

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

HUGHES: OK. Welcome to the Executive Board. I'm Senator Dan Hughes. I am from Venango, Nebraska. I represents the 44th Legislative District. I serve as Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Move to the front row when you are ready to testify. The order of testimony is introducer, followed by proponents, opponents, neutral, then closing by the introducing senator. If you are testifying, please fill out a green form found at the back of the room, hand your green sign-in sheet to the-- to a page or the committee clerk when you come up to testify. Spell your first and last name for the record. As you begin testifying, speak clearly into the microphone and be concise. Because we are a lunch hour committee, we ask that you please keep your testimony to three minutes. When you see the yellow light come on, that means you have one minute remaining and the red light indicates your time has ended. Questions from the committee may follow. If you do not wish to testify today, but would like to record your name as being present at the hearing, there is a separate white sign-in sheet on the tables that you can sign in for that purpose. This sign-in sheet will become an exhibit in the permanent record of-- at the end of today's hearing. We ask that you please limit or eliminate handouts. If you do have handouts, the material may be distributed to the committee members as exhibits only while testifying-- testimony is being offered. Please make sure you have at least 13 copies and give them to the page when you come up to testify. They will be distributed to the committee and staff. The committee with us to-- the committee members with us today will introduce themselves starting on my left.

VARGAS: Tony Vargas, District 7, downtown South Omaha and I serve as Vice Chair.

SLAMA: Julie Slama, District 1, Otoe, Nemaha, Johnson, Pawnee and Richardson Counties.

HILGERS: Mike Hilgers, District 21, northwest Lincoln, Lancaster County.

GEIST: Suzanne Geist, District 25, southeast corner of Lincoln, Lancaster County.

HUGHES: And on my right.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

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

LOWE: John Lowe, District 37.

LATHROP: Steve Lathrop, District 12.

HUGHES: To my right is committee counsel, Janice Satra, and to my far right is committee clerk, Mandy Mizerski. Our page for the day is Chloe Fowler. She is a senior at UNO majoring in political science. So with that, we will open our first hearing today on LB897. Welcome, Senator Lathrop.

LATHROP: Good afternoon, Mr. Chairman, and members of the Exec Board. My name is Steve Lathrop. L-a-t-h-r-o-p. I represent Legislative District 12. I'm pleased to be here to open on LB897. I was asked to introduce LB897 by the Public Counsel in order to make some updates to both the Office of Inspector General of Child Welfare Act and the Office of Inspector General of the Nebraska Correctional System Act. Several procedural and technical clarifications were identified by the Inspectors General and the Public Counsel that they believe need to be made to the respective acts in order to assist them with carrying out their duties. LB897 would do the following: One, clarify the duties of Inspectors General; two, clarify the redundant or confusing language and render the sections and-- pardon me, reorder the sections for clarity; three, clarify and change the timeframe for responses to Inspector General reports; four, require both Inspectors General to refer any actions warranting criminal or disciplinary proceedings to the appropriate authorities. Next. Clarify that the Office of Probation Supervision continues to be subject to the provisions of the Office of the Inspector General of the Nebraska Correctional Systems Act and allow that a witness who speaks with the OIG has a right to counsel and may have personal counsel, not agency counsel, present at the interview. This aligns with national standards for offices of Inspector General, and I think the committee has received a letter from the National Association of Inspectors General attesting to this. These last two points are an ongoing area of contention between the Office of Inspector General of Child Welfare-- Welfare and the Office of Probation Supervision. For the last four years, the IG has been unable to investigate cases involving youth managed by probation because OPS insists on Agency Counsel participating in any meeting between the IG and the probation staff. As the letter from the Association of Inspectors General makes clear, the presence of Agency Counsel presents a conflict of interest and undermines the ability of the ID-- IG to do its job. The Legislature created the Office of IG because we wanted more insight into how our system-involved youth were

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

being treated. The need for this didn't change when case management of some youth was transferred to probation and its attention we've needed to resolve since that time. This bill would give the OIG the tools it needs to conduct its duties as we've defined them in statute.

