prosecutors can still file a motion to transfer these offenses to adult court. The advantage of filing a case in juvenile court is that juvenile court judges have more knowledge of what programming is available than judges in adult court. Juvenile court judges may have knowledge what programming has been tried with this specific juvenile. While the case is still pending in juvenile court, juvenile can begin receiving services. If this case starts in adult court, the juvenile will receive no services until the case is transferred and filed in juvenile court. This bill is better for juveniles while still giving prosecutors the opportunity to request a transfer to adult court. Requiring Class III, IIIA, and Class IV felonies to initially file in juvenile court has worked well. The other change this bill

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

would make is to allow juveniles and their legal counsel to consent to extending jurisdiction till the age of 21. This would give juvenile court more time to work with offenders. This makes sense given the research on adolescent brain development. Sometimes prosecutors argue that if a juvenile commits an offense shortly before they turn 18 there's not enough time for the juvenile court to work with them. In this situation, the juvenile and their legal counsel could agree to extend jurisdiction. This change would also benefit juveniles and prosecutors by giving juvenile court more time to work with the juvenile. Both these changes could further the administration of justice. I recognize that this bill is not prioritized. I recognize this bill has a fiscal note. It's fine. I understand... [LB981]

SENATOR EBKE: You recognize. [LB981]

SENATOR BAKER: ...what's likely going to happen, so. [LB981]

SENATOR EBKE: Thank you, Senator Baker. Any questions for Senator Baker? [LB981]

SENATOR PANSING BROOKS: I have a question. [LB981]

SENATOR EBKE: Okay. Senator Pansing Brooks. [LB981]

SENATOR PANSING BROOKS: Thank you for bringing this bill, Senator Baker. The standards across the nation right now are to consider young persons, young persons' laws and consider the time period from 18 to 26, when we know that young people's are...brains are still developing, to be particularly susceptible to making pathetic decisions, to, you know, really having more trouble and needing more help and time to grow up. So I really appreciate you bringing this. I'm trying to find the fiscal note and... [LB981]

SENATOR EBKE: It's in a...it's at the bottom of the paragraph on the first page. It says... [LB981]

SENATOR PANSING BROOKS: It would so about adjustments to the computer system would be about \$180,000 for our computer system? Wow. So that we do have a court automation fund right now so obviously that is to just kill this bill, so. And we've pretty much used that fund to computerize all the courts across the state. So I'm sorry about that. I think that is disingenuous. I also just want to thank you for doing this. Many states are starting to look at creating these age differentials and not just throwing people away at 18. You know, you still have given county attorneys the power, I believe, is that correct,... [LB981]

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Transcriber's Office

Judiciary Committee  
February 22, 2018

---

SENATOR BAKER: Yes. [LB981]

SENATOR PANSING BROOKS: ...to motion to adult court? [LB981]

SENATOR BAKER: Yes. It's still there. [LB981]

SENATOR PANSING BROOKS: So again, the juvenile courts are supposed to be courts of rehabilitation and, you know, they are becoming less and less so. And I think this is a really good way to look at dealing with the susceptibilities and, you know, differentials of being a child and being a young person. Thank you for bringing it. [LB981]

SENATOR EBKE: Other questions? See none. I presume you'll stay to close or not. Whatever. Okay. First proponent. Do we have any proponents for LB981? Did jumping the time distract people? Were you expecting? [LB981]

SENATOR BAKER: But it's okay. [LB981]

SENATOR EBKE: (Exhibit 1) Okay. Any opponents on LB981? Any in the neutral capacity? Do we have any letters? We have. We have a letter from Juliet Summers of Voices for Children as a proponent, and no opponents. Yes, Senator Krist. [LB981]

SENATOR KRIST: Are you going to close because I'd like to ask you? [LB981]

SENATOR BAKER: I will if you need to ask me, Senator. [LB981]

SENATOR KRIST: Can he close from right there? [LB981]

SENATOR EBKE: Sure. [LB981]

SENATOR KRIST: Okay. I'm, I guess I'm glad you brought the fiscal note to our attention. And I know we have a senior member of Health and Human Services in the room. I guess I'm confused why--and I think we need to have an answer from Health and Human Services; if they're not wanting to talk to us today, I think we need to get an answer--separation of YRTC facilities and what needs to happen. It doesn't, doesn't make any sense when you read that. So, Senator Pansing Brooks, thanks for bringing it up. But I think we should officially ask for a better explanation than what...because our legislative fiscal note really just echos what's come from the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

Department of Health and Human Services and I'm not seeing the logic. So there's my question and my request. [LB981]

SENATOR EBKE: (Exhibit 2) I'm told that there may be a letter in support from Scout Richters of the ACLU of Nebraska. We'll have to check. We are having a little bit of technical difficulty short a clerk, the regular clerk. So we'll go through the e-mails later and see if we can find that. Thank you. Okay. We're done? Okay. That closes the hearing on LB981. And we're still...there is a letter from the ACLU but it didn't get printed. Okay. Okay. Is Senator Howard or Senator Vargas here? Okay, Senator Howard is on her way so we're just going to sit tight for a few minutes. [LB981]

BREAK

SENATOR EBKE: He's here? Why don't we go ahead and get started. Senator Howard will (inaudible). [LB1112]

SENATOR VARGAS: You sure? [LB1112]

SENATOR PANSING BROOKS: She's sitting in there. [LB1112]

SENATOR EBKE: What? [LB1112]

SENATOR PANSING BROOKS: She's sitting in there. [LB1112]

SENATOR VARGAS: Yeah. [LB1112]

SENATOR EBKE: Well, if she's still sitting in there, let's. Sit down. [LB1112]

SENATOR VARAS: Okay. [LB1112]

SENATOR EBKE: Let's go. (Laughter) [LB1112]

SENATOR HALLORAN: Go. Go, Tony. [LB1112]

SENATOR EBKE: She's not actually on the way. [LB1112]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

SENATOR HALLORAN: Go, Tony, go. [LB1112]

SENATOR EBKE: Yeah. [LB1112]

SENATOR VARGAS: (Exhibit 1) Doing as I'm told. Again, (laughter) (inaudible) everybody comic relief for a Thursday afternoon. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I represent District 7 and the communities of downtown and south Omaha in the Nebraska Legislature. [LB1112]

SENATOR EBKE: And let me just make note for the record this is LB1112. [LB1112]

SENATOR VARGAS: Correct. Yes. [LB1112]

SENATOR EBKE: Okay. So we're out of order here so. [LB1112]

SENATOR VARGAS: Yes. Okay. So thank you very much, Chairwoman Ebke and members of the committee. I'm here today to talk about my bill, LB1112, which I'm proud to cosponsor with two members of this committee, Senator Bob Krist and Senator Patty Pansing Brooks. LB1112 will update Nebraska statutes so there is a clear definition of the purpose of detention for juveniles, which should only be to ensure the safety of the community or to ensure that...to ensure the child appeared at a hearing. This committee is well aware of the negative effects of juvenile detention for both kids and for our communities. 2008 and 2014 reports from the Justice Policy Institute show that detention is one of the most significant factors in increasing recidivism, even more so than owning a gun or membership in a gang. Detention makes behavioral health problems worse. Youth in detention have doubled to four times the suicide rate for youth in the community. Detention has a negative effect on future educational outcomes and success in the labor market. Detaining youth reduced work time by 25 to 30 percent over the next decade of their life. Moreover, unnecessary detention costs the state of Nebraska an average of \$347.55 per youth for every day that they're detained, for an annual cost of \$126,856. Now there are...there are alternatives to detention and I'd like to say that an organization, Crime Commission, Probation, JDAI have worked to expand these alternatives in the state and I believe that this builds on the progress that has been made. LB1112 was previously introduced in 2016 by...as LB675 by Senator Bob Krist, as one of the questions that arose during the hearing was: What about communities in rural and small-town Nebraska that don't have access to detention alternatives? Now there is access to electronic monitoring across the state. That's one example. In some communities, probation officers and judges have partnerships with mental health and substance abuse treatment facilities. In addition and in response to the concern brought forward on this bill in 2016, we've added a provision to the bill that would allow counties a one-time use of community-based aid funds to help defray the costs for alternatives, such as conversion of an

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

existing facility to a temporary shelter. LB1112 is not suggesting detention may never be used. It updates state statutes to bring them in line with national best practices that have clearly been shown to improve outcomes for juvenile offenders. LB1112 will save the state money, better support communities, and, most importantly, help children access the services they need and avoid continued interactions with the juvenile justice system. Now one final note on this bill. You have an amendment that I actually need to make sure to give to you. Want to see if I have it right here and I have all the copies here. Hold on a second. All right, I'm going to have to get you guys a copy of this amendment. It's a very small change. With the amendment that we'll make sure to share with you is something that our office worked with the Juvenile Justice Institute and Voices for Children. What essentially it does is this amendment puts into place in statute what is already a common practice for plans submitted to receive community-based aid funds, which includes an examination of disproportionate minority contact. Given both the rate at which minority children enter the juvenile justice system compared to their white peers and the opening up of community-based aid dollars, I feel it's important to put this practice into statute to ensure that disproportionate minority contact is considered by communities when using the funds for this new purpose. With that, I'll be happy to answer any questions you may have. [LB1112]

SENATOR EBKE: Questions for Senator Vargas? Senator Halloran. [LB1112]

SENATOR HALLORAN: Thank you, Chair Ebke. Thank you for bringing the bill, Senator Vargas. On page 8, line 31...and this is just for clarification (inaudible). [LB1112]

SENATOR VARGAS: Uh-huh. [LB1112]

SENATOR HALLORAN: "To convert an existing juvenile detention," it's talking about using the community-based juvenile service fund. "To convert an existing juvenile detention facility or other existing structure for use as an alternative to detention as defined in Section 43-245." What would be some of those other...or what would be the...what would potentially be some of those alterations of a facility to accommodate that? I mean... [LB1112]

SENATOR VARGAS: This is on page? [LB1112]

SENATOR HALLORAN: Page 8, line 31. [LB1112]

SENATOR VARGAS: So there's a couple of different ways that it could be used. I'm trying to see what I've referenced the exact couple ways over here. So one way that we...I cited in here is that it could be used as a temporary shelter. Right? That's one way that it could be repurposed. What we don't want is that a reason to continue to encourage a juvenile to be placed in detention

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

center is because it exists and it's what we have and so we need to fill the spots. So one way would be to be able to convert, let's say, a juvenile detention center into a potentially temporary shelter as opposed to keeping it the way it is. [LB1112]

SENATOR HALLORAN: I'm looking for what's the difference between the facility if it's converted, it's just to a temporary juvenile detention versus an established facility. I mean what would be the...what would be the difference in the facility? [LB1112]

SENATOR VARGAS: Uh-huh. There will be a couple other people that will be able to talk to that, that have been working in this arena for some time. But my understanding is a lot of it has to do with the level of security, access, the types of support mechanisms. That has a lot to do with the differences in a temporary shelter and a detention center. [LB1112]

SENATOR HALLORAN: Okay. [LB1112]

SENATOR VARGAS: I mean I think the end game is we want to provide if individuals that are juveniles are being detained, that there's a reason why they're being detained rather than just detaining them because we have the facilities. [LB1112]

SENATOR HALLORAN: Right, I under... [LB1112]

SENATOR VARGAS: And if we can encourage to get these facilities to be not detention centers then that will be... [LB1112]

SENATOR HALLORAN: Right. [LB1112]

SENATOR VARGAS: ...an avenue to go down. [LB1112]

SENATOR HALLORAN: I understand the intentions and it's good intentions. I'm just trying to determine what would be...what would be the difference, right? I mean are we try...would we be reinventing the wheel as far as what that converted, more local detention center would be, facility would be versus would it replicate it? I mean would it be similar? [LB1112]

SENATOR VARGAS: No, it wouldn't replicate. I'll say that. It's to make the alternatives would be less restrictive, far less restrictive, all right? So it would not be replicating, reinventing, creating the same sort of system, creating another detention center. It's not what it would be. [LB1112]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

SENATOR HALLORAN: Okay. Thank you. [LB1112]

SENATOR EBKE: Other questions? Senator Pansing Brooks, I didn't look away fast enough. [LB1112]

SENATOR PANSING BROOKS: I may have to go to something. I have another hearing, so I just want to thank you so much for bringing this bill. It's really important that it does align with best practices across the nation. And I just thank you very much for bringing this. [LB1112]

SENATOR VARGAS: Thank you. And you've worked in this arena so I appreciate you acknowledging that this is best practices across the nation. [LB1112]

SENATOR PANSING BROOKS: It is. [LB1112]

SENATOR EBKE: Senator Baker. [LB1112]

