LATHROP: Welcome to the Judiciary Committee. My name is Steve Lathrop, I represent District 12, which is Ralston and parts of southwest Omaha. I Chair this committee and I'd like to start off today, as those of you that are here frequently and some of you that aren't, I got a little thing that I read ahead of time so everybody kind of understands what the process is. I'm going to do that, but before I do that we'll have the senators introduce themselves, beginning with Senator DeBoer to my left.

DeBOER: Hi, I'm Senator DeBoer. My name, my name is Senator Wendy DeBoer. I'm a little bit tired today. I'm from District 10, which is northwest Omaha, Bennington, and the surrounding areas.

BRANDT: Senator Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

SLAMA: Senator Julie Slama, District: Otoe, Nemaha, Johnson, Pawnee, and Richardson Counties in southeast Nebraska.

WAYNE: Senator Justin Wayne out of District 13, which is north Omaha and northeast Douglas County.

LATHROP: And we have Senator Pansing Brooks who is a committee member in the chair ready to introduce a bill. And before we get to that, assisting the committee today is Laurie Vollertsen, who is seated back here. She's the committee clerk. Neal Erickson is committee counsel, along with Josh Henningsen. The committee pages are Alyssa Lund and Dana Mallett, both students from UNL. On the table inside the doors that you came in you will find a yellow testify or sheet. If you're planning on testifying today please fill out one and hand it to the page when you come in to testify. This helps us keep an accurate record of the hearing. There is also a white sheet on the table if you do not wish to testify but would like to record your position on a bill also for future reference. If you are 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 to have your letter included in the record. We'll begin bill testimony with the introducer's opening statement, following the opening we will hear from proponents of the bill, then opponents, and finally those that want to be heard in a neutral capacity. We'll finish with a closing statement by the introducer, if they wish to give one. We ask that if you are going to testify you begin your testimony by giving us your first and last name and spell them for the record. We utilize an

on-deck chair right next to the testifier's chair, please keep the on-deck chair filled with the next person to testify to keep the hearing moving along. If you have any handouts, please bring up at least 12 copies and give them to the page. If you do not have enough copies, the page can make more copies if that's necessary. We also utilize a light system here. When you begin your testimony, the light on the table will turn green, the light-- the yellow light will be your one-minute warning, and when the red light comes on we ask that you wrap up your final thoughts and stop. As a matter of committee policy, we'd like to remind everyone that the use of cell phones and other electronic devices is not allowed. I got to tell you, I need to make sure mine is off because that happened the other day, it was embarrassing. Those senators may use them to take notes or content-- stay in contact with their staff. At this time, I'd ask everyone to check their cell phones and make sure they're in the silent mode. Also, verbal outbursts and applause and the like are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing room. And you may notice members coming and going, that has nothing to do with the, how they regard your bill or the bill being heard. But senators have other bills to introduce in other meetings that they have to attend from time to time. One last thing, since we're holding hearings in the Warner Chamber while our regular hearing room is being renovated, please remember that water bottles, soda cans, or cups are not permitted on the desks. And that's so that we don't damage the desks and leave rings on them. And with that, we will turn to Senator Pansing Brooks who will introduce LB354. Good afternoon, Senator.

PANSING BROOKS: Good afternoon. Thank you Chair Lathrop 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. Thank you. Right here in the heart of Lincoln. I appear before you today to introduce LB354, which sets forth automatic record-sealing procedures so children can move on with their lives after they have satisfactorily completed their probation, sentence, or diversion program. Children make mistakes. That fact should not be surprising to any of us. Those of us who have raised children or remember our own childhood experiences can certainly attest to that. What may be surprising to some is that many children are not able to move on from those mistakes after they have paid their debts, endured their punishment, or and been rehabilitated. That's because serious loopholes exist in our juvenile sealing statutes that leave children vulnerable and subject to ongoing negative ramifications throughout

their lives. Nebraska has made a number of juvenile justice reforms in recent years informed by adolescent brain development. In response to studies which recognize that children need to be treated differently than adults, youth are still in the process of development and are prone to more risky, antisocial behavior, more susceptible to negative peer pressure, more impulsive, and less capable of thinking through the long-term consequences of their actions. Our juvenile justice system is supposed to be rehabilitative. Seeking to quote hold juveniles accountable for their unlawful behavior in a manner consistent with their long-term needs unquote, pursuant to Nebraska Revised Statute 43-402. The accessibility and effectiveness of our state sealing statutes is imperative to reaching the goal of the juvenile justice system, which is focused on rehabilitation. Public access to a juvenile record can create lifelong barriers to success for youth and young adults who have either outgrown their behavior or who have become rehabilitated. Public access limits the young person's ability to secure housing, obtain jobs, join the military, or pursue higher education. We must take steps to ensure that the protection of juvenile records, not only for our youth but for our community as a whole. Access to juvenile records blocks a young person's ability to become a productive member of society, undermines the rehabilitative intent of our juvenile code, and ultimately reduces the tax base by limiting employment and educational opportunities. As a reminder, the State Chamber has determined that the number one business issue across the state is work force development, and we are precipitously hindering that, that effort to bring in more workers by, by our sealing statutes. Nebraskans should not be defined by a lifetime or for a lifetime by the bad decisions that they made as a teenager. However, our current ceiling laws are doing exactly that. Dr. Anne Hobbs from the University of Nebraska-Omaha's Juvenile Justice Institute will be testifying today and share her research, which shows a staggering percentage of cases for those individuals ages 21 years and younger which are not sealed, including a majority of cases for individuals who were under 18 when the offense occurred. In 2016, I brought LR216, an interim study to examine the policies, practices, and laws that govern the safeguarding and sealing of juvenile records. Nebraska does have a statute governing the sealing of juvenile records. In the context of LR216, I was able to speak with local juvenile justice stakeholders and gather input on the effectiveness of our current statute and whether the intent of our statute is reflected in our current practice. LB354 before us today attempts to clarify the sealing process and make it less cumbersome. It also helps remove current barriers that youth and families face when requesting their

juvenile records be sealed. Under LB354, youth who have successfully completed probation or crime or youth who complete the orders of the court would be able to have their record automatically sealed upon successful completion of probation or court orders. The current confusing process requires the court to send notice to the youth when they receive-- when they reach the age of 17, whether or not the case has been closed, and then to initiate a process wherein a hearing is held to determine if the record shall be sealed. This is an unwieldy and oddly-timed process and it places a burden on both the court and the parties to the case. Providing for an automatic seal upon successful completion of probation instead will ensure that the juvenile who has demonstrated compliance with court orders and successful rehabilitation gets the benefit of a sealed record without this additional burden to all parties and further additional court proceedings if the record is not automatically sealed, the juvenile or the juvenile's parents or guardians may file a motion to seal when the juvenile reaches the age of majority or six months, or six months have passed since the case was closed, whichever occurs sooner. LB354 would also still allow the state court administrator to permit viewing of sealed records for bona fide research. Finally, the bill changes the penalty for noncompliance from contempt of court to a Class V misdemeanor. This additional accountability to system stakeholders will ensure that we are taking precautions to promptly and correctly seal a youth's record as required. Failure to seal a youth's record when they have been assured it will be sealed can put them in an even worse position if they are applying for a job college or professional association while relying on the promises of this, of our statute to not disclose a youth's history, juvenile history. If a record is incorrectly left unsealed, the youth is seen not only as a criminal but also viewed as dishonest by potential employers and landlords. These failures by system players do not comport with our juvenile code. Our juvenile code requires that our justice system act in a way that is cognizant of the youth's developmental limitations balanced against his or her long-term needs to live a productive life. When we do wrong by children who have done everything we have asked of them, we should be held accountable. The juveniles who have complied with what the state requires of them should not be expected to wear a lifelong mantle of public punishment. I have been, I have one amendment to this bill. AM112 removes the portion of the bill dealing with confidentiality in public case files. The County Attorneys Association had concerns with this provision and I believe that issue needs to be addressed in separate legislation. Additionally, AM112 clarifies that the auto seal does not apply retroactively. Law

enforcement was concerned that they would have to go back and review old cases to auto seal. That was never my intention. This amendment makes clear that a motion can still be filed for these, these prior cases, but the law enforcement does not need to do-- to retroactively create an auto seal practice. So I ask the Judiciary Committee to advance both LB354 and AM112 to General File. In addition, I just want to say that no general funds are impacted. This will be absorbed, the costs can be absorbed through the, the Supreme Court's automation fund and also there is a portion of the fiscal note that should be taken care of by the amendment because I think there was again some confusion about the retroactivity. So that's not, not happening. So I want to thank the juvenile county court judges who-- or the juvenile court judges who've been very helpful in working through both the bill and the amendment. The Court Administrator's Office, the County Attorneys Association, and Professor Sullivan of the Clean Slate program at the UNL College of Law for helping to strengthen this bill, eliminate the administrative burdens, while protecting the future of our youth. We have a number of juvenile law experts and child advocates who are present to testify this afternoon on the bill. And in closing, I am happy to answer any questions you may have.

LATHROP: Thank you, Senator. Any questions for Senator Pansing Brooks? I see none. Proponents may come forward. Good afternoon and welcome to the Judiciary Committee.

CHRISTINE HENNINGSEN: 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, which is housed in UNL Center on Children, Families, and the Law. Nebraska Youth Advocates provides training for juvenile defense attorneys and promotes best practices in juvenile justice policies and procedures. I'm also a practicing attorney specializing in juvenile defense. I thank Senator Pansing Brooks for bringing this bill and inviting me to testify in support of this bill. As LB354 takes important steps both simplify and expand our current sealing statute to help ensure that youth can move forward in their future and not be held back by juvenile adjudication. Every person makes poor decisions as a kid, particularly as a teenager. Adolescents typically experiment with risky behaviors, have trouble regulating emotions, and fail to anticipate the future consequences of their actions. Developmental research suggests that with time most adolescents will grow out of these habits naturally as they mature. How our state responds to the poor decisions that adolescents make, tend to make, particularly those that lead to criminal sanction,

should be based on this developmental research. This is particularly important in regards to how we approach sealing of juvenile records, as the existence of a juvenile record can lead to multiple collateral consequences which act as barriers to success and is contrary to the goals of the juvenile court system which seeks to rehabilitate and assist youth and families. In addition to my testimony, I created a section by section breakdown of the changes that LB354 makes to improve our sealing statute. The biggest change provides for immediate sealing of a juvenile court record upon satisfactory release from probation, rather than a youth having to wait until they're 17 years old for the court to initiate the process. The bill also provides a clear path for any youth requests sealing of their record upon a demonstration of satisfactory rehabilitation, reflecting research that most youth will mature and age out of delinquent behavior. The other changes seek to simplify the process and create better notifications for youth so they are aware of the opportunity to seal their record so it does not stand in the way of their success. According to Juvenile Probation administration's fiscal analysis for the last year, there are over 5,000 youth served through probation with 90 percent of those offenses being misdemeanors and status offenses. So this will have a significant impact on the improvement of how we deal with our youth. I'm happy to answer any questions, and thank you again for your consideration of this bill.

LATHROP: Thank you. I appreciate your testimony. I see-- oh, Senator Brandt has a question for you.

BRANDT: Ms. Henningsen, so if somebody was 14 under your proposal then it would be sealed, if they were still 14 and completed their probation or--

CHRISTINE HENNINGSEN: If they satisfactorily completed their probation, yes, it would be sealed at that time.

BRANDT: So then it would be possible for them to have multiple sealed records before they were 18, if they had another offense and then completed that?

CHRISTINE HENNINGSEN: Yes, they could if they got a subsequent one. But under a sealing records as well it blocks the public access to the records, so for employers or for landlords. However, the sealing records still allow for law enforcement and county attorneys and a number of other agencies to access records even if they are sealed.

Which I think would dispel any fears that you have that they wouldn't be under consideration if they had a subsequent offense.

BRANDT: Thank you.

CHRISTINE HENNINGSEN: Thank you.

LATHROP: Senator Wayne.

WAYNE: So if a, so if a young individual who was 14 underneath Senator Brandt's theory completed and then committed the same crime or violation, could they be charged with a second offense?

CHRISTINE HENNINGSEN: If they were-- like depending on what the charge was and--

WAYNE: So let's say they get charged with first offense, I can name any of them, it goes to juvenile court, they complete everything satisfactorily, records seal. Two months later, they commit the same thing. Could they be charged with the second offense? Would it have to go back to a first offense?

CHRISTINE HENNINGSEN: Even under the current statute itself to be a first offense, because in the juvenile court it's not treated as a conviction.

WAYNE: So when it's transferred back down, it's still considered a first offense-- if it starts in adult court it transfers back down and still considered a first offense? I just can't remember, that's why I'm asking.

CHRISTINE HENNINGSEN: If it begins in adult court but then is transferred to juvenile court, and that it's found to be true or the child admits to the charge, it is not considered a conviction that could be used against them to for a subsequent offense as far as charging them with a second offense. But that's true even now, because none of our adjudications are convictions.

WAYNE: We don't have second offenses in juvenile code? I thought we did.

CHRISTINE HENNINGSEN: No.

WAYNE: Okay, thank you.

CHRISTINE HENNINGSEN: Thank you.

LATHROP: I see no other questions. Thank you for your testimony. We're appreciate--

CHRISTINE HENNINGSEN: Thank you, Senator.

LATHROP: --you coming here today. Good afternoon.

SHAKIL MALIK: Good afternoon, senators. My name is Shakil Malik, S-h-a-k-i-l, last name, M-a-l-i-k. I'm here testifying on this bill in support on behalf of the Nebraska County Attorneys Association. First of all, I want to thank Senator Pansing Brooks and her staff for working with us on to address the concerns we had and some our law enforcement partners had. Also Christine Hansen for working with us and serving as a liaison to help work on the language on the amendment. The bill as amended, I just want to talk about a couple of points, you can read the rest in my written statement that we feel is useful for all parties involved is, first of all, it clarifies the general confidentiality of juvenile diversion records. Another point is it puts into place a practice that already it's in the larger counties we do where if a case is not filed on either due to we declined to charge or sometimes you'll hear called "no way pross [PHONETIC]" or if they successfully complete pretrial diversion, it codifies our practice of immediately sealing the record once that event occurs. Also, it establishes a clear framework for notifying juveniles in a consistent and vehemently appropriate manner, different stages the case about what their entitlements are for getting their records sealed and also what the impact of having a record would be sealed. And you'll see that language where it directs the Supreme Court to stand-- establish a standard notification document by mid 2020. Another point I'll talk about is the clarity, as for years we've had what I would call administrative sealing where a record is sealed by either the county attorney because we didn't file on a case or by a county attorney or diversion center because they completed diversion. And under the existing law, the statute that talks about who can access sealed records and what you can say and not say about it didn't actually apply to those administrative seals, it only applied to court seals. We treat it as if it did but didn't formally do. Now we'll have greater guidance for us and law enforcement and other programs on who has access to those administratively sealed records and what the protocols are for those. That's very helpful to provide that clarity. Last point I'll talk about is the clarification, the retroactivity provision, because since sealed records were passed there have been

different courts in the state that have taken different interpretations on whether people who had offenses that occurred before the passage of the original bill would be eligible or not. This provides a uniform standard that people can go both and ask the record to be sealed administratively or by the court if they met the proper requirements that are set forth in the bill. So I'd ask that this committee move this bill forward along with the proposed amendments.