Understand, that it was recently brought to our attention that the addition of the word "personal" may not suffice to clarify this. State employees who speak with the OIG have the right to counsel, but that-- this cannot be an agency attorney. We may need to amend the language to make that clear. And to provide further insight on these changes and answer questions you have regarding the bill, Inspectors General. Jennifer Carter and Doug Koebernick will testify after me. I will say that I know the piece on-- the third piece that that deals with the Inspector General getting into and doing its work with probation has been an area of contention, some contention. Hopefully, this will lead to a process where we can resolve that in a manner that's acceptable to all concerned.

HUGHES: Thank you, Senator Lathrop. Are there questions from the committee members? Seeing none. You'll stay for closing.

LATHROP: Yeah.

HUGHES: Very good. We will open up testimony on LB897 to proponents. Welcome.

JENNIFER CARTER: Thank you. Good afternoon, Chairman Hughes, and members of the Executive Board. My name is Jennifer Carter, J-e-n-n-i-f-e-r C-a-r-t-e-r, and I serve as your Inspector General for Nebraska Child Welfare. The Office of Inspector General for Child Welfare provides oversight and accountability to the child welfare and juvenile justice systems through systemic review, inspection, investigations of deaths and serious injuries, and making recommendations for improvement. As Senator Lathrop said, LB897 makes a lot of technical and clarifying changes to our act and to the Corrections Act. Our written testimony details a lot of those, and we've also provided a section-by-section summary. So in the interest of time, I will just be highlighting a few things. Number one, as stated, the bill clarifies a lot of the OIG's duties. It's-- one piece that I did want to highlight is it does amend HHS's reporting obligations regarding sexual abuse allegations. As it stands, they only report sexual abuse allegations for state wards, which is a smaller subset of the child welfare system. The change would align it with the requirements-- reporting requirements for deaths and serious injuries, which would be any case that any child who's receiving services in the system. It clarifies provisions regarding the duty to cooperate with the OIG. It sort of realigns some sections to make a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

little bit more sense. It amends the investigative reporting process, timelines and whatnot. It does also require the OIG to refer matters to appropriate authorities if we believe a public officer or employee has acted in a manner warranting criminal or disciplinary proceedings. But the biggest issue as Senator Lathrop pointed out, this bill would clarify that when a person is required to provide information to the OIG, he may have personal counsel present, not agency counsel. If this has just been a disagreement on protocol, my understanding is for a while and it has kept us from completing investigations and probation, and that is my concern that the office is not meeting its mandatory obligations as a result. And this-- having agency counsel present at the interviews is contrary to IG practices nationally. Our job is to gather information and make recommendations. To do this, we have to be able to receive complete, candid and truthful answers from those interviewed. The presence of agency counsel can compromise that investigation if it results in any real or perceived intimidation that may lead the witness withholding-- to withholding necessary information that could be adversarial to the agency being investigated. Allowing agency counsel to represent both the agency and the employee as personal counsel presents a serious conflict of interest that shouldn't be waived. If that witness or employee was actually going to provide information that's adversarial to that agency, it would be hard to represent both. As Senator Lathrop mentioned, you should have received a letter about this from the Associations of Inspector General. I did want to note when considering this issue, it's important to remember that the OIG gathers information and makes recommendations for system improvement. We cannot prosecute. We cannot bring a case. We can't discipline employees. The information and evidence gathered is not discoverable or admissible in court. In addition, the state agency reviews our report before it ever becomes finalized, and they can correct factual errors. And it's our practice to attach their report for full transparency if and when the report is made public. Our job is not to assign blame, particularly to individual workers, but to provide accountability for the system. It's our understanding that probation is concerned that our investigations will focus on decisions of the courts in these juvenile cases, leading to potential separation of powers issue, and we fully acknowledge we have no jurisdiction over judges or court cases. We would be focusing on the actions taken by probation, focused on rules, regulations, statutory duties as the act outlines right now which our executive branch functions, and that would be the focus of any investigation. These changes would just be an effort to-- oh, I see my time is up, but that's sort of the bulk of what I wanted to say. Happy to take any questions.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

HUGHES: Thank you, Ms. Carter, I guess. Senator Vargas.

VARGAS: Thank you very much for being here.

JENNIFER CARTER: Yeah.

VARGAS: I said two questions. One was, you mentioned that a standard practice for other federal IGs across the nation were-- we're currently in contrast or contrary to that existing practice with having the agency counsel present. What do they normally do? Do they assign somebody? Is there like a separate (INAUDIBLE) staff?

JENNIFER CARTER: We had just have not been conducting the interviews as a result.