SENATOR BAKER: Thank you. Senator Vargas, you indicated that you believe that minority children get incarcerated or get taken to a facility at a higher rate than nonminorities. Is that true? So who makes those decisions (inaudible) and why? At what point are those decisions made, say, this kid is going to a facility, this kid goes home? [LB1112]

SENATOR VARGAS: So these decisions are made, well, at a lot of different levels, but you're referring to the disproportion of minority contact that I referenced? [LB1112]

SENATOR BAKER: Yes. Yes. [LB1112]

SENATOR VARGAS: So one, this is just a matter of fact. There's data that supports that there are individuals in the juvenile justice system that juveniles of specific minority group are significantly different, different rates of contact than white, non-Hispanic juveniles in the juvenile justice system; that there are more contact rates for people from specific subgroups. So the literature continues to show that. What we want to ensure is that that is...that's taken into account when decisions are being made and specifically when you're submitting a rationale that you want to repurpose these funds because that is one aspect of the community dollars that is being taken into account. So this happens at all levels. I don't think it just happens at one level. The research shows that disproportion of minority contact is happening at all levels in the justice system. Thankfully, in the justice system for local counties, the state level Probation and juvenile, there's been identified a couple different areas that they have been working to decrease

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

the disproportionate minority contact as much as possible at all levels. So this is to make sure that we do that. [LB1112]

SENATOR BAKER: Thank you. [LB1112]

SENATOR EBKE: Other questions? See none. Thank you. [LB1112]

SENATOR VARGAS: Thank you. [LB1112]

SENATOR EBKE: First proponent. [LB1112]

JULIET SUMMERS: (Exhibit 2) Good afternoon, Chair Ebke and members of the Judiciary 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 LB1112. When our kids are going down the wrong path, how our system responds matters. We can either get it right or we can compound the damage that's being done. Decades of research have shown that what works in combating juvenile crime are thoughtful responses aimed at changing underlying beliefs, engaging family and community around a child, and providing positive solutions. In direct contrast, time and again we have seen that incarcerating juveniles does not work. Voices for Children supports this bill because it will bring Nebraska's Juvenile Code into alignment with best practice standards for the use of secure detention. All too often we're locking up children who present with greater treatment needs than safety risks. When we place a young person in detention who's not a threat to society, we spend tax dollars with no benefit to public safety. When we place a young person in detention who is already suffering from a mental health disorder, addiction, or history of trauma, we compound that suffering rather than resolving it. So without demonstrated benefit we expose the child to worsened mental health and increased rate of suicide, increased likelihood of recidivism, a decreased likelihood of returning to school and completing education, increased likelihood of going deeper in the system, and increased likelihood of adult recidivism and incarceration. And all that summed up: Detention is not just a bad place for low-risk, no-risk, or mentally ill youth; it is arguably the worst place. So I'm happy to report to you today that in Nebraska our total annual admissions to juvenile detention facilities have fallen dramatically through some of the concerted efforts and investments in alternatives that have been led by this body and, as the Senator noted, through various initiatives in the state going from 3,930 in 2011 to only 2,161 in 2016, and this is a terrific trend that I think everyone should be proud of. And we believe that LB1112 would substantially cut our juvenile detention admission numbers again, protecting kids from the unintended harms of detention by ensuring that only the youth who truly require secure confinement to protect public safety or to ensure that they appear in court would be detained. And then additionally, by allowing counties a one-time use of the community-based juvenile services aid fund to modify existing detention facilities or to invest in new alternatives to

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

detention, the bill has the potential to broaden the array of existing placements available for youth who need a safe space to be that maybe not be home but doesn't require secure confinement in a detention facility. When a child acts out, society has a choice in how to respond. How we choose to structure our system and the investments that we make have real and lasting consequences for kids and communities. I'd like to thank Senator Vargas for bringing this important bill and the committee for your time and consideration. And I've got my yellow light, but I'd be happy to attempt to address the questions that have already been asked if you would like me to. [LB1112]

SENATOR EBKE: Senator Baker. [LB1112]

SENATOR BAKER: Thank you. First of all, I'm with Senator Vargas on this and with Voices for Children. But...and again, getting at the same kind of question I asked Senator Vargas, who in your sector who say all too often we are locking up children and whenever we place, who is "we"? [LB1112]

JULIET SUMMERS: That's a fantastic question, Senator, and I thank you for asking it. So the way, I can tell you the specifics of how a child would present to a detention facility, that almost all cases where a child would be arrested or brought in would...they would probably go through Probation intake. So there would be, in almost every case at the detention, moment of detention, a probation officer doing a assessment of the child's risks. Now the Probation Office has based their risk assessment instrument off of national best practice, which only assesses for danger to community or risk of flight to avoid court proceedings. Unfortunately, that isn't mirrored by our statute. So for reasons risk assessment instrument is a little ahead of the game and it's resulting in quite--there have been a couple evaluations done--a high number of what are called overrides, where a child is overridden into detention even though their score is low enough that they should be safe to go home. So to...now you're asking, I think, specifically about disproportionate minority contact. The risk assessment instrument is race neutral and I don't think any of us in this room should be concerned that we have a racist Office of Probation. So that's not at all what we're saying. The amendment regarding disproportionate minority contact asks that counties at the local level, when they're creating their comprehensive juvenile services plan, to figure out what's going on with their juvenile cases and how to best use this money to fix their system, fill the holes, they can assess that on a local level of what it looks like in that area of the state. So obviously, the issues regarding disproportionate minority contact are going to be different in Omaha than they might be out in Scottsbluff or, you know, in central Nebraska. [LB1112]

SENATOR BAKER: So how is passing this law going to change people's behavior for doing what they've been doing has a resulted in some imbalance? [LB1112]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

JULIET SUMMERS: Well, in two ways. So on the detention moment part of bthings, by not allowing the use of detention for the rationale of risk of harm to self anymore, that just cuts out... [LB1112]

SENATOR BAKER: Okay. [LB1112]

JULIET SUMMERS: ...that rationale. So legally it can't happen anymore. Regarding the disproportionate minority contact piece, as was noted, many counties are already doing this. They're already identifying this as a need to improve their system of response and use of the community-based aid fund. Codifying it in statute and saying this needs to be part of your community plan will then require counties and groups of counties and tribes who want to receive community-based aid funds to include a consideration of this in their grant request and in their three-year sample plan. [LB1112]

SENATOR BAKER: Okay. Thank you. [LB1112]

JULIET SUMMERS: Yeah. Thank you, Senator. And then Senator Halloran, I don't know if you'd like me to try and take a stab. [LB1112]

SENATOR HALLORAN: Sure. [LB1112]

JULIET SUMMERS: Okay. So the difference between detention and a placement that would be considered an alternative to detention has everything to do, in a very technical way, with the ways that youth would be restrained. So an alternative to detention per the statute that's listed, 43-250, can't include any physical restraint of the child through like the way the building is built, essentially locked doors. So one way that facilities might convert would be to change the locking mechanisms, like how youth would enter and leave the facility, access to the outside, but also could be used in other ways too. So I'll raise the example of Sarpy County's staff-secure detention facility. They already use part of the facility for the actual detention, but then their numbers have dropped so dramatically of kids actually residing in the detention facility that they've started using another part of their facility for after-school programs, for, you know, running out the electronic monitoring program. So facilities could potentially modify space in that way to, instead of having it be beds and locked doors, to have space be, well here's a safe place you could come in the after-school hours to get tutoring; you know, make sure that you're not out on the streets getting into trouble during those after-school hours, that kind of a thing. [LB1112]

SENATOR HALLORAN: Okay. Now don't mistake my questions as opposition,... [LB1112]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

JULIET SUMMERS: Sure. [LB1112]

SENATOR HALLORAN: ...but if it makes it to the floor there's going to be questions. [LB1112]

JULIET SUMMERS: Absolutely. [LB1112]

SENATOR HALLORAN: And so for clarity of the purposes, so I can see no reason for within a facility to have locked doors for the rooms they reside in but what...but securitywise in and out... [LB1112]

JULIET SUMMERS: Uh-huh. [LB1112]

SENATOR HALLORAN: ...for the sake of the kids that are there. The outdoor egress doors... [LB1112]

JULIET SUMMERS: Yeah. [LB1112]

SENATOR HALLORAN: ...would be secure? [LB1112]

JULIET SUMMERS: Would be different. So the definition of an alternative to detention in that 43-250 contains actually a provision about egress doors and how they can be on a buzzer, I think. There might be someone behind me who can be even more specific about this. [LB1112]

SENATOR HALLORAN: Okay. [LB1112]

JULIET SUMMERS: But essentially that the difference between detention and not detention is does the child have access where they could leave. Their supervision that's keeping them in place is through staff only, through eyes on and person-to-person intervention as opposed to there's a locked door keeping you on the inside. So the difference between that and a buzzer-locked door is, you know, some staff member is watching, has eyes on the population, and can hit a buzzer to lock that door as opposed to the door remains locked as a default, I think is... [LB1112]

SENATOR HALLORAN: Okay. In part, the only reason I asked this question is we went from back to the discussion yesterday on when we went from regional mental hospitals to community-based housing... [LB1112]

JULIET SUMMERS: Uh-huh. [LB1112]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

SENATOR HALLORAN: ...there was this kind of same concept. And quite honestly, there was a lot of people that wandered off... [LB1112]

JULIET SUMMERS: Uh-huh. [LB1112]

SENATOR HALLORAN: ...from these community-based housing, got in trouble with the law, ended up in jail and/or prisons where they shouldn't be. And so I mean it's just a reality, it can happen and the best intentions in the world of, well, we're watching them, can easily be missed. And so what happens if a child wanders off,... [LB1112]

JULIET SUMMERS: Well, I think... [LB1112]

SENATOR HALLORAN: ...regardless of how much scrutiny or how much supervision they have? [LB1112]

JULIET SUMMERS: Oh, so from like an unlocked shelter. [LB1112]

SENATOR HALLORAN: A facility, yeah. [LB1112]

JULIET SUMMERS: Right. Right. Well, and I mean that's the difference with detention, you know, that there is...there's physical restraint through the environment as opposed to eyes on the ground. So I guess to answer, this isn't...I don't know whether this will answer your question or not. But I think the concern that the bill is trying to address is the damage that's done in the environment itself when it is locked doors and cinder block walls and... [LB1112]

SENATOR HALLORAN: Oh. No, I understand that... [LB1112]

JULIET SUMMERS: Right. [LB1112]

SENATOR HALLORAN: ...and I agree with that. [LB1112]

JULIET SUMMERS: Right. [LB1112]

SENATOR HALLORAN: It's just...it's just that again the previous example of community-based housing for people that had some level of mental incompetency had the best intentions as well,... [LB1112]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

JULIET SUMMERS: Uh-huh. [LB1112]

SENATOR HALLORAN: ...but a lot of people wandered off. And, you know, that's, I guess that's a concern for the safety of the child ultimately. I mean if they wander off and get into trouble then we got a, you know, a compounded problem, all right? [LB1112]

JULIET SUMMERS: Compounded problem. I think the answer to that, Senator, would be in, you know, there's...we have rules and regulations regard...like governing the staff ratios that would need to be in place for it to be a certain type of shelter or a type of placement. We do have rules and regulations regarding what kinds of locks for security are still available so, for instance, the buzzer lock door. If you have a shelter with someone who's always on staff at that front desk watching the door... [LB1112]

SENATOR HALLORAN: So the buzzer to lock the door would be like if someone walked off the buzzer goes off? [LB1112]

JULIET SUMMERS: It would be...it can either work that way, and again, there may be someone behind me who works in a facility who could explain even better, but I think that's one way it works, that if a door opens or if there's an attempt to open a door a buzzer sounds. But it... [LB1112]

SENATOR HALLORAN: Because at nursing homes they have that, for example, which is, you know, a smart thing to do so it draws attention to the people that are supervising, right? [LB1112]

JULIET SUMMERS: Yes. So I think that's one way that it can work. I think another way it can work is there is someone seated at a desk watching the door and they can, if they see someone trying to exit, they could hit a buzzer that actually locks the door so then the door is locked, so. [LB1112]

SENATOR HALLORAN: Okay. [LB1112]

JULIET SUMMERS: I think we still can move forward, but I don't work in the facilities. [LB1112]

SENATOR HALLORAN: No, I understand. [LB1112]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

JULIET SUMMERS: I know there's others who have more technical expertise,... [LB1112]

SENATOR HALLORAN: Thanks for your effort to answer the questions. [LB1112]

JULIET SUMMERS: Absolutely. [LB1112]

SENATOR EBKE: Senator Krist. [LB1112]