LATHROP: Very good. I see no questions. Thank you for your testimony today. We have another proponent. Hello and welcome to the Judiciary Committee. We'll ask you to scoot your chair up so you can, we can all hear you.

JASMINE JONES: Good afternoon. I'm Jasmine Jones, J-a-s-m-i-n-e J-o-n-e-s, I'm here on behalf of my own personal thoughts about the bill and also with the Juvenile Justice council. I've been a member with the Juvenile Justice council for a while now, but I want to go on the official record in support of LB354, which makes juvenile records sealing automatic upon completion of probation and clarifies the process for youth to request that their records be sealed. I've had my own fair share of legal, legal juvenile justice trouble, mostly due to the environment I was exposed to. I think the bill is great. However, I think it should be added that no one can see those records once they have been sealed, especially like government-type jobs because like although McDonald's or, you know, a low minimum wage job or something can see those files-- can't see those files, you know, the military or the police force really it hinders us, you know, and especially speaking on my behalf. It has taken a lot of opportunities from me due to things that I've done when I was, you know, 13 or 15. And I think it would be a really great opportunity if we could really take an account of those things and really make it to where that that fresh start is truly a fresh start once you get into an adult, because I'm definitely not the same person I was when I was 13 or 15. So taking that into account, I think would be very good for this bill, and adding that in there somewhere. And I would like to thank Senator Pansing Brooks for coming up and introducing LB354 to us.

LATHROP: Thanks, Jasmine. I appreciate your testimony. Senator Chambers has a question.

CHAMBERS: I have seen the future, it is you.

JASMINE JONES: Oh, thank you.

LATHROP: Yeah. Thanks, Jasmine.

JASMINE JONES: Thank you.

LATHROP: Good afternoon.

ANNE HOBBS: Good afternoon. My name is Doctor Anne Hobbs, it's A-n-n-e H-o-b-b-s. I'm the director of the University of Nebraska's Juvenile Justice Institute. However, I do not represent the University of Nebraska in my testimony today. Thank you for the opportunity to speak in support of LB354, specifically with regard to whether or not the system follows through on sealing records. So clearly sealing juvenile records is critical for young people to move past mistakes that they've made and go on to lead healthy, productive lives. But I've been in studies, involved in two studies that examine whether or not the juvenile records actually get sealed kind of following the intent of the law. These studies reveal that a surprising number of cases do not get sealed and it's still unclear, however, why they don't get sealed. So for example in 2016 we examine juvenile cases that have been filed between 2012 and 2015, and we wanted a substantial amount of time to go by so, you know, the process could work itself out and cases could get to court to be sealed or the automatic provision would work. What we found was that only 43 percent of cases where youth were under the age of 18 when the offense occurred, only 43 percent of those later sealed. In 2018, late 2018, I then reexamined juvenile court findings, and this time I looked at calendar year 2017. I'm kind of hoping to see an increase since the law has been in effect. Instead, what we see is of the 12,000-plus cases that had closed and could have potentially been sealed, a little over 20 percent had been sealed. So this is all, the numbers are laid out in table 1 of page 2. So probably one of the things that I think is most interesting is that I also went on to look at cases that are dismissed or dropped. So if those charges are dropped, you would kind of imagine that those should be automatically sealed because the person is never kind of brought to court for those cases. What we do see and what is some good news or is promising is 65 percent of the cases in Nebraska that had been dismissed were sealed in 2017. So that's a steep improvement from the first study that we did where we saw only 6 percent of cases had been sealed. However, only 9 percent of the cases that were dropped had gone on to be sealed. So we still see that our kind of our practice, our internal processes as a system are not-- we're not getting our records sealed. Clearly, it's critical to seal juvenile records, and especially if we're telling youth or their families that this is the

process that they have to take. Our system must follow through and kind of be held accountable to make sure that those records do seal. Otherwise, the young people look like they're, you know, not being straight out with their employer or landlord. As one final note, and it's kind of at the bottom of tables 1 and 2, we do know that counties, there are some counties-- actually there's one county that is really above and beyond in getting records sealed. So kind of the next step is to go to Douglas County and find out what's happening in Douglas County district court because across the state on average most of our counties are seeing maybe 30, 40 percent of cases get sealed. But in the Douglas County district court, 82.7 percent of cases in 2017 were sealed. And we pulled the data really quickly after 2017. So those seem to be, Douglas County seems to be sealing records much more quickly than other counties.

LATHROP: Very good.

ANNE HOBBS: Thank you.

LATHROP: Thank you, Dr. Hobbs. Senator Slama has a question for you.

SLAMA: Thank you very much for coming out today, Dr. Hobbs. So I'm wondering if during your research you could draw a common denominator as to the root of the failure to seal these records. Is it a misunderstanding or confusion with the law as written or is it something obviously a little bit more serious?

ANNE HOBBS: No, I think it's actually the internal process to the courthouse that's causing records not to go forward and be automatically sealed. So I think it's the system.

SLAMA: Outside of Douglas County are there pretty consistent failures across the state, or are we looking more at an urban-rural divide issue or just a county by county?

ANNE HOBBS: No, it's consistently 40 percent or lower every place outside of Douglas County.

SLAMA: Okay, thank you.

ANNE HOBBS: Yeah.

LATHROP: I see no other questions. Thanks, Dr. Hobbs. We appreciate your testimony. Next proponent. Welcome.

JACINTA DAI-KLABUNDE: Good afternoon, Chairperson, Chairperson Lathrop and members of the Judiciary Committee. My name is just Jacinta Dai-Klabunde, that's J-a-c-i-n-t-a D-a-i-K-l-a-b-u-n-d-e, and I'm an attorney with Legal Aid of Nebraska's Juvenile Justice Project, and I work with reentering youth. Thank you, Senator Pansing Brooks, for inviting me to testify today. Legal Aid of Nebraska is the only statewide non-profit firm providing free civil legal services to low-income Nebraskans. And in 2018, Legal Aid closed over 12,000 cases after providing legal assistance ranging from advice to legal representation in courts across the state. In the last two years, Legal Aid has taken its long experience in juvenile representation into an area of great need, providing civil legal services to youth with juvenile records. Unfortunately, a juvenile record can affect the future opportunities of a youthful offender for many years after involvement with the juvenile court system. Through our Juvenile Reentry Project we educate and provide free civil legal assistance to those up to age 24 who committed offenses as a juvenile and are now trying to build a better life as a young adult. And we address what is known as collateral consequences of their juvenile adjudication, including health-- help youth, helping youth seal their records. Legal aid goes to agencies in Lincoln and Omaha that serve youth like the Hub and Youth Emergency Services, and we meet with youth that are trying to take their step, taking steps to improve their lives including attend-- attaining their GED. We find the unsealed juvenile court records create real and significant barriers. These records are very accessible, especially since on-line court databases, such as JUSTICE, are available to the public. We believe that the changes in LB354 will result in huge positive impacts on the lives of these youth. This healing process in this bill is clear and makes sense. It results in automatic sealing for kids that successfully complete what they need to do and it clarifies the process to request sealing when a case is not automatically sealed. Through our experience, we can state so definitively that the automatic and simple sealing of juvenile records is extremely effective. The bill also creates a process for the ineligible for automatic sealing to request the records be sealed when the juveniles reach the age of majority or after their case has been closed for at least six months. This will allow people to improve their lives and put their past juvenile record behind them regardless of how old the offense is. In Nebraska, many people incorrectly assume juvenile records are not available to the public. And there are other states with laws keeping either all or some juvenile court records nonpublic. And based on information from the National Juvenile Defender Center, approximately 8 to 10 states hold all juvenile

records confidential. When looking at states that implement a hybrid model, where some records are kept confidential and others are public, we found that Nebraska is part of a growing minority of states that do not afford youth the same basic privacy protections. LB354 as a step in the right direction for Nebraska. LB354 also makes it clear that the changes apply to all eligible youth, whether the alleged offenses occurred before or after the effective date of the act. This will make it easier for all those involved in understanding when the act applies and it provides privacy protections to all juveniles regardless of the offense date. More details are in my written testimony, and along with the written testimony I have distributed copies of a guide created by Legal Aid of Nebraska and the National Juvenile Defender Center with other partners to inform youth about the collateral consequences of a juvenile record to the committee for your reference. Legal Aid supports LB354. Thank you for the opportunity, and I would be happy to answer any questions.

LATHROP: OK. Thank you for your testimony. I don't see any questions. I just want to comment while you're sitting here, thanks for what Legal Aid does. As a lawyer, I appreciate what they do for people that can't afford access to the courthouse without the help of Legal Aid.

JACINTA DAI-KLABUNDE: Well, I thank you.

LATHROP: Any other proponents? Good afternoon.

MARGENE TIMM: Good afternoon. Margene Timm, M-a-r-g-e-n-e, last name Timm, T-i-m-m, I'm testifying on behalf of the Nebraska Criminal Defense Attorney Association. I've been a public defender in Lancaster County for 29 years. I've been in juvenile court for 19 of those years. I'm currently the supervisor of the juvenile unit. I'm asking you to support LB354. It's not only good policy, it makes a clear procedure as noted by all the testifiers before me. I want to give this committee a real life example of a juvenile who could be helped by this bill. In the past few months, I received a call from a former client. I had a representative for quite a number of years in juvenile court. Her only record was truancy; misdemeanor theft, which was stealing money from her grandmother; and joy ride, which was taking her grandmother's car without permission. However, she was never able to satisfactorily complete the terms of her probation. And so she did not get a successful or satisfactory release, hence her record was not sealed. She contacted me, she is now 21 years old. She has a baby and she said she wanted to make a better life for herself and her child. She said she had written a letter to the court asking to have her

records sealed and got a response that they would not give her a hearing on it. I talked to her, trying to figure out why her juvenile record was giving her such problems in getting a job. And she, I thought maybe she was answering the questions on job applications that she had a conviction. She said that Wal-Mart had specifically told her that they would not hire her because she had a theft record, a theft adjudication in juvenile court. This bill would give that juvenile an avenue to go into juvenile court, show that she's been three years out of juvenile court, she has no criminal record, and she could have that record sealed to prevent those kind of barriers. I know that the senator has, has indicated that she's going to remove Section 2 of the bill, which mentions protections that follow the HIPAA protections. I do just briefly want to mention that, so that if it's studied in the future or is considered for future litigation, as an attorney, I'm very surprised at how often I see that kind of information come across my desk. And I only represent juveniles on law violations and status offenses. I want to give the committee an example, a real life example. We had a case transferred to our office for disposition, along with the copies, the pleadings, the orders, the motions from the transferring county. There was a 25-page juvenile sex offender evaluation that had been attached that only, not only contained really extremely private information about my client but his victim, his parents. I thought maybe it just came to me as part of discovery, so I checked JUSTICE and it had been scanned in. It was there for full public consumption. Anybody could see this. I immediately took steps to redact it, to get it placed under protective seal, to order the district court to remove that from the pleadings or from the public files. So this is a problem. It does need to be addressed. Our Nebraska Supreme Court over the years has been introducing requirements for attorneys not to file financial information in their pleadings. Certainly, mental health, substance abuse, medical records are deserving as of protection as financial information. I urge you to support LB354.

LATHROP: Terrific. Thanks, Ms. Timm. I don't see any questions. Thank you. Welcome.

JULIET SUMMERS: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s, and I'm here on behalf of Voices for Children in Nebraska to support LB354. Our juvenile justice system should be structured to ensure that all children can take the right steps to put their past behind them and move toward a better future. As a society,

we all benefit by policies that hold youth accountable in age-appropriate ways and allow them the ability to grow out of the past adolescent decisions. Voices for Children in Nebraska supports this bill because it provides a needed update to our statutory code regarding the sealing of juvenile records to ensure that those records don't become dead weight dragging down Nebraska's youth, and by extension, our communities. Robust policy around the sealing of juvenile records does not preclude accountability. Youth who break the law should be held accountable for their actions. However, as you've heard, decades of research shows, and in fact public opinion strongly supports, that youth can be rehabilitated and should be allowed to move along with their lives. Most will stop lawbreaking behavior simply as they grow out of it, even if the system does nothing. And a record may actually get in the way of that natural process by cutting off opportunities, which research has shown support law-abiding maturity. Namely, completing school and starting a family, getting a job and achieving financial self-sufficiency. Youth who've paid their debt to society and who've taken advantage of the rehabilitative services offered to them in the juvenile court should have the chance to get an education and earn an honest living. Moreover, when they're able to do so, their prospects for lifetime income and stability improve, impacting the prosperity of neighborhoods, communities, and our state as a whole. We strongly support this bill because we believe the additions and changes will clarify and strengthen our juvenile code in a number of ways. As you've heard, by ensuring that families receive the information they need to understand the importance of a sealed record, the steps the youth will need to take in order to achieve it, and whom to contact after the fact to check that the record has actually been sealed as intended by the law. Simplifying the process for youth who've completed the orders of court by requiring the automatic sealing, which as you've heard, is, is a major portion of this bill. Clarifying how and when an individual may retroactively seek to have his or her juvenile records sealed and what the legal requirements of notice and burden are going to be in that hearing. Allowing individuals simplified, ongoing access to their own sealed record for whatever purpose they deem necessary. LB354 will ensure that our sealed records statute is functioning to meet the need it was intended to. And in doing so, will provide relief to young people who've done everything we've asked of them and only wish to move forward into a better future. So I'd like to thank Senator Pansing Brooks for bringing this bill and to the members of this

committee for your time and consideration. And I would respectfully urge you to advance it and be happy to answer any questions.

LATHROP: I see no questions. Thanks for your testimony.

JULIET SUMMERS: Thank you.

LATHROP: Anyone else here to testify as a proponent? Anyone here in opposition? Good afternoon.