VARGAS: Oh, OK.

JENNIFER CARTER: So that's why we haven't been able to complete our investigations because-- and I will say probation is very timely. When we open an investigation, they provide the documents or access to the documents that we need and they provide us notices very well, and we appreciate that. But oftentimes the documents are not enough for us to really be able to conduct a full investigation on both sides. Like, we find because we don't have this issue with HHS, oftentimes we're looking at documents, and it's not until the interview that we better understand what's happening and maybe better understand that the agency has done what it needed to do or be able to identify where the policy change or gaps might be that we can make a recommendation for a system improvement.

VARGAS: OK, thank you. And then the second question, and you sort of alluded to it was, can you give me a ballpark about how many investigations do we currently have outstanding?

JENNIFER CARTER: Yes, that's-- so we have 17 pending mandatory investigations, eight homicides and nine suicides. There have also been-- I also want to say we really appreciate-- probation does, I think, is clearly very concerned as anybody would be about any sexual abuse of the youth in their care. And so they have been very diligent about reporting any allegations of sexual abuse, which we appreciate. But the number is quite high. And I-- I don't even understand well enough to know how could we be helpful? It might be that what probation duties are right now can't really address that. But it seems to me there might be a gap in the system. So that is something else we'd love to be able to look into further because that's over 100 and some of them involve trafficking, so.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

VARGAS: Thank you very much.

HUGHES: Thank you, Senator Vargas. Senator Hilgers.

HILGERS: Thank you, Mr. Chairman. Good to see you, General Carter. Thank you for all your work. So I-- one-- so Senator Vargas touched on a comment of yours that I wanted to ask about which is he said it's against practice around the country to have a--

JENNIFER CARTER: Yes.

HILGERS: And I wanted to be precise as to what-- what do people do around the country? Do they not have counsel present? Do they have separate counsel? Do they have individual?

JENNIFER CARTER: They don't have counsel present. They-- sorry they could have truly personal counsel, not agency counsel, not counsel from the state agency that they are investigating. So, and we would welcome personal counsel. We also allow if somebody is just uncomfortable, for example, a caseworker, if they have a nonsupervisory person that would make them feel comfortable in the interview, we allow that. They don't speak or participate, but just sort of there for moral support. But-- but they don't-- my understanding from the conversations with the Association of Inspectors General is it's-- it's just very key to the practice of independence and getting it sort of the integrity of the investigation to not have agency counsel available.

HILGERS: So I follow up on that. So you see that in other context when there's an investigation of the corporation and an individual might know something that's negative or will put them in an adverse position of corporation. And the answer typically there is not that-- it's not to say you can't have a lawyer from-- and I know it's analogous, but--

JENNIFER CARTER: Right.

HILGERS: --but we can draw-- I can draw some learnings from that. It's not to say we can't have a corporate lawyer there, and it is-- because it's not always that there will be a conflict.

JENNIFER CARTER: Right.

HILGERS: And so wouldn't the better answer just-- or what-- what is wrong with saying allow, in this case, agency. I'm thinking-- I'm drawing again an analogy, it allowed agency counsel, but-- but it's their ethical obligation as an attorney that if they have information

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

that they know puts them in a conflict situation, they have, then it's on them to say, well, you know, you've got to get separate counsel, you have to do it. In other words, instead of having a blanket rule saying no counsel, unless they go out and hire someone individually--

JENNIFER CARTER: Right.

HILGERS: --why couldn't the rule be, you allow agency counsel unless there's a conflict and maybe in that instance, bless you that the-- the agency would-- could hire, which is often happens with corporate counsel as an attorney personally for them to be to represent them?

