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March 15, 2019

To: Chairman Lathrop and Members of the Judiciary Committee
From: Juliet Summers, Policy Coordinator at Voices for Children in Nebraska
Re: **LB 484 - Change provisions relating to assault on certain employees and officers**

We all benefit when our juvenile justice system is structured to ensure youth receive meaningful rehabilitative interventions so that they can grow into healthy adults. Voices for Children in Nebraska opposes LB 484, which represents a regressive view of juvenile justice and is not based on evidence of what works to change youth behavior for the better.

LB 484 would create three new felony offenses specifically for youth committed to our two Youth Rehabilitation and Treatment Centers (“YRTCs”), for three degrees of assault on staff members. My testimony is by no means intended to undercut or undermine the damage that any victim of assault experiences. However, as we consider how to structure our penalties and systems, we should always ask: what is our desired outcome, and will this policy have the intended effect?

Adding new felony charges for youth committed to YRTC will not protect staff members or improve the behavior of young people.

It will not prevent assaults: Because their brains are still under construction, youth simply don’t make decisions about consequences in the same rational way an adult might, particularly when they are experiencing high emotion or tension. Teenagers are particularly likely to give in to impulsive behavior without regard for the consequences.¹ Most assaults occur in moments of extremis, and an additional charge is unlikely to sway their behavior in the direction we want. As a longtime practitioner in juvenile court put it, “Deterrence requires pre-meditated thought using a cost versus benefit analysis. Youth in this situation are not thinking, they are reacting.”

It will not change much in actual system response to assaults: I believe that a driving impetus behind this bill is an intention to charge YRTC youth in criminal, rather than juvenile court. However, based on our jurisdictional statute and the degrees of charge as laid out in the bill and underlying statute, LB 484 would change almost nothing regarding concurrent or original juvenile and county court jurisdiction.

- The bill creates a new Class ID felony for assault in the first degree, specifically on a YRTC staff member. Assault in the first degree is defined in Nebraska statute as knowing or intentional assault causing serious bodily injury, and is already a Class II felony.² Under our jurisdictional statutes, this

¹ Harvey B. Milkman and Kenneth W. Wanberg. *Criminal Conduct & Substance Abuse Treatment for Adolescents*. Sage Publications 2012.

² *Neb. Rev. Stat.* 28-308

means that youth committed to YRTC who assault *anyone* knowingly or intentionally, causing serious bodily injury, can already face direct filing in criminal rather than juvenile court on the charge.³ Adding an additional, separate charge based on the identity of the victim does not add anything to that calculus.

- Third degree assault on a staff member in the bill is graded a Class III felony, which would not give rise to concurrent jurisdiction.
- The only shift in charging availability would be for second degree assault. Currently, our charging statute for second degree assault requires *serious* bodily injury to occur when the *mens rea* is recklessness in order to charge a Class IIA felony.⁴ LB 484 would lower the injury required when a youth acts recklessly with a dangerous instrument, eliminating the requirement that bodily injury be serious in order to charge a Class II felony and thus achieve concurrent criminal jurisdiction. This change reflects an intent to penalize reckless youth behavior, even when serious injury has not occurred, and has no place in facilities built precisely for reckless youth. LB 484 would grant unilateral discretion to the Buffalo and Fillmore County attorneys to decide whether to charge boys and girls acting recklessly as adults, when those juveniles are placed in their county pursuant to juvenile cases. However, our YRTCs exclusively serve the *rehabilitative* rather than retributive juvenile system. These young people have lawyers and judges in other counties with infinitely more knowledge and understanding of their history, needs, and rehabilitative goals.

I reached out to Senator Lowe both last summer and in advance of this hearing with concern about this proposal, and he has been very gracious in communicating with me about his big-picture goals for the facility and community, many or all of which Voices for Children shares. If these facilities are going to continue to exist in our juvenile spectrum, we all want them to be safe for youth, staff, and community alike.

If the goal is to increase staff morale to retain dedicated, experienced frontline workers, there are other bills on the table this year that would better support those goals: LB 345 (Sen. Wishart), which would prohibit the use of mandatory overtime in state run 24-hour care facilities like YRTC, or LB 226 (Sen. Quick) which would appropriate funding to support staff hiring, retention, and training, as well as provide more mental health services and programming for youth committed to YRTC.

I would like to thank Senator Lowe for his open door on this issue, but would respectfully urge this Committee to support those other options should they come to the floor rather than move LB 484 forward.

³ *Neb. Rev. Stat.* 29-1816 and 43-246.01 permit concurrent original jurisdiction in criminal or juvenile court when the accused is between 14 and 18 years of age, and the alleged offense is punishable as a Class IIA felony or higher.

⁴ Compare LB 484, page 5, lines 19-22 with *Neb. Rev. Stat.* 28-309.