LARRY STORER: Good afternoon. Larry Storer, S-t-o-r-e-r, 5015 Lafayette Avenue, Omaha, Nebraska. I'm amazed that there's nobody here in opposition. Although I don't have a child or a grandchild in the juvenile system, I've been sort of involved on the periphery for quite a few years. And I'm amazed that we want to seal all these records so that nobody can really help them. But we want to run around strengthening families. You can't strengthen families if grandparents can't be involved. I know the Supreme Court says grandparents have no standing. Well, they have a lot of standing. So what I'm saying is, in Omaha right now, they seal the records, yes. But then people could come in from outside at the behest of the state Legislature. A few years ago, brought in a judge from Pennsylvania to tell us how to find children and save families. Since that time, we've had lots of different names. But I went to the city council Tuesday. The kids that are in detention have been studied, they've been analyzed. They've gathered the data on them and they've presented all the statistics as to how many were there, why they were there, what color they were, what the different adjudications were. How do you get that information? You seal it from everybody but yourselves. That's not right. I think you're violating some of those kids' constitutional rights, as well as families'. I was in a juvenile court a few years ago where the judge said, no, before she even started speaking she chased people out of the room. There was a poor grandmother who was trying to find out about her children, not allowed to. So what I'm saying is, if you want to strengthen families, if you want to save the children like you've all been professing to do, you need to let grandparents be involved. For one thing. But first of all, if the kids are detentioned in Omaha, does that not mean that they committed an offense> If they did not commit a defense-- an offense, they shouldn't be detained. But people don't seem to get that. But you have a state, a city councilman and a Douglas County Board members that want to keep these kids in here and gather the information and present programs that we have spent contracts on to spend money without side charitable organizations and 501(c)(3)s to present programs. To do what? To help

them get out of there. Why are those programs not successful before they get there? This is money and efforts that ought to be going on in the schools, not in the Douglas County Detention Center or in the state Legislature. This is an educational function. They're doing that right now. Do it in the school, see that the schools have the structure and the money.

LATHROP: OK.

LARRY STORER: Don't farm it out to people that don't know the children. Thank you.

LATHROP: I see no questions. Thank you for your testimony. Anyone else here to testify in opposition to LB354? Anyone here in a neutral capacity? I'm sorry. Oh, anyone here in a neutral capacity? Senator Pansing Brooks to close.

PANSING BROOKS: I just mainly want to thank everybody for coming today on both sides. And clearly, you know, there's some grandparents rights issues going on and that's something that can be addressed in different legislation. And especially want to thank Christine Henningsen from the-- from the UNL Children, Families, and the Law. And also Juliet Summers from with her incredible work, both of theirs', from Voices for Children and the County Attorneys. It was a kumbaya moment. Thank you.

LATHROP: [INAUDIBLE] debate for the most part.

PANSING BROOKS: Thank you very much.

LATHROP: OK. Thank you, Senator. That will-- before we close the hearing on LB354, I'll read for the record letters that were received by the committee in support. Spike Eickholt from ACLU; Nick Juliano from Children and Family Coalition of Nebraska; Tim Curry, National Juvenile Center-- Defender Center, pardon me; Ryan Sullivan. In opposition, Shawn Renner with media of Nebraska; and Todd Schmaderer, Omaha Chief of Police.

PANSING BROOKS: I just want to say one more thing, it was nice that Jasmine Jones from the juveniles coalition-- what was the name, anyway, came. It's just wonderful to have all ages coming and being part of our Legislature.

LATHROP: You're right. You're right. That was a treat for us. Thanks, Senator.

PANSING BROOKS: Thank you.

LATHROP: That will close our hearing on LB354 and that will bring us to LB219, Senator Wishart, to introduce that bill. Good afternoon, Senator Wishart, and welcome back to the Judiciary Committee.

WISHART: Well, good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Anna Wishart, A-n-n-a W-i-s-h-a-r-t, and I represent the 27th District in west Lincoln. I'm here today to introduce LB219, a bill that seeks to make the transition to independence easier for Nebraska youth in the foster care system. There will be some Judiciary Committee members who are familiar with this bill, as I have brought it I believe two years in a row. Senator Kathy Campbell's Nebraska Strengthening Families Act passed in the Legislature in 2019, and among other things required the state to provide essential documents, including a driver's license or identification card to young people as they age out of our state's foster care system. This bill, LB219 is the next step in ensuring that youth in our foster care system are able to successfully transition to adulthood and independence by addressing additional barriers for foster youth having access to a driver's license. Because of a young person's status in the foster care system, there is often confusion when that youth turns 16 and decides they would like to learn how to drive. LB219 ensures that youth in the foster care system are not met with any additional requirements simply because of their status. Currently, existing state and federal law requires DHHS to provide youth with copies of a certified birth certificate and Social Security card when the youth ages out or exits foster care at age 18, 19, and 21. LB219 would add age 14 so that youth receive the necessary documents required to allow them to get a driver's license. When I originally brought this concept with LB226 in 2017, one concern that was identified by stakeholders was the liability associated with owning and operating a motor vehicle. LB219 ensures that a caregiver of a child in the foster care system who obtains a driver's license is not personally liable for harm caused to or by the child when operating a motor vehicle. Being able to drive is an important step to independence. Obtaining a driver's license allows youth to be able to drive themselves to school, extracurricular activities, and maybe a part-time job. It is my goal with LB219 that we are not standing in the way of youth in our state's foster care system as they transition

to independence. Removing barriers for these youth who want to obtain a driver's license can only help them as they grow into adulthood. Thank you for your consideration. I'd be happy to answer any questions.

LATHROP: I don't see any questions.

WISHART: Thank you.

LATHROP: Thank you. First proponent?

SARAH HELVEY: Thank you, good afternoon. My name is Sarah Helvey, that's S-a-r-a-h, last name H-e-l-v-e-y, and I'm a staff attorney and director of the child welfare program in Nebraska Appleseed. For many, getting a driver's license is an important milestone to growing up. It is a necessity for many young people as they pursue goals related to work and education. But for many young people in foster care, there are additional barriers including documentation, liability concerns, access to a vehicle and insurance, and just simply understanding the process. By way of background, and Senator Wishart went into a little bit of this, in 2014, Congress passed that Preventing Sex Trafficking and Strengthening Families Act, which among other things requires states to provide vital documents to young people when they exit foster care, including a birth certificate, Social Security card if eligible, and a driver's license or state I.D. In 2017, the Nebraska Legislature passed LB746, which codified this provision into Nebraska statute and implemented the Reasonable and Prudent Parent Standard, another provision of the federal Strengthening Families Act to allow caregivers to use their best judgment in determining what extracurricular enrichment, cultural and social activities, youth in their care may participate. Together, the intent of these laws was to provide youth in care with access to normalcy or opportunities for the same types of growing up experiences like going to a slumber party without a background check or getting a part-time job as their peers. We support LB219 because it help ensure that these existing laws have their intended impact and help more young people in foster care successfully transition to adulthood. First, we support LB219 because it would make sure youth in foster care aren't treated differently in the process of obtaining a driver's license. When families, foster parents-- while families, caseworkers, and foster parents should discuss the responsibility and safety needed to become a driver, parental permission is not required by the DMV under existing statutes in order for minors with our system involved or not to obtain a driver's license. However, this has been an area of confusion as to

whether caseworkers' signature permission is required and whether a foster parent can get permission for youth in foster care to get a driver's license. The bill would clarify that youth in foster care will not be met with any additional requirements by virtue of their status as a youth in foster care. Second, LB219 would ensure foster parents play a supportive role as youth in care learn to drive, by providing liability protections in the case of a driving accident of the youth. The federal and Nebraska Strengthening Families Act implement a similar liability protection to encourage normalcy. The intent was to make sure that foster parents don't say no to normal childhood experiences that include some risk like riding a bike or going out for football out of fear that they could be held liable if an accident occurred. The liability protection in this bill would similarly encourage foster parents to help youth learn to drive without fear that they could be held liable in an accident, so long as they were acting within a reasonable and prudent parent standard. And finally, includes the requirement to give access to vital documents including that birth certificate, which we know is a barrier for many young people at age 14 to pursue their thought, their driver's license or learner's permit at an age-appropriate time. So with that, I just want to thank Senator Wishart for introducing the bill again, and the Committee for your ongoing commitment to young people in our foster care system, and urge the committee to advance the bill.

LATHROP: Very good. Appreciate your testimony, Sarah. We do have a question from Senator Slama.

SLAMA: Thank you for coming out today. I noticed in the fiscal note there was a little bit of a lack of clarity as to whether we'd also be expected to cover the cost of drivers safety courses. Could you just clarify whether or not that would be covered under this bill?

SARAH HELVEY: That was not the intent. The intent was to encourage caseworkers to refer young people to community resources. And I think you'll be hearing a little bit more about those community resources from testifiers that are going after me.

SLAMA: Sounds good. Thank you.

LATHROP: I see no other questions. Thanks, Sarah. Next proponent.

SARA DRUEKE: Hi, and thank you, Judiciary Committee. My name is Sarah, S-a-r-a, last name Drueke, D-r-u-e-k-e, and I am here representing myself today. I am a program coordinator of the Opportunity Passport

program here in Lincoln, and we are operated from community action in partnership with Nebraska Children. We're a voluntary program that allows young adults aging out of the foster care system to receive a comprehensive financial education, as well as a match savings account. The matched funds allow the youth in the program to purchase assets as they transition into adulthood. One of the most popular purchases in our program is for transportation and insurance. I am writing to offer support of on LB219 on behalf of myself but from what I also see from working with our youth in our program. I support LB219 because it ensures that youth in foster care are not met with additional requirements in obtaining a learner's permit or driver's license by virtue of status as a child in foster care. In order for a young person in care to be successful through a program such as ours that matches their savings towards purchasing a vehicle insurance and registration fees, they first have to obtain a driver's license. This law would provide clarity in giving foster parents and caseworkers' permission to allow a young person to pursue getting their license at an earlier age than when they age out. Second, I support this to LB219 because we are interested in improving the overall well-being of youth transitioning from care. The Opportunity Passport program works to help these young adults reach financial stability. The purchase of a car, which is the most common asset purchased in our program, has the potential to impact both employment and housing opportunities very quickly. Young people with a car immediately have broader geographic area with which in they can find appropriate employment or housing while also providing reliable transportation to and from their job. And obtaining a license is critical for their success in both purchasing a car and in many cases finding adequate employment. Lastly, I support LB219 because it would require caseworkers and caregivers to provide youth with vital documents and information to obtain a driver's license starting at age 14. One of the biggest challenges that I see in working with these youth is that they don't start the process of obtaining their license until well after their 16th birthday, and in many cases this has led to a lack of confidence in this young person's ability and desire to drive and hesitancy from youth in signing up for drivers ed classes, and also has limited their options for finding someone that would allow them to practice driving a car. Additionally, research has established that youth who get their license on time at age 16 through provisional licensing programs are safer drivers. We need to support these youth at a much younger age than the time that they're aging out of the system towards helping them plan to reach the necessary milestone of obtaining a license. So

I fully support LB219. I appreciate your time today and work on this, and I request that you advance this.

LATHROP: Okay. Thank you. I don't see any questions. Next proponent. Good afternoon.

FELIPE LONGORIA: Hello. My name is, is Felipe Longoria, that's F-e-l-i-p-e L-o-n-g-o-r-i-a. I want, I want to thank the committee for bringing up LB219, the foster youth driver, driver safety bill. As an employee of Central Plains Center for Services, a human services agency focused on, on providing support to older Nebraska foster youth and their-- and those exiting foster care, I am keenly, I am keenly aware of the barriers that foster youth face when trying to get their driver's licenses. I am speaking on, on my own behalf and not of the agency's. You may be surprised how many foster youth do not possess the basic skills to drive and acquire a learner's permit, let alone get a driver's license. I have worked for this agency for close to nine years, and in that time I have encountered, I have encountered hundreds of foster youth that do not have a driver's license. I do not think it's a stretch to say that more than half of the foster youth my colleagues and I have worked with have waited until they were adults to get their driver's license or something that never got theirs. I think many of you would agree that, that this is not normalcy. Getting a driver's license is something we all likely see as, as a rite of passage to adulthood and take for granted the process of getting one. Either we had someone in our lives who could teach us to drive or we were able to get into a program like driver's, drivers ed, where we were taught to drive. And while our agency manages a grant that pays or foster youth drivers ed cost, foster youth still face, face additional challenges. Foster youth, foster youth struggle acquiring the necessary documentation, such as birth certificates and proof of residence to getting their learner's permit to even get into drivers ed. They face challenges finding consistent transportation to classes. They are often unaware that our agency can pay for driver's, drivers ed, and they are not receiving a supplemental driving practice at home to make drivers ed effective enough for them to feel like they have learned how to properly drive. As a result, some foster youth either, either drop out of drivers ed or end up failing the driving portion. Learning to drive, learning to drive takes time and it is important to give, to give that to foster youth so they can get the driver's license so they can advance in, so they can advance their lives, increase their independence, while also potentially eliminating barriers to getting a job and enrolling into college. Helping foster

youth get their driver's, their driver's license has become a central-- has become central to my role in helping foster youth become independent, independent adults. So much so that I have personally taught many of them to drive using my personal, my personal vehicle. Now, while my supervisors might not have appreciated me, appreciated me taking the risk in teaching them, far too often foster youth having no one who is willing to find the time to teach them, do not have a vehicle in which to learn, or have anybody they feel comfortable enough, that they feel comfortable enough asking. Foster youth should not have to rely on the kindness of a particular specialist to teach them to drive in, in their personal vehicle to obtain, to obtain a driver's license. LB219 will make a drastic impact in foster youth having an easier time to obtain something that is central to them becoming normal teen, in becoming normal teenagers. Please support this bill and give foster youth more opportunities to get their driver's license and advance their lives forward for the better, which I hope is something that we can all agree is a solid cause because I hope that we can all run-- that we can all remember that while driving may be a privilege, getting a driver's license should be a right that everybody has, especially foster youth. So that is all I have.

LATHROP: Thank you. And thank you for your testimony today, we appreciate hearing from you. Are there any other proponents of LB219? Anyone here to speak in opposition to LB219.

LARRY STORER: I think that's right. Pardon my voice. Larry Storer, 5015 Lafayette Avenue, Omaha, Nebraska.

LATHROP: Can you spell your last name for us?

LARRY STORER: S-t-o-r-e-r.

LATHROP: Go ahead.

LARRY STORER: I've been very closely involved, as close as I could with my grandson since about third grade. He's now just turned 19. He's not in the juvenile justice system but he is in the care of the state. I have tried to advocate all along but the system doesn't work the way you describe it in here. And it's kind of confusing too. You jump from age 14 to age 16 to age 18 or 19, but we really don't know here in the state whether it's age 18 or 19. We're also talking about transition and foster care and out-of-home care. All these terms seem to run together for those of us that are not professionals, any parent or citizen that's involved that's not a professional. This just

doesn't make much sense, it needs to be much clearer. I'm well-acquainted with the privacy laws. Yes, I'm not a lawyer. I'm not a legislator. But the intent of the federal privacy laws and the special education programs was not to prevent people that the child wanted to be involved to be involved. You say so yourself, right in here. What I'm telling you, is the people that do the work, as good as they intend, don't pay any attention to the privacy laws. They don't necessarily let you be involved, even if you're in the room with the parent or guardian and, and the patient. And the form has been signed. They don't necessarily let you give input or ask questions. Often the excuse is, we're short of time. Excuse me, that doesn't strengthen families. Whether they be orange, black, white, green, 14, 16, 18, 19. But how can you transition into independent living at age 14? You're still a juvenile. Is it 14 or is it 18 or is it 19. And transition to what? And then you're going to provide all of this that you say in here? Now, excuse me, that sounds like DD services, they have a program called Transition to age 21, I believe. But they're not obligated to provide what is in here. And as a taxpayer, I'm sorry, I can't afford it.