JENNIFER CARTER: So I-- my understanding is that it is-- it, I think, different than in some of the sort of regular commercial litigation cases. There is potentially more of a risk of real concern on the part of the witness not to be as forthcoming. I also think-- and-- and I think there could to your point, I think there's not-- I don't know. I worry about the the employee not really fully understanding if somebody is trying to represent both sides and then not really understanding that full scope. So to me, the conflict should be resolved beforehand or that really you couldn't properly waive it in that case. So rather than getting into it, also as-- as Association of Inspectors General mentioned, there's also a concern from the Inspector General perspective that agency counsel then understands the direction of the investigation in a different way. It may affect even if they're not present, it could affect how the investigation goes with other witnesses and employees that may be interviewed. I also think there's a specific difference here in how we have it set up in Nebraska because we can't, as I said, there's no-- we truly are just gathering information. Our job is to get to as close to an understanding of how the system works, get to the truth, see if there's any issues. We can't-- as I said, we-- we don't really have any authority to discipline anybody, make any changes. In fact, we've had-- I mean, HHS has rejected our recommendations several times. As it happens, they have later basically implemented those recommendations. But as I sort of describe it, my job is to tell you why the house is on fire and how to prevent it in the future, but I can't pick up the hose or fireproof the walls. So in that sense, I think there is less of a risk in allowing us to have a really frank conversation with employees to really understand what's happening because we are really just trying to get the information to make a good systemic record for this.

HILGERS: So I think I-- I appreciate that. I-- and I'm-- I'm not telling you firmly where I'm at on the bill, and I appreciate Senator

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

Lathrop, what I heard is an invitation to dialogue with an appropriate parties.

JENNIFER CARTER: But we would very much welcome that.

HILGERS: But to reacting to what you said, I would just say, and then I'll-- as a question, I would ask you to react to this. In-- in the criminal context, certainly in federal courts, the idea of an investigation. So two points. One is the idea of a criminal investigation where maybe the employee doesn't understand their rights is something that happens all the time. And usually in that context, it's through some sort of a-- a requirement to have a direction from counsel to say, I'm not your lawyer, I'm in the capacity. So my first question to react-- for you to react to is why-- why wouldn't that which has been more, it seems like more or less successful in that context to apply here, and secondly, wouldn't the argument-- wouldn't the fact that the Inspector General has less-- doesn't have criminal investigatory powers actually then say, we ought not to change the system in the criminal context to provide for less opportunity for counsel to be present? If that-- if that is the question that makes sense. So if you would react to those two points, that's all I have.

JENNIFER CARTER: Yeah, so-- sorry, I was tracking some-- hoping I'm going to answer them. To the last point, I think some of the difference is it's to be very clear we are not opposed to having counsel there. It's just the agency counsel representing the agency in-- in that interview. So we would welcome true personal counsel for anybody who feels like they need that or-- even though, to be frank, most of our interviews are more like, can you explain this policy to me and what-- you know and they're not very--

HILGERS: Sorry to cut in, but because I do want to add that this is an important point. If most of them are not in a position where the individual actually would have knowledge at first, the agency, then doesn't that there-- I mean, isn't that a material fact to say we ought not to have the rule be no agency counsel?

JENNIFER CARTER: So I'm-- sorry not to-- I maybe then misstated it. I didn't mean that we never hear that there's the-- because we do hear that quite often. My supervisor told me to do this, or yes, this is the policy, but actually, this is what happens. We do this thing instead, or we were directed to do whatever. So that does come up quite a bit. And that can be helpful. Sometimes not again, because we want to find, or need to find a particular blame that supervisor is doing something wrong or there's some kind of actual something nefarious going on. It can just be, oh, now I understand the pressures

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

on the system that you guys aren't actually following this policy because of some real life consequence that might happen to a child or whatever. But that's not actually-- so what's not-- helps us identify what's not working. And so I think again, it just comes-- continues to come down to the independence that we need as Inspectors General and to be able to have a fully candid conversation that we believe does not end this as Association Inspectors General think does not often happen when agency counsel is there and that person might feel like their job could be at risk. They don't, you know, they don't want to be as frank as they can, whereas everything we do is just totally confidential. So I think that-- I think I may not have answered your very first question when we started this.

HILGERS: Yeah, why wouldn't the system-- why couldn't we just look to the system that we use, maybe in the federal criminal--

JENNIFER CARTER: Oh, right, yes. I think again, it comes down to that. We'd be happy to have personal counsel. I also think the second piece of having the agency counsel then aware of the direction the investigation may be going in and could that affect what kind of documents we get? You know, any kind of openness prior? And I feel-- I just want to be clear, we don't tend to think we're going into these to find some big piece of corruption. We're almost always just trying to understand how the system is working so that we can make it better. And yes, sometimes people are not following procedures the way they should or things fell apart. And then it's our job to say, hey, here-- here, this would have caught it if we had done this or change the policy in this way. So I actually think that argues on our side for why it is less important to have agency counsel there because there's not a much of a risk to the agency in the work that we do. So the benefit to me of getting the frank conversation from the employees really for the betterment of the entire system really outweighs the damage that can be done when agency counsel is present.

