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March 21, 2019

**To:** Chairman Lathrop and Members of the Judiciary Committee  
**From:** Juliet Summers, Policy Coordinator at Voices for Children in Nebraska  
**Re:** **LB 231, change provisions relating to legal defense of juveniles**

Every child is entitled to due process and equal protection under the law. Voices for Children in Nebraska supports LB 231, 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 constitutional imperative 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 are lawyers necessary 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 usually 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, forced psychological or psychiatric treatment, 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 what would in criminal court be considered 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 is the current state of the law?* In 2016, the 104<sup>th</sup> Legislature passed LB 894, identifying certain circumstances with especially grave stakes in juvenile court when counsel may not be waived. This protection applies statewide. However, a compromise amendment regarding automatic early appointment left us with an equal protection problem.

The statute on its face affords greater protection relating to this constitutional right to children in counties with more than 150,000 inhabitants, where appointment of counsel is automatic at the time the petition is filed. In counties with fewer than 150,000 inhabitants, the child must be advised of his or her right to counsel prior to the trial phase, nothing more. It is past time to set this injustice right.

*What does the data show?* The data makes clear that, unsurprisingly, youth across our state are not getting access to this important constitutional protection at equal rates. The document I have provided to you breaks down the rate of juvenile access to counsel by county – map on the front and table of counties on the back. It also has statewide rates of access to counsel broken down by age, gender, race and ethnicity.<sup>1</sup>

As you can see from the map, though the statute currently unfairly distinguishes between urban and rural children, as it plays out it is not precisely an urban versus rural issue. Counties right next door to each other can vary as much as 100%. LB 231 would ensure that every youth coming to juvenile court has a meaningful opportunity to take up this constitutional safeguard, regardless of where he or she happens to be charged.

Every youth 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 231 would put right our statute, providing every child equal protection under the law, 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 as always, this Committee for your time and consideration.

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<sup>1</sup> This is 2017 data, provided to Voices for Children by the Administrative Office of the Courts and Probation. 2018 data is not available yet. The map, chart and table are taken directly from the *Kids Count in Nebraska Report 2018*, available online at [www.kidscountnebraska.com](http://www.kidscountnebraska.com).