SENATOR KRIST: Hi. And thanks for coming. I am the last person that...I mean actually I signed on to the bill and I understand, but I...you said that a child can no longer be detained based upon this if he is, he or she is at serious risk to themselves. [LB1112]

JULIET SUMMERS: Yes. [LB1112]

SENATOR KRIST: Okay. So following the line of questioning, where are we going to put them? [LB1112]

JULIET SUMMERS: Well, Senator, I mean that's the...that was the argument for the second half of the bill that's, first of all, I do think since we worked on LB675 a couple years ago there have been great strides made in terms of the offerings available throughout the state for community-based mental health services specifically related to kids on probation. So we have MST, multisystemic therapy, rolling out throughout the state. We have crisis response now rolling out throughout the state. We have electronic monitoring rolling out throughout the state. So we have a lot of things in place already that weren't there a couple years ago, to respond to that. And then the second piece of things was the community-based aid funds and opening this flexibility to allow, if a jurisdiction identifies this is a gap in what we have, we don't have a shelter where we can safely keep kids who need to be there who might not need detention, they can use this funding towards that to try to raise a match or braid funds together in order to try and create some kind of placement to fill that need. [LB1112]

SENATOR KRIST: Okay. So I get it, in an ideal world, the world that I would have liked to have created eight years ago when we started this venture, but we're not there yet. So I'm going to hear from my rural counterparts in Chadron and other parts of Nebraska and the sheriff doesn't want to drive them a hundred miles to a facility and then go get them and bring them back. And so it's not doable for some parts of the state. When we're talking about MST, FFT, and all the strides that have been made, the greater the population base, the greater the energy level, the better the facilities, the better the services. I'm one who's still extremely skeptical that when one is at serious risk to themselves and you don't have any place to put them, then I'm going to send them

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

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home so they can slash their wrist? That's not an option for me. And when we say the second half of the bill, we're saying draw down on those community-based services. We've been saying that for five years. I think...well, four years. I think we established the community-based funds four or five years ago. So they haven't done it so far, and we're going to pass a bill and it's going to get signed into law--and I'm not arguing that it shouldn't be, I'm just playing devil's advocate here--and then the juvenile court judge is going to be forced to a situation where they had no place to put them because we're telling them not to put them there. This is, you know, I hate to say this, but this, I've heard this argument over and over and over again. And, yes, I signed on to this bill. Yes, I believe it's the right thing to do. But until we wake up and actually pay the piper, so to speak, we're going to have kids at risk all over the state because we're not taking the necessary action. That goes back to a time when we disabled the programs. It goes back to a time when Health and Human Services disabled all of those facilities that we had as potentially half...I call them halfway homes or at least some safe haven to put them into. Those don't exist anymore. And so I'm expressing a lot of anxiety and a little bit of apprehension because I'm not going to be here to fix this next year, but we've tried to fix it year after year after year. So you can respond to it any way you want to. It's not really a question. It's just a caution for those who are coming up in opposition. I've heard the opposition before. I know what the juvenile court judges are going to say. I know what HHS might say. But what are we going to do with that kid that there's no place else to put them to save them from themselves at any given time. And in the judgment of the judiciary and of the caseworker, where do they go? [LB1112]

JULIET SUMMERS: I hear you, Senator. I've been part of those conversations too. [LB1112]

SENATOR KRIST: I know. [LB1112]

JULIET SUMMERS: And I guess I would say I would start with the big picture, so what we know, what the research really shows on that big picture--and I know it's hard for those who are facing the individual case--is that overall detention is worse. Detention is worse we know. We know that is true. For those kids who are borderline, who are suffering from some mental health issue, place...incarcerating them is going to exacerbate things and that's true. Just that is big picture across the board. So I do know, and I have practiced as well, I know how hard it is in terms of services on the ground. I think at a certain point to get ourselves out of the cycle that we're in, we need to take the stand that says we know what we're doing is wrong, we know what we're doing is making the problem worse, and so we are going to cut it off here. And that forces the rest of us, the practitioners and everybody else, to up our game and to start figuring out some of those other solutions. And I actually think we have some data to suggest that this is already the case. So I know you hear from the rural parts of the state, but actually, when you look at the data of where kids are coming to detention centers from, the most kids are coming from our locations that are close to a detention facility. So in the pockets of the state where it's much, much farther and harder to get a kid in to detention, they do a better job of keeping kids out of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

detention. So they work with the services that they have, they figure out safety plans more I think than, you know, as a rate than the locations where it's easy to say, well, the detention center is right down the road so just to be on the safe side I'm going to detain. So... [LB1112]

SENATOR KRIST: But I would argue, and I think if Mark were here that he would tell you, that it's a hold. If we're talking about...are we talking about Kearney and Geneva? [LB1112]

JULIET SUMMERS: Sir, I'm just speaking about the short-term detention facilities. [LB1112]

SENATOR KRIST: Okay. All right. [LB1112]

JULIET SUMMERS: Yeah. [LB1112]

SENATOR KRIST: Because the point needs to be made that if that's what we're talking about, that's fine. But with the long-term Kearney and Geneva, that's a whole different class of young person right now. They are...I know you hate when I use this term but they are really the worst of the worst and that's the last place that they can possibly be, because we've tried everything else, so. But you're talking about short-term detention. [LB1112]

JULIET SUMMERS: Right,... [LB1112]

SENATOR KRIST: Right. [LB1112]

JULIET SUMMERS: And that actually does raise an important clarification from the text of the bill. So on the very first page, the first line that you see does refer that some language was moved regarding YRTC. That was in the drafting process of the bill wanting to separate out the short-term detention and what's considered in short-term detention. So it was just like a drafting process thing to, okay, we're just going to move YRTC out of it. Some language was left behind when that move happened so it looks like the bill does something serious with YRTC commitment. However, actually the part of statute in a whole other section of code that changes what...or that deals with what can be considered an order for a commitment to YRTC, none of that is changed. So this bill should not change the process that's been in place since LB561 in terms of what needs to be considered for commitment to YRTC, what kinds of motions the county attorney has to file, what needs to be proved up. All of that still exists in a different section of (inaudible). [LB1112]

SENATOR KRIST: So I would bring to my colleagues' attention that if that is the case then there has to be legislative...we have to establish a record that that's what this bill means or purports to

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

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do and it has to be done on the floor if it goes forward and not just here in committee. Go ahead. Sorry. [LB1112]

JULIET SUMMERS: No, that's all I have. [LB1112]

SENATOR EBKE: Other questions? Okay, thanks. [LB1112]

JULIET SUMMERS: Thank you. [LB1112]

SENATOR EBKE: Next proponent. [LB1112]

CHRISTINE HENNINGSEN: (Exhibit 3) Thank you. 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 direct a project called Nebraska Youth Advocates at UNL's Center on Children, Families, and the Law, and I'm actually going to read a letter in support of LB1112 that was written by our staff attorney, Joy Suder, S-u-d-e-r: Most of my almost ten years as an attorney in Nebraska have been spent practicing law in juvenile court. As a former Douglas County Public Defender and now a juvenile defender in private practice, I have represented many hundreds of children at detention hearings. The current detention standard is overbroad and brings kids deeper into the juvenile justice system. The current standard also sends a clear message that, as Nebraskans, we value property more than children and that we'd rather lock up children who self-harm than provide placement that is actually in line with their immediate social and emotional needs. If passed, LB1112 would establish that, as Nebraskans, we recognize that our young Nebraskans, aged 12 and younger, are better served outside of detention; that our parents need to parent and must not be allowed to push off responsibilities to counties by refusing to take their children home; our system-involved youth require rehabilitative services in actual placements that provide actual rehabilitative services; and we do not detain a youth to punish them but only to protect public safety. The harms of detention have been studied, written about, and replicated for years. It's been proven time and time again that youth who have been detained are two times more likely to reoffend than nondetained youth. Youth who are detained are more likely not to go back to school or to drop out of school. One in three detained youth who are diagnosed with depression develop the condition after placement in detention. These results are unacceptable. Our very system, whose aim is to rehabilitate, is causing more harm to our youth through the use of excessive detention. In 2015 the average length of stay for youth at the Douglas County Youth Center was 28.3 days. In 2017 that number has increased to 49.9 days. The majority of youth in detention in Omaha, Douglas County, are there for violating the terms of their probation in ways that are nonviolent. These children are waiting for placements to open up, for violations of probation hearings to be heard, and for dispositional hearings to be heard. This would require that we address the issues and needs of our system-involved youth in an immediate, timely way. I believe this bill will increase the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

likelihood of rehabilitation for young Nebraskans who find themselves in court. And I'd be happy to answer any questions. Joy and I also practice together in the Public Defender's Office so I have personal experience in detention hearings as well. [LB1112]

SENATOR EBKE: Thank you, Ms. Henningsen. Questions? I see none. Thank you. [LB1112]

CHRISTINE HENNINGSEN: Thank you. [LB1112]

SENATOR EBKE: Other proponents. [LB1112]

RICO ZAVALA: Good afternoon, Chair Ebke and members of the Judiciary Committee. My name is Rico Zavala, R-i-c-o, last name Z-a-v-a-l-a, and I am testifying in support of LB1112 on behalf of CEDARS Youth Services. CEDARS works to provide services for youth who have committed law offenses or at risk of doing so to prevent deeper system involvement. Currently, we're working in Bellevue all the way down to Nebraska City in Judicial District 2 and we cover the entire Lincoln and Lancaster County area here in District 3. We serve about 160 juvenile justice youth every single day in our juvenile justice programs, that include shelter, tracker, life skills, and electronic monitor services. I've been with CEDARS for 13 years and in those 13 years I've had the great fortune of working with juvenile justice youth the entire time. In those 13 years I have yet to come across a 13...or a 12-year-old or under that I feel is best served behind bars. Mandating that a youth 12 years old or younger be placed in detention under any circumstances is a critical component of this bill. We see no reason to place someone that age in a setting that is so similar to an adult facility. At the age of 12 and younger is when these youth most need a homelike environment. We know from our work with kids in the juvenile detention center that they face serious emotional and psychological trauma but none more than the younger population. This can lead to mental health issues, like depression, anxiety, self-harm, or even suicide ideation. It's also important to think about the education components of these young persons' life. Imagine being 12 years old, put behind bars, released, and asked to go back into your original education setting and do so with little to no issues. I find it difficult for an 18-year-old to do that let alone a 12-year-old or somebody younger than that. The good news is that there are services other than detention that are available to address some of these issues. There are mental health services, foster care programs, mentoring services, additional clinical services, and many other community-based services. CEDARS is ready to work with Probation and other providers to make sure these service are available for all kids across our great state. As we move forward as a state in providing services to juvenile justice system-involved youth, it will be vital that local governments work hand in hand with private nonprofits to develop quality detention alternatives. With these two sectors working together, we'll be able to come up with cost-efficient, community-based programs while removing the stigma associated with the formal

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

juvenile justice system. Thank you for your time this afternoon. And with that, I'll take any questions. [LB1112]

SENATOR EBKE: Questions? I see none. Thanks for being here. Oh. [LB1112]

RICO ZAVALA: If I may, can I touch on Senator Halloran's question... [LB1112]

SENATOR EBKE: Sure. [LB1112]

RICO ZAVALA: ...regarding...I'll speak on how we, our facility here in Lincoln. Our shelter facility here in Lincoln, we offer...we utilize a crash bar system. So what happens is when you push on it, it will not unlock. But we are not a staff-secure facility because if we get to a point where a youth becomes angry enough or is going to cause destruction or damage, we are able to open that door and let them out. Unfortunately, it does happen but only happens rarely. I believe last year we had, out of our 200 kids we served, we had roughly, oh, probably right around 18 run. Ten percent of those ran from our facility. So what happens when you go to a shelter in Lincoln you're able to continue on going to school in your normal school setting, so you get to attend your school that you've always been to. The vast majority of the runners that we're going to see are going to be in that capacity. Does that answer your question as far as the crash bar system? [LB1112]

SENATOR HALLORAN: So what happens when they run? I mean... [LB1112]

RICO ZAVALA: Law enforcement, unfortunately, has to be involved again. [LB1112]

SENATOR HALLORAN: Okay. I mean I'm sure, I mean you know I mean the problem doesn't go away just because they become destructive and are able to walk out the facility, so...but. [LB1112]

RICO ZAVALA: Sure. Sure. One other thing with the shelter, it's much more of a homelike environment than you would see at a detention center. [LB1112]

SENATOR HALLORAN: Sure. No, I understand. Thank you. [LB1112]

SENATOR EBKE: Other questions? Okay. Thanks. Next proponent. [LB1112]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