HILGERS: I appreciate that. I should have said at the outset, I appreciate all the work that your office does, the public counsel. We're very proud. I know as the Legislature of the work that you all have done, and I-- if it was-- if it was a question of motive and intent, there wouldn't even be-- but when we do set up rules, I just put these cards on the table and then I'll hand it back to the Chair. When we do set up rules, I do think it's important that we do think through all the variables--

JENNIFER CARTER: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

HILGERS: --including-- including in this case, an agency, their right to counsel and their right to their ability to represent.

JENNIFER CARTER: Right.

HILGERS: It would be easier in a lot of context if you could just go, not you specifically, if you could go and ask questions of it and it during an investigation where they didn't have counsel. But that's not how generally our system has been set up. And so as we dialogue it about this after this hearing that's some of the considerations I want.

JENNIFER CARTER: Yeah. No, I appreciate that and we would welcome the dialogue. And I think it's just a little bit different the nature of being an Inspector General makes it maybe-- is a little bit different than those other contexts as well.

HILGERS: Appreciate it. Thank you.

JENNIFER CARTER: Yeah, thank you.

HUGHES: Senator Vargas.

VARGAS: Thank you. This is kind of just following up on that, and maybe you did state this and I just missed it. So the other, you know, other ideas across the state and association, their intent. What is the best practice? This-- these amendment changes represent the best practice intentions of what you're seeing in other states?

JENNIFER CARTER: Yes. I mean, to what Senator Lathrop said, I realize now in looking at it that putting the word "personal" before counsel probably doesn't do the job when what we really mean is agency counsel should not be present, but our understanding from our conversations with the president of the association, who's been an IG-- actually with like law enforcement powers, a lot of IGs have different powers than we do here but that-- this is just the standard across the country.

VARGAS: OK. That's helpful. And my only connection to-- the reason why I was asking questions is when we were on the school board and looking at Senator Wayne, we have these student hearing officers. These are not criminal cases. This is all internal. And you know, the student affairs, there's an independent arbitrator. There's somebody that is asking these questions doing the investigation, largely because of what the nature of the-- the power dynamics that you represented. Not that there is-- the power dynamics are inherently there, but there's a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

reason why there's independent hearing officers that are conducting these questions and investigations at that level for personnel or for students. And it just reminded me of that when you were talking about it. Thank you.

JENNIFER CARTER: Yeah, sure.

HUGHES: OK. Additional questions from the committee? I just have one. Was there a point or two in your opening that you needed to kind of swing back to and--

JENNIFER CARTER: Sure.

HUGHES: --re-emphasize?

JENNIFER CARTER: I did want to just point out that some of the clarifications of our duties just harmonize some language. We do-- we did ask for 30 days rather than 14 days to decide if we're going to do a full investigation on a complaint because we varied-- we do a real full vetting of any complaint that comes into our office and that is-- takes some time. And given how many complaints we get and also our mandatory investigation obligations, that would be super helpful. I did want to also point out that we've asked the timing on the response to the report is 15 days, which we interpret legally as calendar days. We've asked to move that to business days. That gives the agency a little more time to respond, and it just provides clarity for everyone. And it also-- the one other piece that is very helpful to us is agencies can ask for a modification to recommendations, but there's nothing in the end of the process if they ask for that modification and we don't accept it. The report is finalized, but we have to track their acceptance or rejections by statute. And so it would be helpful-- we've set it, the language would set it up as a default, that if they requested modification, we don't accept it. We will consider the agency to have rejected that recommendation just for purposes of us tracking it going forward. So those are some of the other highlights, I think, hopefully that I've hit most of them. And we have a lot of mirror kind of changes in our act. So if we've forgotten something, I'm happy to talk to the committee at any later point too.

HUGHES: Very good. Any other questions? Thank you for coming in today.

JENNIFER CARTER: Thank you.