LATHROP: Thank you, Mr. Storer.

LARRY STORER: But I do, I do, excuse me real quickly. I do think the state needs to rethink if they're strengthening families to not recognize the grandparents for example as not having standing. Read the privacy laws. It doesn't say that. If the child wants me involved, I should be involved.

LATHROP: Okay.

LARRY STORER: The people running the programs have no right to say no.

LATHROP: Thank you. Are there any other opponents here today to testify on LB219? Anyone here to testify in a neutral capacity. Seeing none, Senator Wishart waives close, and that will-- let me read a couple letters. I think we may have, we do have two letters in support on LB219 for the record from Juliet Summers at Voices for Children and Nick Juliano from Children and Family Coalition of Nebraska. That will close our hearing on LB219 and bring us to Senator Briese and LB17. Good afternoon, Senator Briese, and welcome to the Judiciary Committee.

BRIESE: Thank you, Chairman Lathrop. Good afternoon, Chairman and members of the committee. It's my first time ever in the Warner Chamber so I-- very nice.

LATHROP: Well, we have one, one rule: pull that mike close enough so we can all hear you

BRIESE: OK.

LATHROP: The sound is a little difficult.

BRIESE: Very good.

LATHROP: Thanks.

BRIESE: Good afternoon, Chairman and members of the Judiciary Committee. My name is Tom Briese, T-o-m B-r-i-e-s-e, and I represent the 41st District in the Unicameral. Today, I'm offering for your consideration LB17. LB17 comes on the heels of last year's LB845, which passed unanimously and protected parents with disabilities in custody cases. This bill would bring the same basic concept: that disability alone is never a valid justification for preventing a child from being raised by his or her own parent and brings it into our juvenile code. I'll begin by saying that thankfully this has not been a large issue in Nebraska. However, just because you don't have a problem yet that's not reason to make sure that rights are protected, and the termination or attempted termination of parental rights when the only concern raised is the disability of the parent is something that has happened and continues to happen in other states. So while we have judges in Nebraska who do a great job of not letting biases about folks with disabilities inform their decisions, clarifying this in statute will not only give those judges a clear place in the law to point to in making decisions regarding parents with disabilities, but will also protect those children from that 1 in 1,000 judge who comes along and lets preconceived biases dictate the wrong outcome. And this really is a proactive approach. In working with partners in the disability advocacy community to develop this bill over the interim, I've heard many stories about how folks with disabilities are discriminated against every day in this country. The unemployment rate for Americans with disabilities is higher than any other group of Americans, no matter how you slice it, and they face the unconscious bias of lowered expectations even when they are successful. Children of parents with disabilities are often questioned by well-meaning but ignorant people at school, at the doctor's office, and in the public,

and in public spaces. They are asked how much they help around the house; or how often their parents cook a meal; or if the child dressed him or herself; or what their living conditions are like home, or are like at home and children are smarter than we give them credit for. By the time a child is five or six, he can she-- he or she can look around and notice that adults aren't asking other children those same questions. This fundamentally undermines the child's confidence in his or her parents and leaves the parents feeling as though people don't support them raising their own kids. This bill isn't going to fix the inherent biases that many people have against people with disabilities but will give those with disabilities a strong message. And that message is: The state of Nebraska knows that the best place for children is with their parents and nobody is going to destroy that relationship solely because of a parent's disability. I'd also like to draw your attention to that word "solely," and that word appears on page 2 line 15 of this bill, and I'd argue that that is one of the key protections in this entire bill. Nothing in this bill is going to keep children of folks with disabilities in a bad situation if their parents are abusing them, not giving them proper nutrition, not ensuring that those children make it to school, or if those parents are using, abusing drugs or alcohol. In researching for this hearing, I noted that the juvenile code of Nebraska does not define disabilities and I would recommend that the committee consider defining it exactly as it is under the federal statutes and the Americans With Disabilities Act. And that's found at 42 U.S. Code Section 12102. This language is used elsewhere in Nebraska statutes to define disabilities, and ensures that the most current federal definition is used. And this will also be helpful on the question of where disabilities stem from when you're talking about history of drug, excuse me, drug or alcohol abuse versus those who are currently or were until very recently engaging in substance abuse. I believe that I will be followed by a couple of attorneys in the field of disability civil rights and they will have better answers on that specific issue than I do. But as I understand it, there is existing case law regarding the federal disabilities language under the ADA, which makes it clear that when a person has a disability relating to substance abuse, it is the brain damage caused by that abuse which is that person's disability and the symptoms of that brain damage but not the use and abuse of drugs and alcohol is not in and of itself a disability offering any protection. Again, the attorneys who follow me will know more about this but I'm led to believe that this will still allow a judge to allow the current abuse of substances or the length of time which has elapsed since a parent was abusing substances to

inform his or her decision. And I understand that some opponents of this bill may suggest that they want the legal system to have the option to make decisions as broadly as possible. And while, while I appreciate that sentiment, I submit that this bill does not impact the discretion of our judiciary in these matters. It simply ensures that bias and prejudice are not allowed to be the sole determinant. Members of the committee, I believe this is sound, commonsense, proactive legislation that reaffirms our commitment to the disability community, while at the same time allowing our juvenile justice system to perform as intended. Thank you very much. I'd be happy to answer any questions you might have.

LATHROP: Oh, Senator Pansing Brooks.

PANSING BROOKS: Thank you for bringing this, Senator Briese. As I remember, you had LB845 last year. That was a strong bill with a very strong hearing. Can you remind me what happened? Was there not enough time to get on the floor with that?

BRIESE: No, we did get that on the floor, and actually I believe we amended a bill that you had into that and we got it on the floor. But LB845 as originally introduced, we had to work with some stakeholders there to make some adjustments. So what we got to the floor and got passed probably on a 49 to 0 vote, I think, it somewhat mirrored this language we have here. We had to make some changes from the original version but, yes, we did get it there and we got it passed.

PANSING BROOKS: Yeah. OK, so it was different.

BRIESE: It was dealt with custody, it dealt with custody proceedings to my recollection.

PANSING BROOKS: All right. Yeah. Thank you very much.

BRIESE: You bet.

LATHROP: Senator Chambers.

CHAMBERS: Senator Briese, will that language in the federal regulation that you cited describe or point out which disabilities may indeed be a basis for not allowing what it is you want to have done here?

BRIESE: Well, perhaps to answer your question I can describe, I can give you the definition of disability under 42 U.S. Code Section 12102, and that provides that the term "disability'' means, with

respect to an individual, (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) or a record of such an impairment; or (C) being regarded as having such an impairment." And obviously there are some definitions that, you know, there's definitions for some of those words in there but in a nutshell that's essentially the federal definition of disability.

CHAMBERS: Now, would that type of disability the disqualifying factor? If a person had a disability that fell within that definition, could that disability alone be a basis for not allowing--

BRIESE: Correct. Yes, you understand that correctly. Yes. It could not be the sole, the sole factor. Obviously if there's other factors, yeah, there was, they're brought in. But the disability alone cannot be a basis for negatively impacting the child-parent relationship.

CHAMBERS: Well here's what I'm getting at, maybe I should ask the question a different way. Is there any disability which would prohibit the child from being parented by his or her parent?

BRIESE: Any disability?

CHAMBERS: [INAUDIBLE] the disability alone. Let's say a person is a quadriplegic and sightless. Could that person be allowed to parent a child?

BRIESE: If the disability negatively affects the health safety and welfare of that child, that, that negative impact on the health, safety, and welfare would come into play. They'd have to evaluate that. But the fact of the disability alone, the fact that they have a disability, that cannot be the sole factor.

CHAMBERS: I think there needs to be some qualifying language because I do, I can conceive of a disability which is so severe that that disability alone, if this is the only parent, and the only ones in the house would be the parent and the child, such a severe disability alone should be enough to keep that parent from-- that child from being parented by that parent alone in my opinion.

BRIESE: Yes, and I think the language of our bill probably says that, if I understand your question correctly.

CHAMBERS: Okay, well I'll listen--

BRIESE: Sure.

CHAMBERS: --to the rest of the testimony and maybe it will clarify what's going on in my mind.

BRIESE: And perhaps I'm not understanding the question correctly either, but it seems to me that that is addressed by the language of the bill. But thank you.

LATHROP: Senator Briese, maybe I'm-- I kind of have the same question or the same concern, and that is the fact that somebody has a disability, whether it's-- whatever the disability may be, their status as a person with a disability should not be but it is possible for somebody who has a disability that prevents them from parenting or, or from being a good parent.

BRIESE: I would agree with that statement. The effects of your disability may impact your ability to be a, an effective parent.

LATHROP: So the way--

BRIESE: But the status of the disability, as you say, cannot be the determinant.

LATHROP: So maybe the, maybe the bill needs to have an amendment. I'm going to offer that says your status as having that disability because if you, if your disability is a frontal lobe injury and now you are, you'd get along with nobody and you're berating this child nonstop and no efforts from the juvenile court are getting anywhere to try to real this back in because it's a disability or some type of mental illness that, that is untreated, those can prevent you from being a parent. But it is the sole reason for that conduct or the failure to parent.

BRIESE: Yes. And I think that is the practical interpretation of what we're trying to do here. But spelling it out a little more clearly, yes, probably would be a good idea.

LATHROP: OK. OK, I appreciate that. Senator Chambers.

CHAMBERS: Now, I'm not going to try to give the language right now, but the language would be less troubling to me if, and I'm going to read what's here now, "to assure the right of each juvenile to be parented by her or his parent which shall not be abridged solely due to a disability of the parent provided such disability" and then you

give the language that might define or describe a disability that would abridge that right.

BRIESE: Okay.

CHAMBERS: That disability alone would do it but I'll listen to the testimony because maybe those people coming will address what I'm talking about.

BRIESE: Okay. Thank you.

LATHROP: OK, I see no other questions. Thanks, Senator.

BRIESE: Thank you.

LATHROP: Those who wish to speak can come forward and testify. We'll, we'll take the first proponent.

BRAD MEURRENS: Good afternoon, Senator Lathrop, members of the committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I am the public policy director for Disability Rights Nebraska, that designated protection and advocacy organization for persons with disabilities here in Nebraska. And I am here in strong support of LB17. We support LB17, as it is a clear declaration that Nebraska will not discriminate against parents with disabilities who wish to parent their children and those children have touched the juvenile justice system. These are parents who at the outset, due to their pejorative and arbitrary social presumptions about disability, are a population that must prove their ability to parent in American society. Such discrimination should not be allowed to persist and Nebraska should be proactive and take every necessary step to prevent bias against parents in the juvenile justice system. LB17 ensures that decisions about the suitability of a parent with a disability to parent their child are made based upon substantive, evidenced analysis and are not based solely on the parents having a disability. The American Disabilities Act prohibits discrimination on the basis of disability in a wide variety of areas: employment, state and local government, public accommodations, etcetera. Given that parenting has been described as a fundamental right, why would Nebraska not extend the prohibition against discrimination solely on the basis of one's disability to the parenting context? There is nothing inherent about disability that in and of itself automatically means that the individual with a disability would not be a good parent, just as there is nothing inherent about persons without disabilities that would

automatically deem them as the most fitting parent. Nebraska should treat both parents with and parents without disabilities the same, and let the decision about parenting placement be made on substance and merit, rather than on individual assumptions about the person with a disability. Just as it would be wrong to deny a parent their right to be a parent based on skin color or religion, it should be equally wrong to deny this right based solely on the immutable characteristic of one's disability. As the National Council on Disability reports, when families with parents with disabilities receive the proper supports, most will undoubtedly thrive, just as those parents without disabilities need formal and informal supports to raise children successfully. We fear that without the clear language in LB17, the question of proper supports for parents with disabilities could be ignored or dismissed out of hand. When parents without disabilities are struggling or when their parenting skills need support, there are systems in place to provide them the supports and services needed to be more successful parents. Why should this be any different for persons with disabilities who want to be parents? Disability Rights Nebraska strongly encourages this committee to advance LB17, and I'd be happy to answer any questions if you have some.

LATHROP: Senator Chambers.

CHAMBERS: To me, the word discrimination means an improper denial to a person of something he or she is entitled to when the denial is based strictly and solely on whatever this trade or characteristic is. Now, stammering could be a basis to deny a person a job as a newscaster. Stammering is not anything that is inherently and intrinsically dehumanizing, but because of the nature of the job, if a person cannot articulate words, he or she could not get that job and could not say discrimination was the basis. It is the nature of that person's inability to articulate the language as a newscaster should which prevents him or her from getting the job. I'm trying to make the point as clear as I can. I can envision certain disabilities which are so severe that a person with those disabilities would not be able to properly parent a child. You mentioned that there are services available. Well, even when we're not talking about severe disabilities and so forth, in Nebraska there are inadequate services in the terms of nursing homes, long-term care facilities; and there are some that go by that name but when you visit them they do not have the trained personnel, the patient or resident ratio to employees does not meet the appropriate standard. So whereas it could be stated that these services are available, when you look at what constitutes the supposed

service, that service does not do what it's supposed to. Now, I will ask the question this way. You deal with all types of disabilities. Is there no disability alone that you can think of which would prevent a person from being the sole provider of parenting to a child?

BRAD MEURRENS: Well, I think that the, I think the premise is that, that decision, the severe-- for example, the severity of their disability and the impact that that severity would have on their ability to parent, is what I was saying. It's that it's the merit and the substance of the secondary level of analysis, right, that is important here. The, the issue is that we don't think it's appropriate to just say, well, you have a disability, therefore you just cannot be a parent. And that it, and that this language in this bill would force that second level of analysis to, to analyze and based on merit and substance whether or not this person with a disability could be an effective parent. Or it's not, so we're saying that it's not just, well, you have a disability, therefore you can just blanket say you cannot longer-- you can no longer be a parent.

CHAMBERS: I understand but this is an absolute statement. It doesn't mention anything about a second level of analysis. It does not say, provided that analysis, evaluation, or whatever that second level would be, establishes that the person indeed could not provide the parenting. It doesn't say that. It says the disability "which shall not be abridged solely due to a disability." So regardless of the disability that person would be allowed to parent, provided there's nothing like, you know, aside from the disability. But I think there are certain types of disabilities, certain levels of disability which in and of themselves would justify abridging that right as it's called of the juvenile to be parented solely by that individual. So let me give what you might think is an extreme example. A person is a quadriplegic, a person, that person is blind, that person is deaf. That person would be allowed to parent the child anyway based on this language. And in addition to that, the person could not speak.