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ELAINE MENZEL: Chair Ebke and members of the Judiciary Committee, for the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, appearing here today on behalf of the Nebraska Association of County Officials in support of LB1112. First of all, I would like to thank Senators Vargas, Krist, and Pansing Brooks for introducing this legislation. Also, this is my opportunity and our opportunity to provide a great deal of appreciation to the Legislature and to the state of Nebraska for supporting the community-based aid program. That, as you know, goes to both the counties and the tribes to be able to set up community-based aid programs. As I'm listening to the discussion it makes it sound like there are no juvenile detention alternatives in existence, and that's not...there are some that certainly are. And the community-based aid program we just went through the aid applications for, at this...as of the fiscal year '15-16 there were 73 counties and two tribes that were participating in that aid program. And it goes for prevention and diversion and those types of things. So I do think that the focus of trying to become more juvenile detention alternatives based is an admirable one. Like Senator Krist, I have heard the discussions and concerns that communities have about not having those services available. And even with the community-based aid, it's not a lot of money in some of those rural areas for what they're appropriated potentially to apply because of their juvenile detention populations. That's what it's based upon. So you've got some of the communities that are roughly \$10,000 that they could be using for aid programs. With that said, they do pool together, as multi community or counties, and create plans to work with this type of thing. The reason that we're in support of this is not only does it, the Section 4 that amends the juvenile justice aid provisions, but it's similar to the provisions when the Legislature adopted LB561 and transferred from OJS to Probation offices. Well, counties have to provide the office space for Probation offices and we were allowed for one year to help transit that for the payment of those office spaces because of LB561 provisions. With that said, I would be glad to try to answer any questions at this time. [LB1112]

SENATOR EBKE: Any questions for Ms. Menzel? I see none. [LB1112]

ELAINE MENZEL: Thank you. [LB1112]

SENATOR EBKE: Thank you. Are there any other proponents? [LB1112]

ANNE HOBBS: Hello. Good afternoon. My name is Dr. Anne Hobbs, it's A-n-n-e H-o-b-b-s, and I think I can be fairly brief. I'm here in support of the proposed amendment that adds DMC to the planning process for communities. Currently, JJI is the entity that assists counties with their planning process and of the 73 or so counties and tribes, some include a DMC glance and others do not. I think it's absolutely critical that as a state we look at those patterns very locally because they play out very differently. For instance, yesterday I was in Colfax County, which is one of the most diverse counties in Nebraska. It's about 40 percent white. And I was working with their community on...first of all, I wanted to know whether or not this would pose a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

hardship because they are all volunteers and...but I also wanted to know what some of the concerns were in their community. And what we found is that they have a very high, currently a very high number of Congolese families with French-speaking youth. And while that poses some challenges for the language barriers, what they are finding is none of those youth are getting involved in the juvenile justice system. So we actually want to study those families to find out, you know, if the families are intact and they are operating maybe a little bit better or more functioning or higher functioning than other families. So the patterns across our state are very, very different, depending on which community you're working in, and that's why I would really support that each community look at the data that's relevant to their community. The last comment I'd like to make is that this, the proposed amendment, should not have any cost to this process because communities are already required to plan. The Juvenile Justice Institute is already required in statute to assist communities and the Crime Commission with that planning process. So the mechanisms are already in place. And JJI is actually...has expertise in this area. We did the state's 2012 DMC assessment and helped Kansas with their DMC assessment. So without...I don't have any other additional comments. I would be happy to take questions. [LB1112]

SENATOR EBKE: Thank you. Senator Krist. [LB1112]

SENATOR KRIST: Dr. Hobbs, thanks for coming. It's great that we have the reference in there to the code in looking back and forth. In your opinion, and you have worked with different demographic areas around the state that have different (inaudible), if you're...is it enough to just stick in a note that says look at the...look at U.S.C. dah-dah-dah-dah-dah, or do we need to in some way amplify or highlight the things we really want them to look at? I mean we run in, all the time, to saying things like we want you to do that. And then we come back two years later and say, no, you know what, we really meant it when we said we want to do that. So is there a better way to do that you think? [LB1112]

ANNE HOBBS: I think additional clarification would be helpful for communities and specifically what they're required to do. So to examine their juvenile justice data by race and ethnicity would make it much more clear, I believe. [LB1112]

SENATOR KRIST: Is that...who should do that? Should we do that in statute or should we send that out from JJI? How should we do that? [LB1112]

ANNE HOBBS: You know, it can be done either way. I think just having the requirement that they examine disproportionate minority contact should be enough. Like that's very common terminology and states know what it means because of the OJJDP mandate that's been in place. So... [LB1112]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

SENATOR KRIST: Right. [LB1112]

ANNE HOBBS: ...that might be fine for statute, so. [LB1112]

SENATOR KRIST: Okay. Thank you. [LB1112]

ANNE HOBBS: Uh-huh. [LB1112]

SENATOR EBKE: Any other questions? Senator Halloran. [LB1112]

SENATOR HALLORAN: Thank you, Chair Ebke. So in these smaller communities that don't have the resources, I mean, to accommodate this, you're working with those smaller communities? [LB1112]

ANNE HOBBS: Yeah. Actually any, any community in Nebraska can contact JJI for assistance. And so the smaller communities tend to lean on us. [LB1112]

SENATOR HALLORAN: Okay. So what do they do if they don't have...? One of the requirements is that they have to be placed...they cannot be placed in detention due to the lack of more appropriate facilities. What do those communities...what are some examples of what those communities do? [LB1112]

ANNE HOBBS: So what...for the last couple months I've been working with communities to find creative and solid solutions for whatever the problem is. So one of the biggest problems we're having as a state is the lack of mental health resources for youth and sometimes that results in a youth being transported to detention, even from far distances. So some of the proposed solutions we've been working on, that they should put into their plans, are things like partnering with the university so there are LME...so our mental health practitioners can get students out there to get their hours. So that's a low-cost alternative to getting resources into the communities that don't have them. Alternatives to detention, many communities are starting to really think about these in a more creative way, like electronic monitoring and reporting centers. In Colfax County, that was one of their proposed solutions yesterday was (inaudible) reporting. [LB1112]

SENATOR HALLORAN: All right. [LB1112]

ANNE HOBBS: We didn't get into the discussion of facility or whether they would use funds for a facility, just they're just starting the discussion. [LB1112]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

SENATOR HALLORAN: Okay. But if this law is put into place, I mean there's no choice or I mean there's no option for a smaller community or what are the options? I mean if a smaller community doesn't have appropriate facilities, what then? What do they do? [LB1112]

ANNE HOBBS: Well, this law would actually give them resources to repurpose if they have a center site. In a place like Colfax County, they have the problem either way, whether the law passes or not. [LB1112]

SENATOR HALLORAN: Right. [LB1112]

ANNE HOBBS: So they're either going to have to transport a youth a far distance. And somebody before me said, and the data would bear this out, our smaller communities are much better at refraining from using detention because they don't want to drive the five hours to get to the site. The county doesn't have the dollars to fund the detention, say, so they're actually much more creative. And the outcomes, they're not showing bad outcomes by being creative, so. [LB1112]

SENATOR HALLORAN: Okay. Thank you. [LB1112]

SENATOR EBKE: Other questions? See none. Thanks for being here. [LB1112]

ANNE HOBBS: Thanks. [LB1112]

SENATOR EBKE: Are there other proponents? How many more are planning on testifying on this bill as proponents? Opponents? Okay. [LB1112]

SCOUT RICHTERS: (Exhibit 4) Hi. My name is Scout Richters, S-c-o-u-t R-i-c-h-t-e-r-s, here on behalf of the ACLU of Nebraska in support of LB1112. Many of the previous testifiers have covered the points I wanted to address so I will be quick. We know that detention is geared toward the short-term housing of children, yet it can have implications that last a lifetime. As Senator Vargas mentioned, we know that experiencing incarceration, such as detention, is the single most significant predictor of recidivism. So every child that is detained for offenses like missing curfew or running away from home represents a missed opportunity to divert that youth away from the justice system and this bill recognizes that community-based alternatives to detention are the best way to rehabilitate our children and keep our communities safe. So given the constitutional implications of detaining our youth and the racial disparities that exist in the juvenile justice system and the sound policy of diverting our children away from the system in

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

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the first place, we offer our full support of this legislation. I'm happy to answer any questions. [LB1112]

SENATOR EBKE: Questions of Ms. Richters? I see none. Thanks. [LB1112]

SCOUT RICHTERS: Okay. Thank you. [LB1112]

SENATOR EBKE: Are there any other proponents? Are there any opponents to LB1112? Is there anybody testifying in a neutral capacity? [LB1112]

SHAKIL MALIK: Good afternoon, Senators. My name is Shakil Malik, S-h-a-k-i-l, last name Malik, M-a-l-i-k, testifying in a neutral capacity on this bill. As was noted before, a lot of the change in the detention standards is basically language that Senator Krist had for LB675 and we testified neutral on that bill too. And I'll basically bring up similar concerns that we had on that bill. Overall, we're in agreement with clarifying detention standards and we certainly don't want to have any more kids in detention than would absolutely have to be. The piece that our concern was, was basically the detention on the bar...the complete bar on detention for the 12 and under. When I was here last time we had two 12-year-olds in detention. One was there on a first-degree murder charge. Thankfully, we don't have any 12-year-olds currently there, but that is something unfortunately in Omaha that does happen. We just charged a 14-year-old with first-degree murder yesterday. That's our concern on these severe felonies. And what we'd asked for last time and had been worked with and then ultimately it was taken out down the road on that bill was having a carve out for felonies or at least serious high-class felonies, like your I's and your II's. The other issue that I brought up last time was--and Senator Krist already touched upon this--is what do you do when alternatives or multiple alternatives have already failed? And the example I gave last time unfortunately still happens where somebody goes to Youth Links, our enhanced shelter; you know, gets violent/combative there or tries to escape there repeatedly; and they get kicked out because almost all these facilities are private facilities so they can choose to not have a child there anymore. The, you know, Boys Town has shelter. They can discharge a child. The question is where do we put them? What do we do? So if there was something in there to address, you know, we have somebody who, as the bill is currently written, may not be able to be detained at all, but if all our alternatives are failing or if it's an extremely violent or serious offense, what do we do? The only other points, and this is I guess relatively new and this was touched upon, too, is with the YRTC. So this bill moves the YRTC commitment language and now just says if it's an immediate and urgent necessity. My concern is if it's creating a conflict. Because if you look at 43-286, that actually lays out all the elements a prosecutor has to hit when filing a motion to commit to YRTC, which are greater than what's in there. But with that change, it almost reads differently. I actually don't know if you even need to have the "immediate and urgent necessity" language that's in this bill, because that's already in 43-286, plus all the other

elements we have to have with exhausting all levels of probation supervision, that there are no other community alternatives, all things we have to prove already by a preponderance of evidence. So if you're already trying to separate the detention to YRTC, since that language is already duplicated in 286, you may just...it might be easier just to knock out that piece that talks about YRTCs in this bill and it's already sitting there in 286 that we have to prove anyway. And the last point I want to talk about is just on the new detention standard, it is going to...and may I have a moment just to finish my thought on this? [LB1112]

SENATOR EBKE: Please do. Yeah. [LB1112]

SHAKIL MALIK: The current RAI tool used by Probation that Dr. Hobbs, which she may have stepped out, did a validation study on, it looks at your detention principles that you see with JDAI, basically looking at risk to re-offend before coming back to court and risks that they won't appear at the next court hearing. The new statutory standard only talks about physical safety. And the concern on that is, first of all, the tool is going to probably have to require some recalibration or changing because the statutory standard is changing and the tool is validated somewhat to that. And the second thing is what about nonphysical safety? It's been in the news in Omaha and nearby Omaha we've had a lot of terroristic threats, schools having to be closed down because of terroristic threats. It's not, per se, a physical safety issue but it's still a safety issue. So I'd ask the committee consider that as well too. You know, we're not arguing about the...you know, it is a concern but the danger to self and other, or even tying up the flight risk, but the physical safety, in the modern world there's a lot of things that can still affect (inaudible) sense of safety and safety that aren't, per se, physical threats, so...well, they're threats but they're not an actual immediate, like something is happening physically. So I just want to bring that to the committee's attention. Otherwise, we always are in support of efforts to improve services for juveniles with increased services and keep as many kids as possible out of detention. [LB1112]

SENATOR EBKE: Thank you. Senator Krist. [LB1112]

SENATOR KRIST: So thanks for coming. On your second point, that was my point with establishing legislative intent, because I'm afraid that the way it's currently written there's going to be some misunderstanding... [LB1112]

SHAKIL MALIK: Uh-huh. [LB1112]

SENATOR KRIST: ...in different jurisdictions, and I appreciate that. On your concern when you came in, you've come in a couple times on these bills... [LB1112]