HUGHES: Next proponent. Welcome.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

DOUG KOEBERNICK: Thank you. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k. I am the Inspector General of Corrections. I want to thank Senator Hughes and the committee for holding this hearing, Senator Lathrop for introducing this bill. In 2015, Senator Mello introduced legislation to create the Office of Inspector General of Corrections, and that was a result of the work of the LR424 Committee, the Special Corrections Committee. And that committee recommended that the Legislature establish this office so that-- that the office could conduct audits, inspections, reviews and other activities as necessary to aid the Legislature in its oversight of the Nebraska correctional system. And the bill at that time, was kind of what Jennifer just said, was basically a mirrored image of the Child Welfare IG Act and wasn't exactly tailored to fit a correctional system. So after a few years, it became obvious there's things that just kind of needed to be clarified and changed. With that said, this bill, as the other Inspector General explained, clarifies language within both of our acts and allows to better serve the role that the Legislature envisioned with the creation of two offices. Without these changes, we will continue to do the work that we now do, but we seek these clarifications to reflect the legislative intent in our actual work. You have the section-by-section handout that Jennifer referenced, and that explains the changes to both of our acts. Mine are, I think Section 23 to 41, something like that. And I want to just briefly touch on a few of the changes in there. First, throughout the bill, there are changes that reflect that the Legislature intended this office to provide oversight over the parole system. When the bill was passed in 2015, parole was actually under the Department of Corrections, but then was spun out in 2016 to be an independent agency. There were some changes made in the act then, but it wasn't fully completed really, to make it clear that that oversight continued, but that was the intent of the Legislature. And you can still read parts of the act that make it look like it is the intent. But there's things in this bill that in several of the sections that make sure that that is very clear and everything. So if the Legislature wants to keep that, then we would need to make these changes. The bill also does the following. It clarifies that employee does not have to report to their employee-- employer that they have filed a complaint with-- with the office, as that may deter the reporting of misconduct, etcetera. It provides that the failure to cooperate with the OIG, not just with an investigation, may result in the public discourse-- disclosure of this failure to cooperate. It currently-- the law currently says that it may result in discipline or other sanctions to the department, but I don't -- we don't know what those would be. And so those really are not an option. It clarifies that the Department and Parole Supervision-- Supervision shall provide

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

direct computer access to both the Office of Public Counsel and the Office of the Inspector General of Corrections. Right now, there's some thought that that might just apply to the specific positions of public counsel, which would be Julie Rogers and the Inspector General, which is me. In that we would like to have that clarified. It also clarifies that the annual report submitted by the office is a report and not a summary. It's written up as a summary, and that's really not exactly what we do. It's an annual report that is put out every September 15th, and we would just like that language to reflect that. And then finally, it adds additional protection for employees by clarifying that the protection against action being taken against them also includes providing information or testimony pursuant to actions initiated and undertaken by the-- by the OIG and not just the result of an investigation. It is likely that if the Office is reviewing a case to determine if an investigation is to be undertaken that it may result in various information being released, which then could impact that employee. So we just want to make that clear as well. There are several other clarifications in that bill, and I'd be happy to answer any questions you may have about those.

HUGHES: Thank you, Mr. Koebernick. Are there any questions from the committee members? Seeing none, thank you for coming in today. Next proponent to LB897. Do we have any opponents to LB897? Welcome.

COREY STEEL: Thank you. Good afternoon, Chairperson Hughes, and members of the Executive Board. My name is Corey Steel, C-o-r-e-y S-t-e-e-l. I am the State Court Administrator for the Administrative Office of the Courts and Probation and work for the third branch of government, the judicial branch. I'm here today to provide testimony in opposition to LB897. In 2002, the Legislature created the OIG with-- in the Ombudsman's office to allow for inquiry and review of actions of individuals and administrative agencies responsible for care and protection of children in Nebraska's child welfare system. In 2014, service dollars for juvenile probation were transferred over to the Nebraska Supreme Court's budget based on the legislative authority that was given. Then in 2015, the Legis-- Legislature also gave the authority to the OIG for oversight of juvenile probation, which is under the direction of the Nebraska Supreme Court. LB897 further expands the authority of the overreach of the Office of Inspector General of Nebraska Child Welfare. It is my opinion such oversight contradicts Nebraska State Constitution, Article II, Section I, more commonly known as the distribution of powers clause. I quote: The powers of the government of this state are divided into three distinct departments. The legislative, the executive and the judicial and no person or collection of persons being one of these departments shall