BRAD MEURRENS: Well, I mean that but that's, that's where we're getting it. That's, that's that second level of analysis. It's not the fact that you have a disability which "blanketly" says you can't, you know, you do not have the right to parent. It's that then that language forces that, forces that second level of analysis. I would say that if we don't have this language, right, or something to that effect, then that just gives, gives permission to "blanketly" say, well, since it's-- since we're not forced to make the decision based

upon whether or not you have the ability to parent, they can say, well, there is that you have a disability. Sorry, you're done. And, and I would also say that, that what-- when in your scenario, Senator, what, what services are available to that individual? Personal assistance services could help, right? There may be some services that all would be available or should be available to that parent which can help them overcome the parenting deficits that might arise based upon their, whatever the disability may be, right? And that's what we're seeing in the National Council of Disability talks about how like even parents that don't have disabilities are needs, need supports and some help in times when their parenting skills may not be up to, up to par.

CHAMBERS: To be comatose could be a disability. Based on this language, being comatose is not enough in and of itself to prevent that person from provide-- being the sole parent of a child.

BRAD MEURRENS: I don't know about, about comatose being a disability under the ADA. I'd have, I'd have to go back and ask the lawyers in my office who have more experience with the, with the language of the ADA what that-- how that would fit in.

CHAMBERS: But let me ask the question this way. I'm not trying to trap you or anything.

BRAD MEURRENS: I don't take it that way, sir.

CHAMBERS: [INAUDIBLE] wrong with leaving this language but having a proviso: the disability alone would not abridge provided such disability does not comprise-- and then you tell what kind of disability would be exempted from this blanket guarantee. And you don't have to answer that right now but that's what I'm looking at. But I would not support this bill with the language standing alone as it is. That's how strongly I feel.

BRAD MEURRENS: Well, certainly we can--

CHAMBERS: I'm looking at the child. I'm not looking at the pair. If it's the child's welfare or the parents, the child should not be used as something that just makes the parent feel good. There's a term in law, in loco parentis, where the state takes the place of the parent for the welfare of the child. And I think it should obtain in this situation too. I don't think that a disability alone, if it does not impair the individual's ability to parent, should be a basis. But with this language, even if it impairs the ability to parent it cannot be

taken into consideration. And that's the way I read it. But since I've said it over and over, I won't pursue that further. But I wanted to do it with the person who works in that field and that is all that I have.

LATHROP: Senator DeBoer.

DeBOER: Thank you for testifying today. Would, to get to some of these concerns, would some language that would parrot the ADA in terms of maybe the essential functions of parenting with reasonable accommodation or something like that, would that be appropriate types of language to add some kind of-- since there's case law on those that general issue? Would that be helpful to this area or can you, I mean, I know it's right on the spot so it might not be good.

BRAD MEURRENS: Oh, I mean, we can certainly, you know, talk about that. I'm not exactly sure how the ADA talks about parenting in particular.

DeBOER: It doesn't, but I'm saying it kind of-- sorry, it doesn't. And I recognize that. But I'm saying, if we talked about the essential functions of parenting instead of the essential functions of the job. So in this way we're, we're sort of talking about not just an impairment. I don't think an impairment to parenting should be enough, but something that impedes the essential functions of parenting. Because I think every parent has some sort of impairment or another, right? So, you know, to get that threshold level there, unless you have other language that you might suggest that would get to some of these concerns.

BRAD MEURRENS: Oh, we can certainly talk about that language, but I would be fearful of trying to delineate what the essential functions of parenting would be. I mean, and my, my assumptions about essential parenting needs, you know, needs may be different than somebody else's. So, I mean, I would really kind of leery about trying to specify, just as I would be leery of trying to specify what disabilities would be available or would be not disqualifying. And those, some of those who, who would be disqualifying, because it's not, it's not a universal thing. Like some disabilities of persons have different disabilities and they have different abilities to do different things, and it's not-- it's sort of an individualized case-by-case basis, which is why we, were making the argument that in this language-- now we can certainly talk about, you know, additional language or adding things to, to, to cover what you raised, Senator

Chambers. But I would be real, I would be leery of making, trying to delineate in the law what disabilities would, you know, would qualify and what this of those would disqualify. It needs to be on a case-by-case basis, and I think that language in LB17, now granted we could talk about making additions, forces that, that sort of level of analysis. The way I read it is that it's that you can't base, you cannot deny the right of a person with a disability to parent based solely on whether or not they have a disability. And then that forces then, well, is this the best placement for the child? Well, then that then assumes-- makes the decision based upon the merit, right, and the substance of the person's ability to parent, not based on whether or not they have, categorically have a disability.

DeBOER: So it sounds to me like you'd like to preserve the discretionary quality of the juvenile court to make a sort of secondary assessment of the totality of the circumstances. Is that--

BRAD MEURRENS: Yeah, I think that's pretty accurate. Yeah. And I think this bill does allow it, does retain that discretion.

LATHROP: I think we get the conflict. We-- I think we understand as a committee the intent and the goal of this legislation and I think you can appreciate the-- some change that needs to be made, because it doesn't really, the way it's drafted, permit that secondary analysis that you referred to. And that's really what we need to make sure is still in the discretion of a juvenile court. But Brad, thanks for being here today.

BRAD MEURRENS: Sure.

LATHROP: Appreciate your testimony.

BRAD MEURRENS: Thank you for your time.

LATHROP: Is anyone else here to testify in support of LB17? Good afternoon.

DEANNA HENKE: Good afternoon. Hello. My name is Deanna Henke, it's spelled D-e-a-n-n-a H-e-n-k-e. I'm speaking to you today in support of LB17. The proposed change would allow juveniles the right to be parented by his or her parents regardless of whether the person is a person with a disability. Since this law is about juveniles who have been involved in the court system, it stands to reason that these juveniles are already in a state of crisis of some sort. Denying them

the right to be parented by a loving and capable parent simply based on the person's disability would put the child in further crisis and would not be in the best interest of the child. I am a person with a disability. I've raised two children as a single parent. My children are now adults with happy and fulfilled lives. They graduated, they are employed, and are active members of the community. My son is married and starting a family of his own. My daughter is a strong advocate for disability rights. They grew into these adults being raised by a parent with a disability. In addition, they learned compassion, selflessness, and the importance of inclusion of people with disabilities into society. Denying juveniles this right would be a mistake. It would be telling the child that their parent has no value and nothing to offer because they have a disability. In addition, disabilities are often inherited. A parent with the same disability as their child can help them navigate the challenges that come from this situation. I ask that you support LB17. Thank you, I'd be happy to answer any questions that you have.

LATHROP: Thank you Miss Henke. I do not see any questions. Thanks for being here today.

DEANNA HENKE: Thank you.

CHRISTINE BOONE: Sorry, guys.

LATHROP: Oh, that's okay.

CHRISTINE BOONE: [INAUDIBLE] around the microphone. Okay.

LATHROP: Good afternoon.

CHRISTINE BOONE: Good afternoon, Mr. Chairman. Chairman Lathrop, sorry, and members of the Judiciary Committee, thank you for being here. I, I really have gotten rid of most of what I was going to say based upon the questions that you guys have asked previously. Before I begin, the light system that you have for time is, I'm going to get in trouble because I won't know the lights have gone off.

LATHROP: How about two things.

CHRISTINE BOONE: Pardon?

LATHROP: I'll let you, I'll let you know when it, when you have a minute left.

CHRISTINE BOONE: Thank you, I would appreciate that.

LATHROP: I'll have you start with your name and spell your name.

CHRISTINE BOONE: Absolutely.

LATHROP: Okay.

CHRISTINE BOONE: My name is Christine, C-h-r-i-s-t-i-n-e, and the last name is Boone, B-o-o-n-e. I am from Pickrell, Nebraska. A long time ago, the Supreme Court of the United States made a ruling in a case called Meyer vs. Nebraska, and that ruling basically upheld the liberty of parents to rear their children in accordance with their wishes in spite of the misconceptions of the people around them. That case, though it didn't deal with disability, it actually dealt with educating children, and the fact that immigrants at the time wanted some education to be provided to their children in a foreign language, and that foreign language was German. The state thought that that was not a good idea and the Supreme Court said that the parents had the right to determine this. So this was a case of misconception, about people who were not originally from this country. Senator Chambers gave the example of a parent raising a child when that parent is deaf, blind, and quadriplegic. What we need to do here is to separate the disability from the strategy of parenting. That parent who is deaf, blind, and quadriplegic is intelligent. They know how they wish for their child to be raised. And as long as they have a strategy for raising that child that should not be taken away from them. If that child is taken away from that home then their wishes about how their child should be raised are of no account. And if they have those wishes and a strategy to implement those wishes then their parenting of that child or children would be appropriate. Obviously, they will need to utilize, well, I don't know. I'm not quadriplegic and I'm not deaf or hard of hearing, but I believe that that parent would need to implement some strategies and have some others assist them with the parenting of the children in terms of cooking and cleaning and communicating with the children and so forth.

LATHROP: One minute.

CHRISTINE BOONE: Oh my goodness. I hope you guys have questions for me because I'm, I want to give you another example. I know of a parent in Indiana who had a child, and the parent has some kind of a disability. It is a, an emotional and a cognitive disability. For the first six months of the child's life, the child was fed water and formula maybe

once every couple of days. The child was taken away. Obviously, that disability was not the cause that the, for the child's being taken away, but the fact that the parent was unable to make appropriate decisions and to parent appropriately, that was the reason that that child were to be taken away. So this bill is not saying that an incompetent parent with a disability is allowed to raise a child. The bill is saying that disability alone cannot be used to make that determination.

LATHROP: OK, Ms.--

CHRISTINE BOONE: I hope that you all will have questions. I've testified before in one hearing in particular. About six blind people testified and there were no questions at all and the first sighted people who-- person who came to testify had 20 questions. So.

LATHROP: Well, I think we've had-- pardon me. Oh, Senator Morfeld has question.

CHRISTINE BOONE: You saved the day.

MORFELD: Can you, can you identify, I mean, is there a certain instance or case where this occurred in Nebraska that is particularly concerning that we can point to and look at it as an example?

CHRISTINE BOONE: I knew you were going to ask that. Anecdotally, you know, I understand that in the last few years there have been some cases in the deaf and hard of hearing community. I think the problem is for obvious reasons a lot of times parents don't want to self-identify if this has happened to them. I do know, and Senator Briese said this in his opening, just because it hasn't happened yet doesn't mean that we ought not to have a case about it. I do know that in Oregon in the last couple of months a family has lost their children because both parents are blind. So it is still happening. I think for a lot cooler than Oregon. So hopefully it's not going to happen here. But we just don't know that, you know? I mean, when we have Title VII here, well, everybody has Title VII, that we're not able to discriminate on the basis of race, color, of religion, et cetera. That doesn't mean that we all were discriminating on the basis of those things but the law is still appropriate. That's what we're saying.

MORFELD: Thank you.

CHRISTINE BOONE: Anyone else?

LATHROP: I see no other questions do I.

CHRISTINE BOONE: I'll just say, I'm anxious to provide this committee with the information that it needs. I know this is hard and it's hard because of our misconceptions and I have, I have misunderstandings too, you know, about people with other disabilities. So I'd like to be able to communicate and share information that would be helpful to this committee and going forward.

LATHROP: I appreciate that.

CHRISTINE BOONE: Thank you, senators.

LATHROP: Yeah.

JOHN WYVILL: Good afternoon Chairman Lathrop. My name-- and members of the Judiciary Committee. My name is John Wyvill, spelled J-o-h-n W-y-v-i-l-l. I am here today as the executive director for the Nebraska Commission for the Deaf and Hard of Hearing in support of LB17, and basically have two points in support. We're here to ensure on behalf of the deaf and hard of hearing community that all parents [INAUDIBLE] for everybody else in the state like on the Nebraska state flag that we should be equal before the law. And then people focus on the person's ability, not disability. And so that's why we're here in support of LB17, and appreciate the Senator's sponsoring of this bill. And I close for any questions.

LATHROP: Senator Chambers.

CHAMBERS: Sometimes words can help clarify issues. Maybe what I was trying to get at would be better understood if I dropped, and those listening dropped, disability and I used the word inability. If what is called a disability results and an inability to provide what is needed for parenting, would that alone, would that be a basis for court intervention and perhaps even the child being placed in a different environment? And I'm not asking you to answer that question, I'm trying to clarify what I'm saying. Because I believe, as the previous testified said, that if the parent has the ability to formulate, she used the term strategy, a plan, a basis or whatever word we use to describe it, that parent should at least participate to a great extent in the rearing of that child. But if the disability leads to the inability to do those things, it is based on that

disability that the parent is not allowed to provide the parenting. And I'm making clear what my thinking is. And this language is too absolute for me, people don't understand. I don't think anybody I've ever talked to understands how deeply I feel for children. I have been able to come into a room where there is a child that I never saw in my life and that child will be drawn to me. I one day came to the Legislature on the first day and people had brought their little children. Two, not toddlers, two small ones were crawling, and I was standing under the balcony. They were not even of my complexion and a photograph was taken because both of those two little boys came toward me and I made no movement, movement toward them. So maybe there is an affinity between me and children. I don't know. But I doubt there's a person in the world who cares more for children than I do, and I place the welfare of the child above the concerns of the parent or anybody else. And I say that for the record, not to be argumentative. And that's why I'm not even asking necessarily that you respond to what I say. But I want this record which is being compiled to be crystal clear in what my views are on this subject.

JOHN WYVILL: Senator, thank you for your comment, and thank you for not having me to answer your question. I would defer to we're here just for the board of public policy issue from my perspective for my agency, and I will defer to people who are smarter than me and drafting the appropriate language to accomplish that need.

LATHROP: I think that's it, John. Good to see you again.

JOHN WYVILL: Thank you, Senator.

AMY BURESH: Good afternoon. My name is Amy Buresh, B-u-r-e-s-h, A-m-y. I live here in Lincoln, Nebraska, and I am here in strong support of LB17. I am a wife, a mother of two, and the president of the National Federation of the Blind of Nebraska. I want to begin by thanking Senator Briese and his superb staff for their leadership and advocacy in this issue that is very near and dear to our hearts. Every day in the National Federation of the Blind, we raise expectations because low expectations create obstacles between blind people and our dreams. But we know the blindness isn't the characteristic that defines us. And since it's not what defines us, we have the high expectations so that we can help people with love, hope, and determination to live the lives that they want. For a lot of us, part of that life includes the raising and caring for of children, whether that be biological or adoptive, foster parents, serving as guardians. And that's what this bill is stating, helping to protect. You know, we had a great victory

last year and I want to thank everyone for unanimously passing that legislation last year. We want to be leading the way here in Nebraska in these cases. And, you know, we know that as people with disabilities, we're gonna be doing things a little bit different. When my kids were little they had bells on their shoes or their clothes or somewhere on their person so that I could find them when they chose to wander away as, you know, kids do and explore their environment. When things got quiet you know that you need to, to, to go and see what's going on. And, you know, so although some might question the abilities of the blind, we know that blind parents are fully capable of having successfully been raising children, and this has been going on for generations. And it's-- too many times people question the, the what ifs, the what ifs. Well, you know, I'm here to tell you that until there's cause, you know, just leave it alone you wouldn't want to be questioned on the basis of your gender, your ethnic background, your hair color, anything. So it's the same with us. No, blind parents are not all perfect, of course, of course not, but neither are all-sighted parents. And so there are so many kids out there without someone to love them, someone to take care of them and protect them, and so people with disabilities should have the right to do all of those things.