SHAKIL MALIK: Yes. [LB1112]

SENATOR KRIST: ...and you've always had very poignant comments and I appreciate that. And that is part of my frustration. In the time that I've been here we've said we're going to do, we're going to do, we're going to do, and then we never do, right? [LB1112]

SHAKIL MALIK: Uh-huh. [LB1112]

SENATOR KRIST: And so again, if Douglas County and the metropolitan area is still finding there is a lack of facilities to keep kids safe in different situations, then imagine what it's like in different parts of the state. [LB1112]

SHAKIL MALIK: Ah. [LB1112]

SENATOR KRIST: I think that point needs to be made loud and clear. If this is intended to be the last straw, the...I'm going to hold your feet to the fire, then so be it. And again, I signed on to this. I understand what it says. But when that bill is signed into...when this bill is signed into law, you're going to be in the corner... [LB1112]

SHAKIL MALIK: Uh-huh. [LB1112]

SENATOR KRIST: ...because you're not going to have any alternative in terms of what to do with these kids. [LB1112]

SHAKIL MALIK: And if I may just... [LB1112]

SENATOR KRIST: Absolutely. [LB1112]

SHAKIL MALIK: And that's really our piece and why I mentioned about the private entities. You know the only facility we have any...not we but Douglas County is control over is just the youth center. All the other facilities, like Boys Town--I saw Nick Juliano is back there, you know we have Youth Links, all that, it's private so we're kind of relying upon what the private sector has created and then who they're willing to admit and how quickly they can get a bed for them, because it was mentioned of how Douglas County Youth Center's average length of stay have gone up. Well, part of that, one of the issues was the docket time. This committee helped by getting the sixth judge. But the other issue is, too, is just getting somebody into placement, like what's the availability. I mean it's not...I never heard a prosecutor saying, oh, or anybody in the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

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system saying, yeah, let's just keep them in the youth center for no reason. It's usually we're waiting for some type of service placement treatment to come available to get them moved into that. And until then, we're not comfortable having them just be at home; rather have them be in some type of structured environment. [LB1112]

SENATOR KRIST: Thank you. [LB1112]

SENATOR EBKE: Other questions? See none. Thanks for being here. [LB1112]

SHAKIL MALIK: Thank you. [LB1112]

SENATOR EBKE: Are there any...is there any other neutral testimony? Okay. We have no letters. Senator Vargas. [LB1112]

SENATOR VARGAS: Thank you very much, Chairwoman Ebke, members of the committee. One, I want to say this. If...more than happy to work on legislative intent to make sure that we are getting...we're not creating some redundancies and we're also being very clear on how narrow we're getting. The second piece, and this is maybe just to Senator Baker, is just around this DMC, I stated this earlier but African-American and Latino kids across the country are more likely to enter the juvenile justice system. It's a fact. We have been operating under that fact and have made strides in reducing the minority contact, the disproportionate minority contact. However, we want to make sure that we are encouraging and aligning the ability for these community plans to take that into account, and that's the conversation you had with Ms. Hobbs. You know, I think there's some question...I want to try to address your concern, Senator Krist, maybe not even a concern. I love when we play devil's advocate. It's one of my favorite things in this body. And I guess what I'd say is I understand that there are sometimes unintended consequences of what we do here. We take them to account as much as we possibly can. My fear is that sometimes we make decisions that we're sort of waiting for at least what if; that we may never move to a place that fully states that we're going to avoid, if all possible, to put juveniles in detention centers because it's really the only resort we have. And insofar as we have detention centers, there will be a...we'll create a rationale economically, fiscally to then put a child in those centers if we have them. The reason why I say that is because we make these decisions sometimes in other sectors in Appropriations. We say we have something; how are we going to make sure we get something out of it or we close it down or find an alternative. And in this scenario, it's a bit of a chicken and egg. We're not going to get to a place and think ideologically that we are substantially reducing this population. We have been reducing it, but really getting to a place where we fundamentally change and be a continued leader in this sector, if we're not putting our foot down and stating, no, we are going to not place children under a certain age in a detention center. And what I think that's going to do is it's going to fundamentally change the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

---

actions that communities take to then make sure we're solving the problem. But those actions won't happen unless we change the statute and change the standards that we're expecting, and that's the little bit of part here. We're never going to get to a place that actually fully embraces that a child shouldn't be in a detention center and that we should be actively pushing to find alternatives to that specific type of...that specific type of option. And so I appreciate the devil's advocate because I struggle with this myself. However, I lean towards we need to do everything we can to set the standard. Because if we're not changing the standard, there's this quote that I keep...I keep in my head that we have to keep our feet firmly on the ground and we have to be looking up at the stars. We have to be looking up at the stars and what we want to be possible. We're talking about fully changing our juvenile justice system to make sure more kids are not in the system. And if we don't do that, we may be missing the boat on changing the inherent actions that communities will take if we don't make changes like this. I'm more than happy to work on legislative intent. I'm happy to work on this carve-out piece on DMC to make sure it's a little bit more clarified and I think there's a way to do it. When we reference federal programmatic language, we can actually reference a specific year in which the language was put into place. I'm happy to do that. And I do believe that some of these alternatives, while they may fail in the short term sometimes, they're not always perfect, we're failing our system in the long term economically and socially unless we consider alternatives to juvenile detention. Thank you. [LB1112]

SENATOR EBKE: Senator Krist. [LB1112]

SENATOR KRIST: So I agree with everything philosophically that is in this bill. These are things that I have tried to stand for in the ten years I've been here. You have...we've had these reservations in terms of where to put a kid. [LB1112]

SENATOR VARGAS: Of course. [LB1112]

SENATOR KRIST: The first round of trying to make people realize that we needed to do something, the immediate argument that came back was: I've got this facility; how am I going to keep it full if you're not going to put kids in detention? And I'm thinking to myself, really? Did you just say that? [LB1112]

SENATOR VARGAS: Yes. (Laugh) [LB1112]

SENATOR KRIST: It's like you're running a Holiday Inn and you have to get people to come in. So that culture has changed so much in the last several years. Maybe you put an extended date on and say this has to be done. No questions asked, this has to be done by this date in time and be realistic, talking to NACO, talking to the juvenile court judges, talking to evidence-based

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

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information that you and I both exist within JDAI, some left over from the MacArthur Foundation. What's realistic? How can we get to that point by this date in time? And then the most important thing I think, because I'm not going to be here but you are, is to make sure that the Appropriations Committee doesn't just keep those community-based aid dollars but increases them because that is going to bring programmatic changes to the juvenile court system...or the juvenile system. Again, I agree with everything that's here. I do find that sometimes when you put a reference in to a U.S. code or you reference another, we do this all the time. We reference another statute someplace and we say, yeah, that's okay, we're just going to move on. Well, what did that statute say? Because when we're making these changes, it should be clear to all of us that when we're taking a definition out of this code and bringing it back. I made that mistake and there was a different...in another area and there was...every jurisdiction was...some jurisdictions were evaluating or interpreting it differently, so just by interpreting or just by assuming that people will look at that statute and then put it in there. This is a great bill and I think that there's some minor changes. And if it doesn't go anywhere, it has to in the next couple of years, there's no question, because we've been fighting this battle now for years and I think it's...we're just on the verge, just on the verge. Keep it up. Thank you. [LB1112]

SENATOR VARGAS: Thank you. [LB1112]

SENATOR EBKE: Senator Krist. Senator Halloran. [LB1112]

SENATOR HALLORAN: Thank you, Chair Ebke. This is more of a philosophical issue and it doesn't...we have a problem, right? We have a lot of troubled youth and we spend a lot of time in this Legislature, not just in this area but a lot of areas, dealing with after the fact problems--how do we take care of the problem after it's occurred. But we don't do much addressing why the problem occurs. Right? Why do we have...I don't have the data in front of me and maybe it's not available. I don't know. But it seems like the problem gets worse, troubled youth, the number of troubled youth gets to be worse and worse and worse. And we need to take care of that problem because it is there, but how do we move back into...how do we move back or look back on what caused...what's the source of the problem, right? And there's all kinds of multitude of source, the reasons for the problem, right? But it's just...I guess I would like to see more effort, and I don't have any specific answer to address it, more effort put into, okay, how do we avoid having so many troubled youth, that we have to deal with that problem and we have to (inaudible). Why? What can we do to slow down that pipeline? Right? I'm just throwing that out. It's a statement. I don't expect you to have an answer for me. [LB1112]

SENATOR VARGAS: That's why I like you, Senator Halloran. (Laugh) And I...the only response I'll say is I believe all the proponents would be happy to work with you to identify solutions that exist in preventative ways (inaudible). [LB1112]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

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SENATOR HALLORAN: It's a long-term cultural problem and it... [LB1112]

SENATOR VARGAS: It is. It is. I will say things have gotten better. I don't want you to think that. And I think we have enough data to show that things have gotten substantially better at a very micro level, even under the state. So it's not saying that things are getting worse. It's saying that we could be doing it at a faster rate and we can ensure that it doesn't slide back by making changes like this. But I agree with you, we need to do more, obviously, in education, in healthcare services, and in making sure we're supporting community infrastructure so that things like this don't get to that point. There's a lot. [LB1112]

SENATOR HALLORAN: Well, a lot of it is the family environment and I'm not sure that we can do much about, you know, causing parents to be good parents, right? I mean what can you legislate? You can't legislate that. [LB1112]

SENATOR VARGAS: One thing we do know is, as a result of changes we made, we've been able to substantially decrease, and we stated this, the number of juveniles that are currently in detention centers, and that is still as a result of programmatic and statute changes. So I believe it is possible to make some of these changes on the back end. We're still seeing, we need to do more to invest and identify a long-term solution to this. I agree with you. [LB1112]

SENATOR HALLORAN: Okay. Thank you. [LB1112]

SENATOR VARGAS: Yeah. [LB1112]

SENATOR EBKE: Other questions? Thank you, Senator Vargas. [LB1112]

SENATOR VARGAS: Thank you very much. [LB1112]

SENATOR EBKE: This closes the hearing on LB1112. We will now move to the third item on the agenda. (Laugh) Senator Howard, LB927. But actually it's the fifth... [LB1112 LB927]

SENATOR KRIST: This is like where's Waldo. [LB927]

SENATOR EBKE: ...if you move. [LB927]

SENATOR MORFELD: Good luck to the transcribers. [LB927]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

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SENATOR EBKE: We were sitting here waiting... [LB927]

SENATOR HOWARD: I'm so sorry. [LB927]

SENATOR EBKE: ...and they said she's on her way. [LB927]

SENATOR HOWARD: I was getting yelled at by Big Pharma (inaudible). [LB927]

SENATOR EBKE: So get up and leave. (Laughter) [LB927]

SENATOR HOWARD: It was the first time actually... [LB927]

SENATOR EBKE: Lucky you. [LB927]

SENATOR HOWARD: ...tangling with them and I feel like it was a valuable experience for all of us. But I am actually very sorry. [LB927]

SENATOR MORFELD: We'll have to read the transcript (inaudible). [LB927]

SENATOR HOWARD: I got some cardio in getting down here so, okay. [LB927]

SENATOR EBKE: I feel sorry for the transcribers. [LB927]

SENATOR HOWARD: Which part? Oh, the part where... [LB927]

SENATOR EBKE: The whole part when we (inaudible). [LB927]

SENATOR HOWARD: (Exhibits 1 and 2) I'm Senator Sara Howard and I represent District 9 in midtown Omaha, H-o-w-a-r-d. Good afternoon, Senator Ebke and members of the Judiciary Committee. Today I'm presenting to you LB927. This bill partially repeals LB561 passed in 2013 and LB464 passed in 2014. These two bills made...oh, I'm not ready yet. Oh yeah, I time it out. Sam knows. He's really used to me now. I promise. Tomorrow is the last day. Okay. This legislation would move these youth back under the care and custody of the Department of Health and Human Services, Division of Children and Family Services. So beginning in 2013, then-Senator Brad Ashford and other senators, myself included, felt that children who were in the custody of the state and also in the judicial system could be better served postadjudication by the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

