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January 26, 2017

To: Chairwoman Ebke and Members of the Judiciary Committee
From: Juliet Summers, Policy Coordinator
Re: **LB 158, a bill regarding the right to counsel in juvenile court**

Every child in Nebraska deserves equal protection under the law. Voices for Children in Nebraska supports LB 158, because it will ensure youth across our entire state have meaningful access to one of the great protections of the American justice system: the Constitutional right to counsel. This protection is especially important for children, who may by their age fail to fully understand the grave nature of their actions, the complicated legal proceedings against them, and the potentially life-altering outcomes.

Why do lawyers matter in juvenile court? Juvenile court may sometimes be perceived as “kiddie court” or diversionary in nature, but in fact, in every single case, juvenile court judges have a wider range of options available to them than criminal court judges. Though this means a lower reliance on the traditionally punitive response of incarceration, it also means that a charge as “small” as minor in possession can, in the juvenile court, open the door to confinement, removal from the family home to a group home program, being placed on probation for an indefinite number of years, or even commitment to the Youth Rehabilitation and Treatment Centers. In that regard, there is no “small” charge in the juvenile court.

Furthermore, after the trial phase, juvenile courts are relatively unbound by the rules of evidence and have wide latitude to make decisions on treatment, placement, and even incarceration on hearsay evidence. A psychiatrist can make a written recommendation for psychotropic medication or for the youth to be placed in inpatient care and the court may order it. A probation officer may tell the judge that the youth needs to be picked up by sheriffs and confined in a jail-like detention facility until further notice for safety, without a sentence setting a determinate length of that incarceration.

Both of those examples are permissible if the court finds they are in the best interests of that youth ... but would you want to face such a proceeding without a lawyer to assist you and protect your rights? Would you allow your own child to do so?

What does the data show? Unfortunately, the data makes clear that youth across our state are not getting access to this important constitutional protection at equal rates. The map I have provided to you breaks down the rate of juvenile access to counsel by county.¹ Because each and every juvenile court case exposes a youth to the risk of incarceration, the youth in every case is already entitled by the U.S.

¹ This is 2015 data taken from the Administrative Office of the Courts Annual Statistical Report, published in February 2016. At this time, data updated for 2016 is not yet available.

Constitution to an appointed attorney and the judge has to ask when he or she wants one. However, how and when the judge asks that question, and whether the right is adequately explained to the youth or pressure applied not to take it, can all affect the rate at which children actually take up this right. As you can see from the map, this is not an urban versus rural issue. Counties right next door to each other – perhaps, the counties within your own legislative district – can vary as much as 100%. LB 158 would ensure that every youth coming to juvenile court receives the constitutional protection to which she is entitled, regardless of where she happens to be charged.

What about the cost? Last year, there was debate on the floor about the potential costs to counties posed by LB 894. We recognize that this is a special concern this year. Lawyers do cost money, and it is a special and remarkable feature of the American Constitution that we have chosen as a society to bear that cost in order to protect our citizens from possible government overreach.

However, lawyers also have the potential to save money, by reducing expenses the county, state, and even family are already paying. When a defense attorney is able to consult immediately with her client and the county attorney and arranges a plea agreement for the first court appearance, the county and state are saved the expense of bringing judge, county attorney, bailiff and court reporter back for a second or even third hearing. The parents are saved the expense of missing work for a second hearing. If the judge detains the youth pending trial, the county bears the cost of that confinement at staggering expense. I attached an infographic comparing the cost of an average hourly appointment rate for lawyers in Nebraska with the cost of detention; if the lawyer can get the youth's case moved even one day faster, the county saves \$45. If the lawyer gets the case in just one week sooner, the county saves \$1,407.²

Every teenager facing a proceeding in which the government can take their liberty, remove them from home and family, put them on medication, or commit them to a psychiatric institution, boot camp, or YRTC should have a lawyer to ensure their rights are protected and they understand what is happening and why. LB 158 would close a gap in the way our state protects youth, and I urge you to support it. Voices for Children in Nebraska would like to thank Senator Pansing Brooks for bringing this important legislation, and the Committee for your time and consideration.

² This calculation is based on the average per diem cost of detention in 2015, according to data from Nebraska's five detention facilities. To get the average cost of an attorney, we made an informal survey of attorneys taking court appointments, and received responses from 28 different Nebraska counties, both urban and rural.