LATHROP: Okay.

AMY BURESH: I thank you for your time. Don't want to beat a dead horse. I think a lot of other good points have already been made by others, but we appreciate your all-due consideration for this bill and would strongly urge you to move it on. Thank you.

LATHROP: Okay, thank you. Senator Chambers has a question for you, Amy, before you get away from us.

AMY BURESH: Yeah.

CHAMBERS: Before you leave. My presumption is that if people bring a child into the world those two people have the right to rear that child. So that right to rear the child is the beginning presumption. There would have to be something provided to overcome that presumption before the issue that I'm talking about would even come into play. I have known disabled parents who had small children who assisted them. And I'm not trying to use terms in a way that would be offensive, but they served as the eyes and ears of their parents. They would hear things that the deaf parent would not, and they would have a way of communicating. And naturally if the parent was blind, the child just

could find things, could help around the house. And those things can be done even for parents who have the disabilities that we ordinarily think about. But a presumption can be overcome if there are circumstances that would intervene to raise the issues that I'm talking about. So the only question I would ask you, do you understand what it is I'm trying to get at in terms of this language, whereas it stands now, no consideration would have to be given to whether the disability resulted in the inability to carry out parenting? Maybe you don't see a distinction there either, but I'm just asking whether you do or not.

AMY BURESH: Well, thank you for a question. I think I understand what your concern is, and I appreciate it and I think it's certainly a valid one. It's something that, you know, we could, could certainly, you know, take a look at and have some conversation about. But, I mean, to me, the most important part is just that solely based on that disability a court or someone is, is going to come in and just make an automatic assumption as has been stated out so many times before today. We, I mean, we go to the store and people are asking my kids, oh, I bet you're such a good help for your mom. And I'm like, do you want to come back to my house? Do you want to see how messy? You know, you have to, you know, remind them to do their chores all that kind of stuff, you know. I mean, yes, they, you know, we have good kids and they're as helpful as, you know, most kids can be at times. But it's, it's, it's not, it's not their job to be the reader or to be the any of those kind of things. So but just solely on the basis of, of a disability alone, it shouldn't make a decision on whether a person is a fit caregiver, provider, or parent at all. That's, I think, our overarching point so.

CHAMBERS: Thank you for your comments.

AMY BURESH: Well, thank you very much.

LATHROP: I see no other questions for you.

AMY BURESH: Thank you.

LATHROP: Thanks for your testimony today. Others wishing to testify?

EDISON McDONALD: Hello, my name is Edison McDonald, and I'm the executive director for the Arc of Nebraska. We're a non-profit with 1,500 members advocating for people with intellectual and developmental disabilities. We focus on community inclusion because it

ensures the most cost-effective, best possible treatment options and brings the most back to us as a society. We do strongly support LB17. And other than that, most of my testimony has obviously kind of been railroaded off in a very different direction. I do want to go ahead and start addressing just some of the issues that have been brought up. To Senator Morfeld's question about making sure, you know, what are some of the stories and situations. I really appreciate Senator Briese's office and how they've gone and kind of made this a real process, brought in a lot of stakeholders, had a lot of conversation on this. One of the things that was, has been brought up is that question, so have we really went to go and look for some of those stories. And we did find some cases of that, particularly a strong example is a lady by the name of Ann Ireland who, you know, has really tried to go make sure that she could go and keep custody of her child, but because of her disability she's frequently been questioned, and they have gone ahead and begun to look at proceedings a couple times. And there are a couple other cases that I think, you know, kind of fit slightly into this and slightly into some other categories. But I think that the other point that, you know, really needs to be addressed is Senator Chambers' point, which I'm kind of confused why, you know, why this wasn't brought up last year with LB845 when this came before the committee. This-- that time and then how it went and passed 49 to 0 last year. So I went to go look back through some of the language, I think, you know, all of you it seems want to go and ensure that we're able to offer these protections and, you know, find a way to do that that's going to be sensible. LB845 has a lot of language on assistive parenting and in particular the last paragraph, something along the lines: if a court determines that the right of a parent with a disability to custody should be denied or limited in any manner, the court shall make specific written findings stating the basis for such a determination and why supportive parenting services are not a reasonable accommodation to prevent such a denial or limitation. I think, you know, in the process we kind of scaled down it to go and make sure that we had all of the stakeholders content. And it's sounding like you want us to scale back up, and I think that that would be a good place to start. And, yeah, I think that covers most of what I wanted to answer.

LATHROP: Just in time.

EDISON McDONALD: Any questions?

LATHROP: I see no questions. Thanks, Edison. Appreciate your testimony. Anyone else here to speak in support of LB17? Anyone here in opposition? Oh, I'm sorry.

MARK COLEMAN: OK. Should I be sitting?

LATHROP: Yeah, please. And then we can record it. And let's have you start with your name and I'll say something when there's a minute left. How's that?

MARK COLEMAN: OK. Thank you.

LATHROP: OK.

MARK COLEMAN: My name is Mark, M-a-r-k, Coleman, C-o-l-e-m-a-n. And I just want to thank you guys for holding this hearing and for allowing me to speak. I think what's really at issue here is, is presumption, and where presumption should fall. It's been nearly 30 years since the ADA was passed and the principle of presuming incompetence amongst the disabled population really should be a thing of the past by now. By and large, presuming incompetence is not socially acceptable, it's not philosophically acceptable, in most circumstances it's not legally acceptable. Obviously, there's a few areas where that has not been codified into law yet. I know there's been concerns. Senator Chambers raised a concern of not being able to conceive of a blind, quadriplegic parent being able to take care of their children. Fifteen years ago, I wouldn't have been able to conceive of a phone this thin being able to do everything this phone can do. I don't think we should let our lack of imagination be a basis for presuming that somebody is incompetent. I think what's at stake here is the health of our children, the health of our society. It's never a healthy thing to remove a child from their home without valid reason. There's been proposed discussion of adding language. I think the gentleman from the Arc who just spoke, I think his ideas sounded perfectly sensible. But adding language that specifically sets out types of disabilities that should be accepted, I think just leaves things as they are, or possibly worse because it actually creates a situation in which it codifies a presumption of incompetence that doesn't exist now. So that could actually be a step backwards. And I think that's all I have to say.

LATHROP: Great. Makes sense. I don't see any questions, Mark.

MARK COLEMAN: OK.

LATHROP: We appreciate your testimony. And to be clear, you were in favor of the bill?

MARK COLEMAN: Oh yes, I'm in favor of the bill.

LATHROP: Yeah, I just need--

MARK COLEMAN: LB17.

LATHROP: --the record reflect that. OK. Is there anyone else here that wanted to speak in favor of the bill? Good afternoon.

JEFF ALTMAN: Good afternoon. My name is Jeff Altman, J-e-f-f, last name A-l-t-m-a-n, and I am here in as a proponent of the bill. I'm here as a representative of the Nebraska Commission for the Blind and Visually Impaired. And part of what I want to express in that regard, I want to ask you folks, are you familiar with the intersection of 48th and O? It is nine lanes wide north to south and eight lanes wide east to west, fairly busy intersection. And what I want you to do is to imagine a totally blind individual crossing that intersection. Does that make you nervous? Does that cause you concern? Now, that's where the question of our imagination versus what are the realities of everyday life come into conflict. I cross that intersection frequently, and I am almost totally blind. My students, I'm an orientation and mobility instructor, my students cross that intersection. And obviously I'm a little nervous here. The point that I'm making, and Senator Chambers, I truly do understand your concerns. The point that we are trying to bring across, and the point of the language of this bill is that it is not whether or not the individual has a disability or what is called a disability. It is in fact actually a characteristic that the person has. It is what abilities does that individual have. Do they have the ability to be an effective parent? There are many individuals out there that, if you told them that a blind individual or a blind couple were having children, would have a gut reaction that would be basically saying, that's not possible.

LATHROP: One minute.

JEFF ALTMAN: Okay. You know, my wife and I are both blind. Our daughter just graduated from UNL. Now, the thing that I want you to understand is that during those formative years, we did what other

parents do. We did those things. But we also did something that most parents don't: We lived in fear. We lived in the fear that some well-intentioned neighbor or even a family member or a doctor or a nurse or someone out there would make the decision that, oh, they're blind. They couldn't possibly be doing a decent job of raising that child. We lived in fear that CPS would knock at our door and take our child out of our home. No one should have to live with that. Thank you.

LATHROP: Senator Pansing Brooks has a question for you, Mr. Altman.

PANSING BROOKS: Thank you for coming, Mr. Altman, and to everybody else. I think, I think that's a really good thing to mention about the fact that we ought to approach it from the fact, I mean, we don't-- with people with their vision or whatever it is, that people don't look at them and assume what's wrong. We all assume that people are capable and able. So I do see it's a really good point that we shouldn't just look at what on the outside is different for some of us and make it as if that, that's some great barrier. Because you're more able than I to, to live a life without your vision, that doesn't presume that you are less able in other areas. So I really like that point that that we should look at the assumption, we should approach this from an assumption of ability rather than an assumption of some in the inability is causing great harm.

JEFF ALTMAN: And if we're going to look at people from the standpoint of one disability versus another causing the person to be unfit as a parent, who is it that sits in judgment of that?

PANSING BROOKS: Yes. And we know that there are all sorts of other measures where we have unfit parents in everyday life that don't have a particular, I don't even know what to call it, if we're saying disability, but don't have the same--

JEFF ALTMAN: Characteristic.

PANSING BROOKS: Pardon me?

JEFF ALTMAN: Characteristic.

PANSING BROOKS: Characteristics, thank you. So anyway, thank you for coming today.

JEFF ALTMAN: Certainly.

LATHROP: Thank you for-- Senator Chambers.

JEFF ALTMAN: Oh, yes, sir.

CHAMBERS: This to try to make clear what I'm saying. First of all, I have a philosophy of lawmaking. The laws, whether they grant a privilege or put a restriction, should be so crystal clear that an ordinary citizen can read it and understand what is allowed and what is disallowed. So I have an obligation based on the self-imposed standard to see that laws are drafted in a way to say what in my opinion they ought to say, since they've become like a policy encased in stone. It cannot be changed arbitrarily on the spot. So they have to be, there has to be in my view room for movement, interpretation, and evaluation. Before I go on, when you talked about a multi-lane highway, I'm very concerned about mountain lions in this state. In California, people have a different attitude toward those animals than Nebraskans. There was a multi-lane highway in Los Angeles that mountain lions successfully-- nobody knew how-- successfully crossed. But occasionally, one would be struck and killed. So what they did in Los Angeles, they built a multi-million dollar overpass where the lions crossed, and that assured that no lion would be struck by a car because there was only one way to get across that highway. If there are accommodations that can be made to make it possible for a person with disability, whatever it is, to do what is necessary to properly or adequately parent a child, society in my opinion has that obligation because we are our brothers' and our sisters' keepers. But what I still have to look at is a set of circumstances where the disability could lead to an inability. And what I'm saying is that we don't alter the language in the bill as it stands but put after that language the word "provided," then put the qualifying language so if, even with this language standing alone, it could wind up in court. There is no guidance to the court. If you put a provision that if a disability is going to be taken into consideration-- you mentioned nosy neighbors, even family members who mean well. If that happens, there should be some guidance for the court. And the appropriate language would let the court know that if you're going to take into consideration the existence of this disability, then this is the boundary area within which it can be considered. Consideration can be given if the issue is raised. But it would take very strong language-- strong faction-- facts to overcome the presumption that a person with a disability should be allowed to parent. Again, I guess I'm saying it for the record. But I don't want you or anybody else with a disability, because I have a disability worse than all of you. I can

see, I can speak, I can hear, I can think, but my color is a greater disability to me than any physical disability that a white person would have. I, to this day, am prevented from doing things that a white person with any disability would not be prevented from doing. I cannot even be sure when I go into a store, where there is a space where there can be more than one customer, and I can be the next one there and the person behind the counter will see me, then white people come, and that person will call on a white person. And this actually happens. The white person will not say, well, he was here first. So you know what I'm compelled to do? All I wanted to do was buy something at the counter. I have to say, hey, man, let's be fair. Then the person serving says, oh, I'm sorry. Then the white person who was going to step in front of me will say, oh, I'm sorry. They're not sorry. What stops them is that I'm a black man who will speak up. So I'm not equating the burdens that I still carry as a member of the Legislature and all of the other things I've established that I can do well. The racism is still here, I still suffer under it. But what it causes me to do is to be very empathetic toward anybody who is disallowed to do something or disadvantaged for something that has nothing to do with their intrinsic value as a human being. Now, maybe I haven't clarified anything, but my concern that I do not say or do anything that puts an added burden to people who through no fault of their own carry a burden because of the attitude of society. If I can do anything to lift that burden, I will. But that feeling is not so strong that I will forget that children need protection also. And if it makes me a villain because I'm overly protective, then a villain I will be.

JEFF ALTMAN: Senator Chambers, may I ask you a question?

CHAMBERS: Yes.

JEFF ALTMAN: In your situation, you have had people question your capacities.

CHAMBERS: Yes.

JEFF ALTMAN: In your situation, you have had people deny you opportunities.

CHAMBERS: Yes.

JEFF ALTMAN: You have had people directly discriminate against you.

CHAMBERS: Yes.

JEFF ALTMAN: Did any of those people take the time to look at your abilities?

CHAMBERS: They know what my ability is, but the fact that I'm black overcomes and overrules all that because my blackness dehumanizes me and removes me from the human family. They know what I can do, but my blackness is what they see and what they judge me by.

JEFF ALTMAN: Senator Chambers, this is what most people see of me.

CHAMBERS: I understand.

JEFF ALTMAN: And I think this conversation would probably be better over a couple of beers.

CHAMBERS: Except I don't drink.

JEFF ALTMAN: But what we're talking about is shifting a mindset from someone looking at you as a black man or someone looking at me as a blind man, and deciding who we are and what we're capable of to people taking just that one extra step and saying, what really is possible for someone who is black or what is really possible for someone who is blind?

CHAMBERS: But--

JEFF ALTMAN: Or what is possible for someone with any other disability?

CHAMBERS: But this, then I'm through on this, my ability in the Legislature is what created resentment toward me on the part of white people in this state. And because I was so effective as a legislator, working within their rules and mastering their rules, they said that I needed to be out of that Legislature. They never said the white senators should learn the rules. They said a black man should not be allowed to dominate that Legislature, and the only way we can get him out is to term limit him out. And I can show you where they wrote such things and they appeared in the paper. And I'm doing it to make a point, and I'm gonna take maybe 30 more seconds to tell you something. You all may not be aware that there was a time in Nebraska when there were people who were blind who wanted a cane but they were told what they would need is a dog. So they wouldn't, HHS or whoever was supposed to provide, wouldn't buy them a cane. And they came to my

office to complain about that. And the only remedy I could do or offer was ask, how much does a cane cost? And when they told me, I gave them the money to buy a cane for both of them. That's all I could offer, I couldn't make HHS to do anything. So maybe my ability to truly empathize, empathize is limited, but whatever I see that needs to be done that I can do, I will do. But the ones who are not here with a voice today are children. And I've seen children abused by people with no physical or mental disability that was observable or diagnosable. So the children are the ones that I'm looking at. But I've heard some things that were very compelling, and I think that I may have heard two of the testifiers say that some additional language perhaps could be added that would not take away from the presumption of the ability of a person with a disability to properly parent. And that's all that I have to say.