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Office of Probation. I think I've spoken to each one of you individually about this bill. I'm not looking to have it move out but I am looking for us to have a broader conversation about how we conduct oversight for those kids who are under the Office of Probation. So the idea for this bill came over a Christmas holiday, which I'm sure all of you spent your Christmases reading Inspector General reports just like me. And what concerned me most about the 2017 Inspector General's report was the suicide of a youth who was 17 years old who was under the supervision of Probation. So I just want to talk to you a little bit about that and what happened there. So a 17-year-old youth was placed on alternatives to detention by the Administrative Office of Probation following a traffic accident where he had been using prescription drugs. The detention included monitoring by electronic tracking devices, house arrest, restriction on contact with friends, and a driving ban. Twenty-five days after this was imposed the youth committed suicide at home. Because he had not been to court, none of these restrictions had been reviewed before imposition; however, during this time Probation continued to oversee the restrictions and communicate with the private provider who oversaw the electronic monitoring. Because there was no hearing between the alternatives to detention being assigned and his death, there was no chance to review during the court hearing if he was showing any signs of mental health issues. Additionally, a driving prohibition and restriction on friends, while not prohibited by law or policy, are not authorized by them either. When interviewed, some administrators expressed concern that these were not entirely appropriate as they are more of a parental restriction. In this case, the Probation officer documented the youth's history that involved hospitalization for substance abuse and mental health issues, and that he was no longer taking his medication. These are all risk factors for suicide. No referrals or suggestions for mental health services were ever made. The Inspector General found that the liberty restrictions placed on this youth by Probation contributed to his social isolation and perception of being a burden, both considered factors that could increase the likelihood of suicide. In my opinion, every death in this state involving a child deserves attention but especially those that we place under the care and custody and supervision of the state of Nebraska. So how do we even know about this 17-year-old child, because I'm pretty sure Probation wouldn't have offered us this information as a Legislature without us asking? The reason why we know about this is because of the Inspector General. Her office was created in 2012 and she was charged with providing independent accountability, investigation, and performance review of Nebraska's child welfare system, in addition to identifying areas for system improvement and policy change. This included OJS, housed within the Division of Children and Family Services in DHHS. So the OIG investigates any complaint about the system and investigates every death and serious injury that occurs to a system-involved child. She also serves on the Maternal and Infant Child Death Review under the Department of Public Health. So in 2013, then-Senator Ashford, with LB561, moved all community supervision of youth from CFS into Probation. The Inspector General at that point lost all subject matter jurisdiction of those youth that included investigations of complaints, death, and serious injuries, but gained responsibility for investigating death and serious injury of youth in detention centers and other programs contracting with juvenile probation. So in 2015 Senator Krist, with LB347, added the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

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whole of juvenile justice to the subject matter jurisdiction of the Inspector General, including juvenile probation, juvenile diversion, juvenile detention, and juvenile justice programs, funded through the Nebraska Commission on Law Enforcement and Criminal Justice. The OIG's formal examination began in 2015. One year later, in 2016, the OIG released their annual report, which included an investigation summary of a death of a youth served by juvenile probation and DHHS. Recommendations to juvenile probation...and now I'm ready, Sam, you want it? Okay. And we're going to go through these recommendations together. Thank you, Sam. Recommendations to juvenile probation included the following: to adopt training and policy on supervising youth with intellectual and developmental disabilities. Incidentally, the child who died in the report had documented developmental disabilities. Adopt a policy on child welfare referrals and joint case management, so have a policy for when Probation and CFS are supposed to work together and how. Adopt a policy on documentation and recordkeeping. Increase internal quality assurance efforts at the state level. Probation rejected the report and all of the recommendations, and you can see in your handout that the first four, anything 16- and another number, 16 is from 2016. Probation rejected the report and those recommendations and communicated that the OIG's recommendations will be considered in the continual process of evaluating their practices and policies as the Probation Administrator deems appropriate. Coincidentally, that year the Department of Health and Human Services, which has been notoriously difficult to work with, accepted all of their recommendations and is moving forward with them. In September 2017, the Inspector General released their annual report, which included an investigation summary of a suicide of a youth, the one that I've outlined to you already. And I'll just highlight some of the...a few of the recommendations here but you have them in your hands: 17-04, require a simple mental health screening during intake; 17-05, adopt a policy requiring officers to make and document mental health referrals if an intake interview suggests that the youth has mental health needs; 17-07, improve communication protocols between Probation and alternatives to detention providers to ensure that key information on youth is shared between the two of them. All of those remain incomplete. Probation's response to all recommendations from the 2017 report were: Due to the extensive corrections requested in my correspondence of December 15, 2017, the Administrative Office of Probation is requesting that modification be made to all of the recommendations included in the Office of the Inspector General's investigation report. The Administrative Office of Probation further notes this request is due to the lack of evidence in the report which would support the findings and recommendations contained with it. The OIG's status update as incomplete is because Probation requested modification of these recommendations but provided no alternate suggestions. The OIG made changes and clarifications to the report's findings but did not modify the recommendations. I've asked the Inspector General for Child Welfare to come in, in a neutral position, just to help the committee understand sort of the process that she uses for investigations and what type of evidence she's gathering and how she's using it to make her recommendations. But in my opinion, and I wasn't here in 2012, the Office of the Inspector General is there to assess when a child is court involved or system involved and make recommendations to us as a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

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Legislature. If we aren't able to see how things are going, if there is an unwilling partner in that process, I am concerned that we cannot make thoughtful decisions about how to handle these children and how to make better policy around system-involved youth. But also, without this oversight and without appropriate oversight, there are a lot of things that we can't reach into when we consider Probation. So currently the Office of Probation provides inconsistent reporting on data and there are some things that aren't reported at all that we really consider when we're looking at the Department of Health and Human Services. One is we really like to dig into caseload size on the DHHS side, on the CFS side, and we can't see the caseloads of Probation officers. We don't know what type of assessment they're using. In terms of on the CFS side we use alternative response, how are we assessing risk? We also can't see turnover. So one of the challenges is with a caseworker, if we have that consistent turnover, it usually means that the case takes longer. Currently, all funding for these individuals, from what we could tell, is from the General Funds. However, most of these...well, many of these youth should be IV-E eligible, IV-E being one of our main funders of our child welfare system. However, we don't have any evidence that the Department of Probation is utilizing IV-E today. IV-E is important. And, Senator Halloran, I looked at you because you...Senator Baker did a turn on HHS but IV-E is the federal funding that follows a child when they're removed from their home. So, for instance, when my mom was working casework, if you removed a child and you didn't put them into an eligible IV-E placement, they would lose their IV-E funding or their IV-E eligibility permanently. The IV-E is an...when you are IV-E eligible, it opens up a broad array of service opportunities for that child and so you never want to jeopardize a child's IV-E eligibility. So right now the Department of Probation is not utilizing IV-E funds, although they could be. I just don't know. And after the Inspector General released her most recent report, the Office of Probation released a statement that, in my view, had a very concerning tone in the sense that if we consider the OIG somewhat of a creature of the Legislature and we put faith in her ability to consider the evidence and make appropriate recommendations to us so what we can make appropriate policy decisions therein, when the Probation Office says that they have collectively light-years more experience than anybody in the OIG Office, my interpretation is that they're saying that they have collectively light-years more experience than anybody in this body. And that may be true, but we are the ones who make...who are making the decisions about how to help these children who are system involved. And so with that, I will leave you with the press release that cited that. In my...I think we're all here for the same reason. We want kids to have the best quality of life that they can. But it's hard for me to say that we're doing the right thing and making the right decisions when we don't have an Inspector General who can get the full breadth of view of kids who are system involved. And so with that, I'm happy to try to answer any questions you may have. [LB927]

SENATOR EBKE: Questions? Senator Krist. [LB927]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

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SENATOR KRIST: Rewind back to 2009-10-11 where the debacle of the failure of the privatization of Children and Family Services caused this state to be fined millions of dollars and to go through a transition that led to LB561, LB464, and four or five years of trying to put things back together, led us to a point of trying to find someone who could dig down and get the information that we needed to take care of kids. Sitting there with Kathy Campbell and Mike Gloor and your mother and others, we found that in my military background and in most large organizations there is someone who acts as quality control and the IG process works very well in government because there is a standard, nationwide standard training program for an Inspector General and we have two, and I proudly was part of both of those: one in Corrections and one for Children and Family Services. I know what your bill says but I hope none of you ever have to go through what I went through, what past Legislatures have gone through, to completely change the provider within the state to another department, another agency. It is painful. It is disruptive. And quite frankly, when this bill was introduced, I received lots of phone calls about you're disrupting a process that has been in place and it's working and why would Senator Howard want to move it back? Senator Howard doesn't want to move it back. She wants to bring attention to the fact that we are trusting our kids to Probation and other areas and we, the Legislature, has an opportunity, an obligation. We legislate, we appropriate, and we apply oversight. The extension of that oversight is the Office of the Inspector General, both in Corrections and in Children and Family Services. If we can't get the information that we need and if there are roadblocks, then we have taken action. You mentioned my bill that included jurisdiction widely scattered for our IG to do her job. It was our only alternative because that was not there in place. And it caused another commotion with the Chief Justice. There's a couple people in my life that I don't appreciate going toe-to-toe with because I like them too much. One of them is Chief Justice Heavican. But we were not eye to eye seeing on an issue. We came to that resolution and we worked our way through it. What I find unacceptable and why I think this is a good way for us to potentially move forward is that when we do make recommendations--"we" meaning our Inspector General and the legislative body--and we get blown off or that recommendation is rejected without dialogue, without justification moving forward, then I think we've been dissed. We've been completely dissed. That's a technical term, I know. (Laughter) So I'm hoping that this dialogue today and the people who oppose and the people who will support this will do it in an atmosphere of she's not really serious about moving anything anyplace. She's serious, because I know her well enough to know, that we have to have a dialogue about the way we're measuring how these kids are taken care of. We have to have an immediate feedback to make those decisions and to appropriate the right amount of money. And completely...I don't think that Probation has blown off all the recommendations, nor do I think the Department of Health and Human Services have blown off all those recommendations. But I think that we once again in the Legislature need to say, you know what we said? Well, we mean it. We mean it. So thank you, Senator Howard, for bringing it forward. I'm happy if you comment on anything, but that's really not a question. It was just another diatribe from Krist. [LB927]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

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SENATOR HOWARD: You know I agree with everything that you've indicated. I am in full agreement. I think when the OIG was created, that was one of the most stressful times in the Legislature. So God willing, we won't have another safe haven and we won't have to do it again. And in 2013, when we passed the Ashford bill, that was the only bill that we've ever moved off of General File without anybody seeing it. I mean we just...we trusted their judgment and we just...they said, we're still working on it, just move it along, and we did. And I had never...it was my first year, I had never seen anything like it. But I think there are a lot of opportunities here for us to clarify what type of oversight we want. You know, a happy ending for this would be that we start that dialogue or we continue that dialogue between the OIG. And maybe the Judiciary Committee also has the opportunity to get briefings from the OIG of Child Welfare the same way that we do in Health and Human Services so that you all have a better understanding about what's going on with these kids as well. With that, I'm happy to see if there are any other questions. [LB927]

SENATOR EBKE: Any other? Senator Howard, I just want to tell you how much you and I are in agreement on the importance of oversight... [LB927]

SENATOR HOWARD: Yes. [LB927]

SENATOR EBKE: ...of the legislative branch over executive branch functions that we have delegated. So thank you, Senator Howard. [LB927]

SENATOR HOWARD: Thank you, Senator Ebke. I will stay for closing. [LB927]

SENATOR EBKE: Okay. Are there any other...are there any proponents? Okay. Are there any opponents to the bill? [LB927]

MATT WALLEN: (Exhibit 3) Good afternoon, Chairperson Ebke and members of the Judiciary Committee. My name is Matt Wallen, M-a-t-t W-a-l-l-e-n, and I'm the director of the Division of Children and Family Services of the Department of Health and Human Services. I am here to testify in opposition to LB927. In the interest of time, I will only cover most of the highlights in my written testimony and not go through it word for word. In 2013, LB561 passed which moved the juvenile justice population of youth from CFS to the Office of Probation Administration. This was revisited in 2014 to modify statutes on payment of costs and gave Probation placement and care authority over youth placed on probation. The division supported these changes and is confident that the Office of Probation is the best entity to serve these youth, as they are best suited to work with juvenile offenders. CFS identified several areas of concern with LB927. The bill allows youth under age 18 to be placed on probation but requires CFS to pay all the services provided to these youth and gives DHHS placement and care responsibility for all Probation