LATHROP: Very good. Thank you. We appreciate your testimony, Mr. Altman.

JEFF ALTMAN: Thank you.

LATHROP: You're very welcome. Is there anyone else here wishing to testify as a proponent? Anyone here to testify as an opponent to LB17? Good afternoon and welcome.

PATRICK McDERMOTT: Thank you, Senator Lathrop, members of the committee. My name is Patrick McDermott, P-a-t-r-i-c-k M-c-D-e-r-m-o-t-t. I'm appearing on behalf of the Nebraska State Bar Association. I am a retired county court judge from the 5th judicial district. When I retired, I elected to return to the practicing bar where I now represent parties in the juvenile court in Saunders County as a part-time public defender. During my tenure as a county judge, I did in excess of 6,000 juvenile cases of all time-- types. I cannot ever recall a case where it even crossed my mind that a person appearing in front of me with a disability would be treated any differently than any other parent who appeared in front of me. My job was first to try and fix that family. And if I couldn't, then I had to take steps to protect the children. That's not ever changed in my mind. Now, Senator Chambers, you have been particular about looking for some wordsmithing. How can we craft this bill so that we achieve the goal of the people, which I think is worthy to recognize that judges should be aware and sensitive to the people with disabilities who come into their courtroom? And yet, protect the children of the state. By way of example and not etched in stone, I would say after the word disability you would put a semicolon, say provided that such

a bill-- disability does not produce a circumstance that is contrary to the health, safety, and welfare of a child as determined by the best interest of the child test. And that's, those are the classic words that Nebraska uses. Health, safety, and welfare came from the Adoption and Safe Families Act and best interest is just replete and embedded in all of the case law of Nebraska on best interest. That's not going to do any violence to the philosophical statement that disabled parents should have the same footing before a county court judge or a separate juvenile court judge in this state as any other person who has cause to appear there. What I fear in this language is that it is going to produce a massive number of appeals because a lawyer like me, representing a parent who might be disabled, I think I would have a duty to try and argue that that language defeats the jurisdiction. I would also point out that this particular bill amends 43 to 46, which is not the jurisdictional statute of the juvenile code, nor is it part of the remedial statutes in the juvenile code. It is the philosophical statute that says what we believe in, and it's probably appropriate to put it there because it's a statement of what we believe in. But it's also a bit toothless because it doesn't provide an attorney with an actual jurisdictional argument.

LATHROP: Very good.

PATRICK McDERMOTT: That's my statement. I'm happy to take any questions from senators.

LATHROP: Thanks, Judge. Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming, Judge McDermott. I was just wondering, did you or members of the bar talk to Senator Briese about this idea and amendment?

PATRICK McDERMOTT: Yes. Yesterday, I reached out to Mr. Boone, his legislative assistant. I had talked to Mr. Wyvill in regard to this bill. We stand committed to assist that office in crafting that kind of language that satisfies the class of people we are trying to protect as well as the class of children that we're trying to protect. We're fully prepared. I, I just heard about your letter rule today, but I did circulate a letter from Judge Gendler from the Separate Juvenile Court of Sarpy County because he drafted some really, really good language in there that's aspirational and might actually be more germane to this topic. But the, the bar, myself personally, Judge Gendler personally are fully prepared to work with the advocacy groups, the Senator's office, his LA, to try and craft this language.

The other thing that I'm hoping for is a little bit of time to get this to specifically the juvenile law committee of the County Judges Association, which Judge Burns chairs, because I'm not sure that I have heard them chime in. And this would be an important thing for the, the men and women who are doing the trial work.

PANSING BROOKS: So tell me what, what the response of Senator Briese was.

PATRICK McDERMOTT: They were positive. They, they understood first, our first objection was disability isn't defined at all. And now they, they propose to use the same definition as lies in the ADA. At least that narrows it. It doesn't help as much as I would like, because the ADA is not the Nebraska juvenile code, and this is going to go in to the Nebraska juvenile code. And maybe we should tailor something that is state-specific. I know I heard the stories about other states. One of the great frustrations in juvenile law is the case law does not go outside a border. Our juvenile codes are so vastly different throughout the United States that a precedent in Iowa and South Dakota, in our neighboring states, which are usually highly persuasive precedent, are practically worthless and juvenile law because we all have, you know, juvenile law is statutory. That's a court of special juvenile-- jurisdiction, we're to follow what you the Legislature tell us to do and no more, no less. We're a special jurisdiction court. So we can't fix the problems in the other states. We just need to focus on not doing anything to damage what has been a fairly strong and successful juvenile justice system in Nebraska. I don't think our judges have ever deliberately engaged in this kind of discrimination. I think we receive more training probably than any other judicial body on implicit bias and the things that you can do to guard against it, to avoid stereotypical responses. There-- we really take that seriously. I, I used on bond setting sheets have: don't stereotype, so that I would listen to the particular circumstances of a person, not judging by what he's got on.

PANSING BROOKS: Thank you, Judge.

LATHROP: Very good. I see no other-- oh, pardon me. Senator Chambers has a question.

CHAMBERS: Judge, since you're here, and I don't use technology like e-mail and so forth, I would request if you're willing to craft the language and make sure that I get it.

PATRICK McDERMOTT: Okay, I will.

CHAMBERS: I want what is it is desired by those who brought the bill to definitely be a guiding principle. But that next step is what I want as a part of the statute, since we are going to statutorily deal with the issue. And I would appreciate if you get that to me.

PATRICK McDERMOTT: I will do that, Senator. It may be tomorrow, because I want to take some time to wordsmith this--

CHAMBERS: [INAUDIBLE] is tomorrow Friday?

PATRICK McDERMOTT: But it's--

CHAMBERS: Get it to me.

PATRICK McDERMOTT: But I do want to work with the Senator's office, so that we can all get on the same page, so we don't have competing things going around. That we speak with one voice.

CHAMBERS: But I just want one senator to know that there is a senator who's not going to let this go unless it's in his opinion the right thing. So I'm not going to count on Senator Briese, with all due respect to him and all of the other senators. I have an obligation that I want to discharge. So whatever you share with them, I'd like you to share it with me because they don't have a proprietary ownership in your thoughts and your opinions and what you can do with your work product.

PATRICK McDERMOTT: Senator Chambers, I never doubted that for a moment.

LATHROP: Why don't we have you share with my office as well.

PATRICK McDERMOTT: All right, I will.

LATHROP: Thanks, judge. I think that's all the questions. We appreciate your--

PATRICK McDERMOTT: Thank you.

LATHROP: --willingness to appear here to [INAUDIBLE] your thoughts. Anyone else here wishing to speak in opposition? Anyone that cares to speak in a neutral capacity on LB17? Seeing none, Senator Briese to close. Before you start, if I can, let the record also reflect we have

three letters: one from in support from Amy Miller at the ACLU; another from Marsha Bloom [PHONETIC] or Blum, National Association of Social Workers and the Nebraska Chapter; and in opposition, Linda Porter, Separate Juvenile Court judge.

BRIESE: OK. Thank you, Chairman. And thank you, members of the committee. I had a bunch of notes here, I was gonna push back a little bit and talk about status versus impact and talk about the clear implication of the language. Talk about legislative intent and how this is gonna be construed someday. But with the judge's comments here and his suggestion on that language change, and I think maybe there can be some common ground there. And so I think we'll try to work with those folks and come up with something that is palatable to everyone involved. Thank you.

LATHROP: Perfect. That's what we'd like to hear. Thanks, Senator Briese. We're going to take-- before we before we move on to the next bill, we're going to take a five-minute break just so the committee members can stretch.

[BREAK]

LATHROP: OK. I think we're prepared to take up the last two bills. Are we on? Okay. Welcome back, everyone. We are now at the place in the agenda where we're going to take up LB92, and that's Senator Wayne, who is here and prepared to introduce LB92 to the committee. Welcome, Senator Wayne.

WAYNE: Thank you, Chairman Lathrop. Hopefully this will move a little quicker for you all. Although this is a simple bill, it has lasting long impacts. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. First, I want to make sure all the committee members have the amended AM104, it's an amendment to LB92. And this is the amendment that I'm gonna work off of because it is, it does the exact same thing I need it to do, and it clarifies the criminal proceeding aspect and takes that out of my original bill. So as you heard last testimony, juvenile is statutory-driven and juvenile law is, is completely different than any other part of the law as far as personal injury, criminal, or anything else. But one thing that stands out to me is that, I'm going to give you a hypothetical. A hypothetical 18-year-old walks into a local gas station and steals a Snicker bar. Throughout that trial, throughout those proceedings, that person has due process rights and what we call rules of evidence rights, which

ensures due process rights. Yet, a mother or father in our juvenile justice system at the time the state files a motion to terminate their parental rights, and basically that hearing is a mini trial of whether or not a parent should have their rights intact to that child or children. They essentially have no due process rights except for notice and an opportunity to be heard. Our Supreme Court has ruled over and over that Nebraska rules of evidence are somewhat guidelines. What that means is the caseworker or visitation worker who watch these individuals at a visitation made a note, that note gets put into a file, that file or that note gets talked to at the termination hearing, and there is no foundation laid and it's also hearsay. But yet, oftentimes it comes in. So you as a parent and your attorney never really get the opportunity to cross-examine that person and to find out what proper foundation, what biases, what things they may have as an individual writing those statements. Even in death penalty cases, there are heightened numbers of things that we do to safeguard due process. And I believe having a 4-month-old and a 7-year-old losing a child or the state taking a child is probably one of the worst things that can happen to a parent. And at a fundamental level, we have to make sure that there are due processes in place and that the evidence gleamed at this hearing to terminate your parental rights is the best evidence that's offered to the court. That is what the Nebraska rules of evidence is supposed to be. And that's what it's based on, by ensuring that there is the most credible and best evidence before the court. And that does not happen in the juvenile proceedings as it relates to termination of rights. There will be practicing attorneys who, I myself practice in Douglas County, who will testify and give different examples and you can ask them questions. And to move this along, I will tell you this is on my top three list of priority bills because I've seen far too many parents lose their rights on cases that if it was a criminal proceeding would not have moved forward. And again, I fundamentally believe before the state takes away a child from a parent we must ensure that the evidence presented there is the best and most credible evidence before the court. And with that, I'll answer any questions.

LATHROP: Senator Chambers.

CHAMBERS: Senator Wayne, I know the answer to this question, otherwise I wouldn't ask it. But I want it in the record. There have been innumerable cases by courts, plural, construing, applying, and explaining the Nebraska rules of evidence. So when that term is used, there are many sources you can go to, to see what any particular one

would mean and how it's been construed and applied by the courts. Is that true or false?

WAYNE: That's true, sir.

CHAMBERS: So there would be nothing mysterious to anybody who would go into court if your bill is enacted.

WAYNE: That is true sir.

CHAMBERS: That's all that I have. Thank you.

WAYNE: In fact, every attorney in some capacity, if you practice and you ever go into the courtroom, must have a solid foundation of rules of evidence. Or it could be malpractice.

CHAMBERS: And by the way, even when I won traffic tickets, I had to use the-- I did use the Nebraska rules of evidence.

WAYNE: I've read some of those cases you took to the Supreme Court.

LATHROP: I see no other questions, Senator Wayne. Are there folks here that wish to testify as proponents? Good afternoon.

MARY ROSE DONAHUE: Good afternoon. My name is Mary Rose Donahue, M-a-r-y R-o-s-e D-o-n-a-h-u-e, I'm an assistant public defender at the Douglas County public defender's office. I'm here on behalf of my office and the Nebraska Criminal Defense Attorneys Association in support of LB92. At my office, primarily the bulk of my work is in juvenile court, representing parents whose children have been removed due to allegations of abuse and neglect. Prior to this, for six years I worked as a guardian ad litem representing children in foster care and also representing parents with their children removed. As a guardian ad litem, I represented hundreds of children and I have participated in dozens and dozens of-- of termination of parental rights hearings. First, I want to emphasize what we're discussing here. A termination of parental rights is the most extreme action that can be taken by a juvenile court. It is supposed to be used as a last resort. In the words of one juvenile count-- Douglas County juvenile court judge, if it, if it occurs, it makes a parent and a stranger-- a parent and a child strangers to one another in the eyes of the law. It results in a parent's permanent loss of the right to raise their child, visit the child, or have any interaction. The severity of this remedy cannot be understated. The U.S. Supreme Court has noted the interests of parents in the care, custody, and control of their

children is perhaps the oldest of the fundamental liberty rights recognized by the court. The Nebraska Supreme Court has stated nature demands that the right to custody of the child shall be in the parent unless the parent be affirmatively unfit. It's very clear that this parent-child relationship is constitutionally protected and entitled to due process. In fact, the burden at a termination parental rights hearing is higher than any other burden of any dependency hearing in juvenile court. It has to be by clear and convincing evidence and not preponderance of the evidence. So it's very clear that there is this huge, fundamental, constitutional right to parent our children. Yet at the same time, the rules of evidence do not apply. The rules of evidence are-- they should, they should be construed to secure fairness, promote growth and development of the law, so that the truth can be ascertained and proceedings justly determined. Essentially, it serves as a gatekeeper to what information can and cannot be presented to the judge. It ultimately serves to promote fairness to all parties, not just defense. Eliminating hearsay at termination of parental rights hearing is an ever-present problem. What this looks like in a practical aspect, as someone who practices in juvenile court, is that the fact that the rules of evidence are not applicable in termination of parental rights hearing leads to incredibly inconsistent rulings at the trial court level on what information is admitted or not admitted to court. There are no guidelines. Case law is clear, the rules of evidence do not apply to these hearings. But the rules of evidence are to be used as a quote unquote guidepost. And parents are entitled to due process protection. This insufficiently defines how the court should or should not view the evidence that, that is in front of them. Further, it leads to conflicting case law on as to what is or is not admissible. Generally speaking, the appellate courts have held that the information in a court report is not-- is hearsay if a worker is not there. But it is not hearsay if the worker is there to testify as to expert opinion, therapist, etcetera. Thank you very much for the time, and if anyone has any questions.

LATHROP: Senator Chambers.

CHAMBERS: Not really a question, but the reason I like substituting Nebraska rules of evidence for the term "strict rules of evidence," the word strict allows for a lot of wiggle room because that word can be interpreted differently by each judge. Some judge may actually be utilizing the Nebraska rules of evidence but there is no way to know whether that's the case or not. So just that change does a lot of clarifying. But the substantive thrust of the bill I think is

extremely important, so I'm glad it's presented and that those who work in this area are testifying about it.

MARY ROSE DONAHUE: Absolutely. I would agree with you on this strict-- that's something I really only hear in juvenile court, frankly. I practice in county court and district court as well, and I think that's something used to, said to defense counsel by judges: the strict rules of evidence do not apply. I think that, as you said, in Nebraska Revised Statute 27 is where the Nebraska rules of evidence are contained. That is going to very clearly guide judges and also give parents something on appeal. And so to one judge-- as you said, a caseworker testifying to a compilation of reports that includes expert opinion, to one judge, that would not be hearsay. To another judge, who may say, I do believe that's hearsay. If the passage of this bill would create uniformity in that.

CHAMBERS: Thank you.

MARY ROSE DONAHUE: Thank you.

LATHROP: OK.

MARY ROSE DONAHUE: Thank you very much.

LATHROP: Thank you, Ms. Donahue. Anyone else here to testify in support of LB92? Anyone here to testify in opposition? Good afternoon.

SANDRA MARKLEY: Good afternoon. My name is Sandra Markley, S-a-n-d-r-a, Markley, M-a-r-k-l-e-y, and I'm here on behalf of the County Attorneys Association. I also work for the Sarpy County Attorney's office. I've been a deputy county attorney for 18 years, almost, and specifically assigned to the juvenile courtroom to do the abuse and neglect cases. Prior to that, I was a defense attorney and guardian ad litem. So I have worked on both sides of the issue. I'm here today to speak in opposition to LB92 which would require the strict rules of evidence at the termination of parental rights hearings. If this law is passed, it would throw out decades of case law in our state. Our appellate courts have considered the topic of admissible evidence at termination hearings and have consistently ruled that although the strict rules of evidence do not apply, judges determine whether the admission or exclusion of evidence would violate due process of parents. We need to ensure that the law is kept the way it is to, as it has stood for decades, to protect children and to ensure their timely permanency. Currently, the strict rules of

evidence do not apply because these hearings are considered dispositional in nature, just as criminal sentencings allow-- do not follow the strict rules of evidence, neither the, the, the-- this type of hearing, the termination of parental rights hearing, is considered a dispositional hearing. And so that's, that's the background and why it is the way it is. However, the appellate courts have been very clear that, that due process rights of the parents must be protected, and they must be fundamentally fair. And there's a very good discussion of, of what's allowed and what isn't allowed. In the case of In Re Interest of Kassara M, 258 Nebraska 90, if, if any of you like to read the case law. In the juvenile court, the strict rules of evidence do apply at the adjudication hearing. So the case that brings, the events that bring the case into the juvenile court do apply the strict rules of evidence, just as, as in any other case. Unlike the juvenile adjudication hearing, as I said, where it's one event that you're trying and the strict rules of evidence apply, disposition hearings or termination of parental rights hearings happen months and years, oftentimes as many as three years, down the road. And so to, to bring in every single person that touched the case during that three-year period of time could turn a six-hour trial into a six-day trial. The actual visitation report that Senator Wayne mentioned actually wouldn't have been allowed in, in the Sarpy County courts or judges that I work under because, again, the due process rights are protected. But in many cases, when witnesses are long gone, because, again, it's they're three years old, some of this information. It's just the rule of reason and, and, and judges have been very good at protecting rights. Keep in mind that the judges that are hearing the termination of parental rights case have, have heard all this evidence because these, these, these families come in after the adjudication and there's a rehabilitation plan that's offered, and we have disposition hearings and further disposition hearings. So these judges that are hearing the termination already have all of the information that we'll be presenting at the termination of parental rights hearing anyway. I am sorry, I am out of time.

LATHROP: Yeah, we'll see if there's any questions.

SANDRA MARKLEY: OK.

LATHROP: Any questions for Ms. Markley? Senator Pansing Brooks.

CHAMBERS: Let's say that there would be a series of cases, or as the court says: this case and its progeny. Therefore, we rule thus and so. Such lines of cases and progeny have been overturned by the Nebraska

Supreme Court. And I even collected some cases where the Supreme Court reversed itself. So when you're basing things on only precedent or stare decisis or theories that's different from having a statutory guideline. And I recognize that judges can interpret the statute. But here's the question, would there be more certainty in the law if cases were decided based on the Nebraska Evidence Rules, which can be read by everybody? And if a certain rule is invoked, everybody at least knows the language. That would not be the same when it comes to reading these opinions because people can read something different into opinions from what somebody else would read. So how would you answer this question? Which gives the more certainty in this area of the law: stating Nebraska rules of evidence instead of strict rules of evidence or strict evidence? Which one gives more certainty?

SANDRA MARKLEY: Well, of course you're correct. That's a very good example. However, we may not get to the termination of parental rights hearing if we can't gather all the witnesses that we need because they're long gone. You know, case-- we sometimes go through three and four caseworkers and we can't, can't bring them all in. But, of course, you're right.

CHAMBERS: And since all I did was ask you a question and you answered it, I don't have anything further. Thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for coming here today, Ms. Markey. I am wondering as I'm looking at some of this and thinking about some of the (3)(a) cases which have to do with trafficking. It's my understanding that the burden of proof in a (3)(a) is a preponderance of the evidence. Is that--

SANDRA MARKLEY: For the adjudication hearing. By the time we get to the, the termination of parental rights hearing, the burden of proof is clear and convincing evidence. So it changes.

PANSING BROOKS: Right but clear and convincing evidence is a lower standard, isn't that?

SANDRA MARKLEY: No, it's a higher standard than preponderance. Yes.

PANSING BROOKS: OK, that's not what I'm, I'm getting information on. So that the standard is high, is higher on the (3)(a) cases.

SANDRA MARKLEY: The standard is higher for termination of parental rights. The adjudication is preponderance of the evidence on a (3)(a). And then if, if it goes to termination of parental rights, the burden is clear and convincing.

PANSING BROOKS: Yeah, clear and convincing. OK, well, that's-- I'm getting different information from people saying that it is not, that it's, that clear and clear and convincing is a higher standard.

SANDRA MARKLEY: Yes, yes.

PANSING BROOKS: That's what I'm saying.

SANDRA MARKLEY: Yes, you're right. You're right.

PANSING BROOKS: So for termination of parental rights, it's clear and convincing evidence, is that right?

SANDRA MARKLEY: Yes, yes.

PANSING BROOKS: And the preponderance of evidence is the (3)(a) cases.

SANDRA MARKLEY: The adjudication portion. For every (3)(a) case we could have a detention hearing, we have an adjudication hearing, and then if the parents do not rehabilitate two to three years down the road and we have to terminate, then we, we put in all the evidence again. And whether we put in all the evidence again with the strict rules of evidence or the more relaxed rules of evidence is, I'm in favor of keeping it the way it is.

PANSING BROOKS: Thank you very much.

LATHROP: I think that's all we have.

SANDRA MARKLEY: Thank you very much.

LATHROP: Thank you for your testimony, Ms. Markley.

SANDRA MARKLEY: Thank you.

LATHROP: Anyone else here to test in opposite-- testify in opposition to LB92?

LARRY STORER: Thank you, once again. Larry Storer, S-t-o-r-e-r, Douglas County, Omaha, Nebraska. I have to be against it because I don't know anything about it. There's not much here. As a taxpayer,

that's kind of a waste of my time. I shouldn't have to research the state regulations on this but as I go through the Nebraska State Constitution there's a couple of points I want to bring up. Section 3, Article I. "No person", meaning juveniles also, they're a person are they not, "shall be deprived of life, liberty, or property, without due process of law". We just heard that. Section 15, taxpayers really shouldn't have to do all this, but anyway. Section 15 is in question, I'll find that in a minute. Article III, Section 18. All, and I'll find that in a minute, but they all have to do with constitutional rights. None of that is here. For quite a few years, I've been going down here and down to the chambers in Omaha in regards to juvenile matters, largely because of some things I think we're completely out of whack in let's say the HHS department. But in my opinion, have all those experiences was a violation of not only my rights but my grandson's rights. He was not a juvenile that was adjudicated but he is in the system for under HHS. Now, the other day, says my time is short at the council and the Douglas County Board meetings-- Douglas County Board was first, city council was second. I'd like you to enter into testimony the videotapes of those two sessions because they were stepping on people's rights there when the topics of juvenile justice come up. Some very contentious decisions and deliberations amongst the members but nothing is resolved. But there are people from outside of the state that are influencing the decisions. And indeed one of the articles I mentioned was: no person shall be set out of state. That's a violation of your Nebraska Constitution. I think that that's the first one, the second one I mentioned. You can read that. The other thing is the right to petition. We can get three minutes, five minutes and my time is already up. So I get a little upset when I'm told to be quiet or sit down, which I have been done to a number of times at Douglas County and the Omaha City Council. When we only have two to three minutes, don't cut us off, don't shut us down, and don't tell us to sit down. This was done, and you can watch it on the videotapes. I want that entered into testimony because those are unconstitutional acts and those had to do with juvenile justice. Their presentation was like this. What they do, now, excuse me, if a youth is detained at the Douglas County Youth Center, is he detained because of a crime or a purported crime. It's maybe not adjudicated but he is detained. Why are we trying to get them undetained before the case is adjudicated? If they don't need to be there, you don't want him in shackles and all this other stuff, then dissolve the case and turn him back to his parents. OK? Thank you. Please ask a question.

LATHROP: Well, I-- here's what I want to make a comment so that you know this. This group, this committee has no control over what they're doing at the city council or at the--

LARRY STORER: Excuse me, I think that's one of the sections in your constitution.

LATHROP: Pardon me.

LARRY STORER: Yeah.

LATHROP: Our hearing today is on the rules of evidence that relate to termination of parental rights. And I, I as Chair and tasked with making sure that we have an opportunity for everybody to be heard and for each bill to be heard and my senators to be able to return to their family in a timely way at the end of the day. And so we're going to, unless there are questions from the members, and I see none, we're going to go on to the next testifier, Mr. Storer.

LARRY STORER: Okay. I just want to point out that as lawmakers your first duty is to this and the U.S. Constitution. Just two more minutes, please? The right of peaceful peaceable assembly. That's a violation. And Section 18 of Article III: local and special laws are prohibited. That's in your own constitution. So please check into it, watch those videotapes.

LATHROP: OK.

LARRY STORER: And maybe include that in your law because there is nothing here that addresses that.

LATHROP: Fair enough. Thank you.

LARRY STORER: Amend it, please.

LATHROP: Are there any other persons here wishing to testify in opposition to LB92? Anyone here in a neutral capacity? Seeing none, Senator Wayne to close. And as you sit down or find your seat, we have two letters of support. One from Amy Miller at the ACLU and a second from Ellison Dare [PHONETIC] or Derr at Nebraska Appleseed. Senator Wayne.

WAYNE: Thank you. I just briefly want to deal with this issue of evidence and burden of proof. So to put this in perspective to the nonattorneys who practice or attorneys who do not practice criminal

law, I have been involved in multiple cases where a person is charged initially in a criminal. So let's say they're driving drunk with a kid in the car. The state dismisses it because they can't prove their burden of proof. They refile charges in juvenile court because the burden of proof is lower, it's lowered at the adjudication to a preponderance standard. And then at termination hearing it's a clear and convincing. Here's what current clear and convincing means, according to our, our Supreme Court: substantially more likely than not to be true. Substantially more likely. There is people who believe that's 51 percent, most attorneys don't, we believe it's around 65 to 75 percent, more likely than not. That's the standard we use to remove children and terminate their rights or to terminate parental rights of the children and the parent and sever that relationship. Not beyond a reasonable doubt. But I'm not asking for that. But I, what I am asking, if we're gonna have that standard, let's make sure we raise the standard of evidence that is presented to the court. So it's the best evidence we can have before we sever that relationship between parent and child. Will it take longer for some juvenile courts? Absolutely. But if we are a family state, then it should take longer to make sure that we have the right thing to do before we sever that tie. Thank you.

LATHROP: Thank you. And with that, it'll close our hearing on LB92 and we'll move to LB93, also a Senator Wayne bill, so you're--

WAYNE: Thank you. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District number 13, which is north Omaha and northeast Douglas County. This bill, I will tell you, will need an amendment. I'm working on some language with some of the experts in the area, but I'll tell you how this bill came about and answer any questions. A couple of years ago, I was appointed a case in which a father was initially charged in the juvenile matter. We have a law here or a presumption that if you are married any child born in that marriage is presumed to be both from the mother and father. Well, this individual was a domestic violence survivor, came to Omaha from Alabama, lived here for 10 years, but never officially got divorced. She had a child who tested positive for meth. The person I represented was the father of that child, who was there at birth, stood in the hospital, watched the child go away with CPS, was initially charged with neglect because they usually charge both parents, and after the state research that she was married, dismissed the charge against him, filed charges against the individual in Alabama who she had not had contact for 10 years, and proceeded to terminate his rights through

publication of, notice of publication, because he obviously didn't come here and defend because he knew the kid wasn't his. And we petitioned the court on behalf of the true father and the court-- not the court, or the court too. DHHS said, well, we will not make the child available for DNA testing. And under our statutes for paternity, that is the only way to overcome the presumption in a marriage. So although I petitioned the court, I had no standing. We couldn't use the loco parentis doctrine because the child and father haven't built a relationship yet. There was nothing we can do. The child was later adopted, although we went to court and objected multiple times. The court said they had no authority to order DHHS to make the child available because there is a presumption during the marriage who the father is. And even a sworn affidavit cannot overcome that presumption, only DNA testing. The child went on to later be adopted, we appealed the matter. This individual was so distraught he has left the state and told me to withdraw the appeal. Now, to add a cultural component to this, this individual was a refugee from Africa. And if you know anything about the African culture, their bloodline is their life. That's why you have to stay in Nebraska. And that's why he was so distraught. Because it went against everything that their culture and everything that he believed on passing on his bloodline to his child. Now I will tell you, not every court will do that. Some courts will allow and mandate the state to produce the child for DNA testing. But this particular judge, and I know another judge that did not, has not done that. That is a flaw in our system. The reason there has to be an amendment is because this also affect paternity actions, and I recognize that. And I'm trying to bring more people to the table to figure out how to write the best statute. But this issue happens more and more, and it's a fundamental problem in our justice system to making sure fathers or mothers have a right to be a part, and not just that. Once the father's enjoined, that includes grandparents and other family members. Without that enjoining and intervention there is no standing for any other family member to be a part of that problem or solving that problem. And with that, I will answer any questions.

LATHROP: I see no questions. Thanks, Senator Wayne. Anyone here to testify in favor of LB93? Anyone here to testify in opposition to LB93? Anyone here to testify in a neutral capacity? Seeing none, no testifiers and Senator Wayne waives close. We have one letter and that's in a neutral capacity from Matt, Matthew Wallen, Division of Children and Family Services, HHS. With that, it will close our hearing on LB93 and the hearings for today. Thank you.