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

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youth in out-of-home care. It appears CFS would be financially responsible even when children are not in DHHS custody. In addition, Probation would be able to authorize services but CFS would pay for the services. This is very concerning. The department needs to be able to manage funding as well as ensure children are receiving appropriate services that will meet their needs. Also, moving certain youth under the custody of Probation back to the responsibility of CFS is concerning for the Division of Medicaid and Long-Term Care. This will increase the number of young adults who qualify under the former foster care eligibility category, significantly increasing costs for the Medicaid program. The former foster care eligibility category, established under the Affordable Care Act, requires states to cover individuals who are in foster care arrangements under Medicaid until the age of 26. I know their concern is that the bill does not modify any of the statutes in the Office of Juvenile Services Act. Nebraska Revised Statute 43-405 defines the Office of Juvenile Services administrative duties. OJS is the entity that runs the Youth Rehabilitation and Treatment Centers. When LB561 was passed in 2013 and moved juvenile justice youth to Probation, the statute eliminated the OJS functions relating to community-based services, levels of treatment, evaluation, and parole. This bill does not include any reference or inclusion to community-based services. Because of this, many of the references to the Office of Juvenile Services in the bill contradict the Office of Juvenile Services statutes. LB927 creates ambiguity regarding the discharge of youth from the YRTC. Again, I oppose LB927 because I believe these youth on probation are best served by the Office of Probation. The process of moving this function back to CFS is not good for families or youth, and could delay normal assimilation back into the community. Thank you for the opportunity to testify today. I'm happy to answer any questions you might have. And I would just note, in reference to Senator Howard's opening, that the Division of Children and Family Services does work. I think I know the Inspector General is independent, but we do work closely with the Office of Inspector General. We take the recommendations very serious from the Office of Inspector General. I don't have my list in front of me now, but I believe we have completed 20 of the 40 recommendations that the Office of Inspector General has recently made over the last couple years. We continue to work through a list of recommendations and we provide updates to the Inspector General and progress reports on when we've made substantial improvements on implementing those recommendations. So with that, I'm happy to answer any questions any of you might have. [LB927]

SENATOR EBKE: Thank you, Mr. Wallen. Senator Krist. [LB927]

SENATOR KRIST: The funny thing is if we could take your testimony and go back a few years, the opposition or the wanting to keep the kids in HHS, they presented exactly the opposite arguments that you did today. So that's good. The other thing that I would say is when I read through the Inspector General reports, I want to compliment the department for stating reasons why. You don't just say reject. You say, in most cases, we're already trying this in a different way, we're trying to do things. So just to amplify your comments. When I read that report, normally

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 22, 2018

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you'll justify why you're not doing what maybe Julie wants you to do but you're doing it a different way, so. [LB927]

SENATOR EBKE: Other questions? Thanks for being here today. [LB927]

MATT WALLEN: Thank you. [LB927]

SENATOR EBKE: Next proponent. [LB927]

JAMES BLUE: Senator Ebke, members of the committee, good afternoon. My name is James R. Blue, B-l-u-e, and I have been the president of CEDARS organization since 1991 and have seen a lot of changes in Nebraska's delivery system in that 26-year period. Thank you, Senator Howard, for all of your great work on behalf of children and families of Nebraska. I certainly agree with and appreciate your diligence in bringing greater transparency to the juvenile probation system. In that context, I respectfully testify in opposition to LB927. Probation's responsibilities to the current number of young people were borne just a bit over four years ago. The planning process for this historic transition of thousands of youth was little more than the duration of the 2013 Legislative Session. In very short order, that session...after that session hundreds of new officers were hired and trained, statewide systems of care established, outcome monitoring systems developed, cultures were changed. There are growing pains as traditional child welfare watchdog and advocacy organizations learn to work together with both the judicial and the new leadership of the executive branch. With all of us, including private providers like CEDARS, Boys Town, and others across the state, we are working together with informed patience and I hope good vision for the future to reach a level of effectiveness and transparency that we can all be proud of. Juvenile Probation officers that our staff work with are committed, talented, and the ones I know are all focused on the best interests of the children and their families. Their work is tough. It has been my consistent experience that from Chief Probation officers all the way through the top leadership of Nebraska's juvenile probation system that there is a commitment to build a great system for our children and families. I have been through a lot of changes from the Department of Social Services to the Health and Human Services System to the lead agency process to this transition, and some of those were very painful. I believe that this structure is on the right track for the future and I look forward to everyone working together in a focused way for the children and families to achieve the dream that we all have for the kids of our state. Thank you very much. Happy to answer any questions. [LB927]

SENATOR EBKE: Thank you, Mr. Blue. Any questions? I see none. Thank you. [LB927]

JAMES BLUE: Great. Thank you. [LB927]

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Judiciary Committee  
February 22, 2018

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SENATOR EBKE: Next proponent (sic)...opponent, I'm sorry, yeah. We skipped over the proponents, didn't we? (Laugh) [LB927]

ROGER HEIDEMAN: Thank you, Senator Ebke and members of the committee. My name is Roger Heideman, that's R-o-g-e-r, Heideman is H-e-i-d-e-m-a-n. I'm the juvenile court judge in Lancaster County, now in my 12th year on the bench. So I've been on the bench during this transition from the former bifurcated system of HHS supervision under OJS and Probation to the current system after the reforms in juvenile justice to Probation supervision. And while I appreciate Senator...the Senator's concern about the Legislature's need to know what's going on with the children of the state and that being a valid concern, I can't speak in terms of the state but I can tell you what's going on with the children in Lancaster County under juvenile justice since these reform efforts. In that time, under the supervision of Probation and their involvement, our filings with juvenile delinquency continue to decline. That's not only reflective of what's going on with Probation but I think some of Senator Krist's earlier concerns about community aid dollars, what's going on at the local level with our county government. Also I think it's a direct correlation with Senator Pansing Brooks's prior bill where we're now required to provide counsel to all juveniles as well, is that we've actually seen a decrease in the filing and an increase in diversion efforts within the county. Our children in detention, as I think there's been some testimony in earlier bills, our detention numbers continue to decline in the county as well. We previously at times had cases or days where we may have anywhere between 50 and 70 youth in the county detention. Today, this morning, we had 12 youth. We actually have more youth in our detention facility this morning in Lancaster County who were out-of-county kids or adult hold kids than we have that are local juvenile court cases, which has...I don't know has ever happened before in the time I've been on the bench or in private practice. Our out-of-home placements continue to decrease as well. We get a report biweekly from Probation that is broken out by judge and give us our total numbers of where those kids are and the numbers continue to decrease by continued efforts to utilize in-home services as well. Also those commitments to the YRTC in Lancaster County continue to decrease as well. I think the numbers that I was provided indicated between 2011 and 2014, between the two YRTCs, Geneva and Kearney, we had 310 youth committed to those facilities, and in the subsequent three-year period we only had 150 approximately committed, so almost a 50 percent reduction in the YRTC commitments. We've also become a JDAI site. First time we attempted that, three or four years ago, our county board declined. But through the dogged efforts of Probation and Senator Krist, we now have been accepted and have become a JDAI site. So we will be involved in JDAI efforts as well. And we just finished a review by the RFK Foundation of our Probation system within Lancaster County. We're awaiting their report but the initial feedback was positive. There will be I think some suggestions for improvement but hopefully those would also be suggestions that could be utilized statewide as well. [LB927]

SENATOR EBKE: Thanks, Judge. Questions? Thanks for being here. [LB927]

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Transcriber's Office

Judiciary Committee  
February 22, 2018

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ROGER HEIDEMAN: All right. Thank you. [LB927]

SENATOR EBKE: Other opponents? [LB927]

JEANNE BRANDNER: (Exhibit 4) Good afternoon, Chairperson Ebke and members of the Judiciary Committee. My name is Jeanne K. Brandner, J-e-a-n-n-e K. B-r-a-n-d-n-e-r, and I am employed by the Nebraska Supreme Court, Administrative Office of the Courts and Probation as the deputy administrator overseeing the Juvenile Services Division. I am before you today to provide testimony in opposition of LB927. To begin, in 2013 and again in 2014 the Legislature called for major reform and reorientation of Nebraska's juvenile justice system. We've heard a lot about that here today. The focus of this legislation was to see that youth in the juvenile justice system were provided meaningful treatment and were no longer required to become wards of the state to access that treatment. Parents would no longer have to relinquish their rights but would be empowered to be part of the solution. To implement that intent, the Legislature entrusted the Administrative Office of Probation with that responsibility for supervising youth in the juvenile justice decision and I'm here today to tell you that your decision was a good one. While daunting, this charge was well-suited to the mission and values of Probation. The juvenile probation system demonstrates the benefits of engaging families, schools, treatment providers, and law enforcement within the youth's home community to assure the best outcomes for youth. Rehabilitation through support and accountability is the cornerstone of supervision for juvenile justice-involved youth. The result is increased community safety and positive youth development. Our research partners have illustrated the enormous gains experienced through the utilization of risk assessment and matching appropriate services to youth and families in order to mitigate those risks. To summarize those gains, I have attached a handout of the major strides made by Nebraska's juvenile probation system within the last few years, with assistance from our national, state, and community partners. As an administrator overseeing the juvenile justice reform efforts in Nebraska, who personally sits on a number of national and state level boards, committees, commissions, and associations, I can assure you that the progress in Nebraska is being highlighted. Whether it's Probation's work with the Annie E. Casey Foundation, Georgetown University Center for Juvenile Justice Reform, or the Robert F. Kennedy National Resource Center for Juvenile Justice, juvenile probation in Nebraska is demonstrating effectiveness. A pivotal element of this reform has been our focus on collaboration. Each month juvenile probation administration meets with the division directors of Nebraska's Department of Health and Human Services where we strategize and problem solve to maximize access to services for youth and families. At the local level, district probation staff participate in community planning engagement, law enforcement, and connect with schools. Real change comes from increased cooperation and positive relationships. In closing, implementing meaningful reform within Nebraska's juvenile justice system is a process rather than an event. Great strides are in process. Strong leadership and stability is in place. Families are no longer required to acquiesce to their children being placed in the care of the state to access help.

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Transcriber's Office

Judiciary Committee  
February 22, 2018

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Probation is committed to continue progress, in turn showing the long-term success of Nebraska's youth and families. Thank you for your time and I'm happy to answer questions. [LB927]

SENATOR EBKE: Thank you. Senator Krist. [LB927]

SENATOR KRIST: Thanks for coming, Jeanne. We've been involved with JDAI off-site type events and others and I do agree that it was the right move doing what we did. And we've had some hiccups in terms of who's telling on who and who's reporting on who, but I think you...we're at a point where now where it's simply...and you heard my comments before, if the IG makes a report, I'd love to see more comprehensive statements that say, hey, we're dealing with this in a different way or, yes, that's a good idea or something like that. And I think that comes from that cooperation that you're alluding to. And I would say just in terms of the partnership or the working relationship, every once in a while we kind of have to peel the onion back and take a look and see if we're going in the right direction. And I'm personally pretty proud of what we're doing. I think there's some tweaks and I really believe that I'd like to see, as I said, I'd like to see a more comprehensive response in the IG's report, not because I'm looking...and we've had this discussion before, not looking at penalizing anybody for not doing their job. I'm not necessarily looking, and we've always talked about bringing the individual worker into limelight in terms of doing something right or wrong, but from learning from what we're doing and moving forward. But my question, I've got to, I've learned from Chambers I got to give my thing and then I've got to...anyway, my question is, you heard IV-E brought up. Are we maximizing our IV-E efforts in the state? Are we drawing as much IV-E and are we concentrating on making sure that we're using those services and that funding as best we can? [LB927]

JEANNE BRANDNER: Great question, Senator. And before I answer that I do want to comment on your previous information is because there appears...does appear to be some misinformation about the lack of effort and collaboration that we are putting forth in regards to the Office of Inspector General. And part of the process, unfortunately...fortunately for the youth and family in that protection piece is that it's a confidential process. The other part, it's unfortunate for the public and others that don't get to see the level of detail that is put into that process. And this is a very new process to us, as you alluded to, and we have received two investigative reports at this time and so again we're going through those growing pains of figuring out how does this work, how do we respond. And the second report for sure I did go back and look at today, we did submit lengthy comments in the amount of 5 pages to the, I don't know if it was 16-24 page report, something along those lines. And so that is the information that doesn't appear in the public part of the process. And so it's not that we're not responding, not doing our due diligence. And the reason recommendations have been rejected or not examined is because we haven't been able to come to an agreement on the factual basis of the report. So there is work continuing to be

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Transcriber's Office

Judiciary Committee  
February 22, 2018

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done there. We...our office has sat down with Ms. Rogers and her staff to talk about in the future what might be some different strategies that we could employ, because clearly what we're doing now isn't working. So as you said, Senator, we are tweaking that process and I think moving forward it will look different. And so hopefully we will get to the point where we are able to do that. And I would also say that I understand that the recommendations are voluntary; that the act does not require agencies to accept those recommendations. And so to your point, I do also agree that if we're not accepting them that we could elaborate on those reasons. So thank you for that. The second part of the question about IV-E probably isn't best situated for me to answer because HHS is the single state agency that is authorized for that. What I can tell you is that through the prior administration of Children and Family Services, we worked diligently to try to come to an agreement with them to be able to draw down Title IV-E dollars for Probation youth. We were involved with an entity, Justice Benefits, Incorporated, that was willing to sit down and help us get that process going. Unfortunately, what we were told at that time is because of the waiver that's in place, the Title IV-E waiver, those dollars were already maxed out and so there wasn't additional funding to be able to draw down for the Probation population. It's my understanding that we would not be able to revisit that until 2019 when that waiver dissipates. But again, I'm not the expert on that but that is my recollection of the work that we've done with the department. [LB927]

SENATOR KRIST: Okay. I think that's something that this committee and the Health and Human Services Committee needs to deep dive into. You know, the excuse that the waiver needs to be dealt with differently I believe is an excuse. That's my opinion. But having dealt with this IV-E question for a long time, you know, it's like he who knows the most about a subject matter has the power to say this is the way it goes. I think it deserves a deep dive just to understand whether we're actually maximizing that process as much as possible. [LB927]

JEANNE BRANDNER: And to that comment, that is exactly why we attempted to engage Justice Benefits, because they do deal with this with other jurisdictions, to try to figure out the ins and outs of this. And there's not, of course, an up-front payment for their services but they would recoup some dollars for some of those monies that funnel back in. So it's not entirely cost-free but it is...does come out of that federal reimbursement. So again, we are absolutely willing to be at the table and have those discussions. [LB927]

SENATOR KRIST: It came out of an atmosphere of cut Medicaid at all costs in years past and I think that it needs to be reexamined. So thank you, Jeanne. [LB927]

JEANNE BRANDNER: Thank you. [LB927]

SENATOR EBKE: Thanks for being here. Questions? Thanks. [LB927]

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Transcriber's Office

Judiciary Committee  
February 22, 2018

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JEANNE BRANDNER: Thank you. [LB927]

SENATOR EBKE: Are there any other opponents? Is anybody testifying in a neutral capacity? I see people moving. Okay, there we go. [LB927]

JULIET SUMMERS: (Exhibit 5) Good afternoon, Chair Ebke and members of the Judiciary 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 provide neutral testimony regarding LB927. A well-functioning juvenile justice system ensures that youth are held accountable for their actions in developmentally appropriate ways that will promote community safety. In recent years Nebraska policymakers, system stakeholders, communities, and families have wrestled with big questions about our juvenile justice system and undertaken major changes to produce better outcomes. Voices for Children in Nebraska opposes the restructuring of our system to return care and custody to justice-involved youth to the Department of Health and Human Services, Office of Juvenile Services, but we welcome the opportunity that Senator Howard has presented for us all to examine the strides we've made as a state and to push the pressure points where improvement is still needed. I'll skip the second paragraph of my testimony since you've heard it already today but...and move on. But not all the following data points I'm going to offer you can or should be attributed solely to LB561 or Probation, but I do think these are important highlights worth noting. So admissions to secure detention are down from 3,469 in 2012 to 2,161 in 2016. Commitments to our Youth Rehabilitation and Treatment Centers have also fallen from 565 in 2012 to 172 in 2016. And juvenile arrests have also continued to fall over the same period of time from 11,993 in 2012 to 9,461 in 2016. The work is not over. For one thing, our numbers in out-of-home care are still too high. In 2016, of the 5,482 youth who were supervised on probation, 2,195 spent some time in an out-of-home placement. Detention admissions are still too high and go on for too long. Cases can take too long to close, and youth do not always have a clean path forward toward completing probation and getting records sealed. However, I have every reason to believe that these ongoing issues can also be addressed, in large part because of the culture of continuous improvement from juvenile probation leadership. They are clearly committed to continuing to drive down those numbers and they lead or collaborate on multiple initiatives to further healthy juvenile justice reform. When I speak with advocates like myself from other states, they are often shocked when I refer to Probation as one of our strongest allies in pushing positive change for youth. All that said, I do testify in the neutral today for one reason. Because Voices for Children believes that even with the best of intentions producing positive outcomes, we cannot eliminate the need for external oversight to ensure the safety of children in our state's care. We have been, like Senator Howard, disturbed by the argument made over the past few years that Probation, though operating in this capacity as a child-serving agency, should not be subject to investigation or accept the recommendations of the Office of the Inspector General for Child Welfare. And if Probation is going to continue to serve in that role as the custodian of our state's children and receive the millions in state General Funds to do so, that

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Transcriber's Office

Judiciary Committee  
February 22, 2018

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collaboration, that oversight is necessary. And so though we oppose reversal of LB561 and we truly believe that Probation is leading the way in producing positive outcomes for our youth, we hope that this bill can serve as a launching point for conversations about whether separation of powers truly prevents that kind of oversight or collaborative approach or whether it might be necessary in the future to move the agency's operations to a different branch of government. I'd like to thank Senator Howard for her commitment to all of Nebraska's children and this committee for your time and consideration. The Nebraska Unicameral has also been the leader in reforming our juvenile justice system for the better, to better serve all kids, and we are grateful for your thoughtful efforts to ensure that that progress continues. [LB927]

SENATOR EBKE: Thank you, Ms. Summers. Any questions? I see none. Thanks. [LB927]

JULIET SUMMERS: Thank you. [LB927]

SENATOR EBKE: Next neutral testimony. [LB927]

TOM McBRIDE: (Exhibit 6) Good afternoon, Senator Ebke, members of the committee. My name is Tom McBride, T-o-m M-c-B-r-i-d-e, and I appreciate the opportunity to testify in a neutral capacity. And I have to qualify, this is probably the first time in 20-some years that I've ever used neutral testimony, and I do that because I appreciate greatly Senator Howard's intention for this bill to continue dialogue of services to youth in our state. My caution, as some of my other colleagues have talked about, is how the movement for youth currently under the Department of Probation being moved back to the Office of Juvenile Services will be tolerated by...both by those receiving care in the system as well as the work force which would be affected. Since 1976, I've had a career that has been around this, these issues, 11 years with adult corrections and then 26 years working with youth and families that we're talking about today. We have moved so many times back and forth, in and out so many times that oftentimes we forget what the new program is. Since 1987 we've had five Governors, nine executive directors or CEOs of the Department, several interim directors of the department, a host of change in the middle and upper management of the department, each coming with their own agenda, idea for new programs and processes and beliefs on how our system should operate, with the very best of intentions for our kids. I remember staff and providers and others, we spent hundreds if not thousands of hours planning a new delivery system, and in less than 60 days from a new sitting Governor the plug was pulled on that. We don't have a perfect system. We don't. You know, we're never going to have a perfect system. We can't approach a perfect system if we keep changing course every two, three, four years. We've seen improvement in many areas under the current system serving juvenile justice-involved youth, and we can see more improvement by adjusting the steering rather than turning the entire ship. I personally believe there are a lot of people, HHS side, Probation side, the OIG's, Foster Care Review Office, a host of people that are serving

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Judiciary Committee  
February 22, 2018

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the children in this state very well and doing their very best. But I have to say that in my experience that the administration, the juvenile probation administration right now is the most effective, forward-thinking department that I have had the opportunity to work with in state government. I believe we're on a good course that with the increased discussions generated by this bill we'll serve youth and families even better without a huge wholesale shift in administration. And with that, I would take any questions. [LB927]

SENATOR EBKE: Thank you, Mr. McBride. Questions? [LB927]

TOM McBRIDE: Thank you. [LB927]

SENATOR EBKE: Have a good day. [LB927]

JULIE ROGERS: (Exhibit 7) Good afternoon, Chairperson Ebke, members of the Judiciary Committee. My name is Julie Rogers, J-u-l-i-e R-o-g-e-r-s, and I serve as your Inspector General of Nebraska Child Welfare. The Office of the Inspector General of Nebraska Child Welfare, or OIG, is charged with providing legislative oversight, ensuring accountability, and identifying systemic issues in Nebraska's child welfare and juvenile justice systems. Like all Inspectors General, the OIG is expected and committed to holding government systems accountable for efficient, cost-effective operations, integrity, and high performance. Specifically, as you've heard, the OIG investigates death or serious injury of system-involved youth and complaints of wrongdoing to children and families being served by or through our child welfare or juvenile justice systems. The OIG provides accountability and legislative oversight of these systems by tracking issues and themes. System improvement recommendations are made both informally and formally. During investigations, the OIG not only is to uncover any specific wrongdoing but in every instance look for systemwide implications. The OIG strives to provide a systemic perspective which can guide lawmakers, advocates, administrators, and other stakeholders in efforts to improve Nebraska's child and youth serving systems. A full investigation involves writing a formal report with findings and recommendations. The draft report goes to the Public Counsel, or Ombudsman. After response from the Public Counsel, the report goes to the subject matter agency for feedback on correcting any factual errors and responding to the recommendations contained in the report. The report is considered final after any modifications are contemplated by the OIG with input from the Public Counsel. The final report may be shared with the Chairperson of the Health and Human Services Committee or the Chairperson of the Judiciary Committee when disclosure is, in the judgment of the Public Counsel, desirable to keep the Chairperson informed of important events, issues, and developments in the Nebraska child welfare system. On or before September 15 of each year, the OIG is required to submit an annual report to the Legislature and it shall include a summary of reports and investigations. The OIG's role is to be neutral and objective about our work; to analyze the system in play after

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Transcriber's Office

Judiciary Committee  
February 22, 2018

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something very bad happened to a youth or child, like a death; pointing out problems and offer solutions in the form of recommendations to address deficiencies or problems. The OIG has a unique perspective. It is granted access to relevant personnel and case documentation. Because the office is not responsible for any aspect of service provision, it is free from the sorts of biases that may affect almost all other players with access to confidential information. It is my belief that the Legislature and the public expect the OIG to be honest and straightforward about the issues facing Nebraska's child and youth serving systems in its work. As with all Inspectors General, the OIG is not out to win popularity contests. Its job is to ask tough questions and highlight issues and concerns that others might rather not. I am honored to serve as your Inspector General of Nebraska Child Welfare. The OIG is dedicated to continuing our important work. Thank you. I am happy to answer any questions. [LB927]

SENATOR EBKE: Thank you, Ms. Rogers. Any questions of the Inspector General? We have two very good Inspector Generals working in Nebraska for the Legislature, Ms. Rogers and Mr. Koebernick sitting over there lurking (laugh), who's our Inspector General for Corrections. So thank you for the work that you both do on our behalf. [LB927]

JULIE ROGERS: Thank you. [LB927]

SENATOR EBKE: Is there any other testimony on a neutral position? Okay, Senator Howard. Do we have letters here? Whatever is this? (Inaudible) There are no letters. [LB927]

SENATOR HOWARD: That's great. [LB927]

SENATOR EBKE: Okay. [LB927]

SENATOR HOWARD: I was told by one of our colleagues to take my time because we're still working on Senator Pansing Brooks's bill in Health and Human Services, so I'm going to take my time. I'm kidding. I won't. Okay. (Laughter) So one of the things, I have a lot of things to say. No. One of the things I want to point out is that we are investing \$64 million of General Funds into this program and so when we are considering that type of investment, we want to make sure that we have the appropriate oversight. And I do feel as though the Inspector General is the right place for that oversight and that this committee would be the appropriate place to facilitate their coordination and ensure that that oversight is occurring. Most concerning was disputes about the factual basis of the report. My understanding is that the OIG's reports come directly from documentation from Probation, and so if there's a factual dispute it would be coming from their documentation. The other thing I want to talk about or mention is we are under a IV-E waiver right now. We were approved for it in 2013, it's a demonstration waiver, although I believe that there can be modifications to that waiver. And so if there were challenges in how we're drawing

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Transcriber's Office

Judiciary Committee  
February 22, 2018

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down IV-E funds for these children, that would certainly be something that should be occurring to ensure that their IV-E eligibility is either there or it is maintained for them, as well as the IV-E drawdown to support the \$64 million of General Funds that we're currently utilizing for this system. With that, I am happy to try to answer any questions. But I do appreciate the committee's time and attention to this issue. It is a bigger issue and it is one that's been going on for quite a long time and I inherited it from my mother and you all will inherit it from Senator Krist. And so I do appreciate all of your attention. [LB927]

SENATOR EBKE: Thank you, Senator Howard. Senator Baker. [LB927]

SENATOR BAKER: Senator Howard, who put this together? [LB927]

SENATOR HOWARD: The Office of the Inspector General. So she does a status report on all of the recommendations. [LB927]

SENATOR BAKER: All right. Thank you. [LB927]

SENATOR EBKE: Other questions? I see none. [LB927]

SENATOR HOWARD: You're free! [LB927]

SENATOR EBKE: Thanks for being here today. [LB927]

SENATOR HOWARD: Go. Go fly. [LB927]

SENATOR EBKE: This closes the hearing on LB927. Good timing, Senator Howard. [LB927]

SENATOR HOWARD: Thank you. [LB927]