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

exercise any power properly belonging to the-- either of the others, except as expressly directed or permitted in this Constitution. Investigations that encroach on another branch of government's given authority is unconstitutional. Adjudication of juveniles is an express power reserved to the judicial branch. Legislation that allows the OIJ-- OIG to investigate and question judicial orders or judges orders pertaining to juvenile cases raises grave concerns and grave constitutional concerns. Allowing broad access to records that inform judicial decisions raises additional constitutional concerns. The independence of the judiciary is a fundamental element of our government. Judges must be free to adjudicate youth under their jurisdiction without the threat of an investigation by another branch of government. The oversight of the Legislature sought as a result of the child welfare crisis in 2011 was directed to those children whose legal custody is placed with the-- with the state of Nebraska, with child-- children family services or youth under super-- or youth with the Department of Health and Human Services. Youth under supervision by the Juvenile Service Division of Probation are not in the state's legal custody, but only under a court order for probation supervision. Nebraska Revised Statute 29-2249 specific-- specifically designates the Office of Probation as administration as part of the judicial branch of government under the Direct Supervisory Authority of the Nebraska Supreme Court. The newly introduced language in LB897 further extends the reach and exacerbates the separation of power conflict. Examples include expanding OIG authority to determine what can be investigated and who can be interviewed, adding additional reporting restrictions, deadlines. The OIG providing failure to cooperate documentation allowing the OIG fully-- full authority to determine if a recommendation is considered rejected and providing the OIG authority to refer matters determined to warrant criminal and disciplinary proceedings. As previously stated, since the Office of Probation Administration operates within the judicial branch of government under the direct supervision of the Nebraska Supreme Court, oversight by the OIG is strongly opposed. Requests an amendment, which I have handed out, to LB897 that any oversight of the juvenile probation by the OIG should be stricken entirely. Thank you for your time and I'm happy to answer any questions you may have.

HUGHES: Thank you, Mr. Steel. Are there questions? I have one. Back in the middle of page 2, and, you know, I'm not an attorney and not in the judicial branch, but your-- the second paragraph there, the second line says youth under supervision by the juvenile service the Division of Probation are not in the state's legal custody, but under the court controlled probation-- pro-- probation supervision. Tell me the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

difference between state's legal custody and court-ordered probation supervision. And dumb it down, if you would, please.

COREY STEEL: OK. So when a juvenile comes into juvenile court and they are placed with Department of Health and Human Services, they are committed to the state. They are a state ward. The state is acting as the parent. They have educational rights, they have medical rights. They can place those children. They have authority as the state's parent per se. They have custody of that juvenile or of that youth or of that child. When they come in on a law violation or a status offense and they are placed with probation, it is an order of the court to supervise that said child based on the conditions that the court determines. And so they are not in our custody. They're not in our care. We are there to supervise that order from the court. Parents still have educational rights, parents still have medical rights. Parents still have authority and supervision of their children. They're not in our care and custody, and that's the distinguishing factor between DHHS and probation. They're not in our care and under state custody.

HUGHES: OK. I think I understand that. Any other questions? Seeing none, thank you for coming in today.

COREY STEEL: Thank you.

HUGHES: Any additional opponents to LB897? Anyone wishing to testify in the neutral position? Senator Lathrop. We do have two letters, one proponent put position comments for the hearing record and one in the neutral category. Senator Lathrop.

LATHROP: Well, you can see I might have taken a bat to a beehive on this one. I appreciate-- I appreciate the court that the-- that the court is concerned that they are a separate branch of government and their belief that the legislative branch has no oversight function. We can-- we can do all the oversight we want, they would say, of the executive branch. So if this were housed in the executive branches, as I think it once was, no problem. When it goes to the judicial branch, the concern from the OIG's perspective is, what if you have a bunch of kids that are on probation and something systemic is a problem, as demonstrated by a pattern of-- and I'll just-- I'll make a hypothetical and not an assertion. Let's say that we had a bunch of these kids that were on probation and they-- they were-- they had a higher than normal level of suicides. Right? Who's-- who looks after that? Do we-- do we want our Inspector General to be looking at patterns that are going on in juvenile probation? Do we have the authority to? I think that's a-- I think that's a fair question

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

because the the court, and as Mr. Steel indicated, believes that we can't look into anything they do. And if-- if it wasn't clear to you, the last statement by Mr. Steel was, take all the oversight away from the Inspector General as it relates to juvenile probation because they come under the court's umbrella in our branch of government and you don't have any authority to go there. I'm not sure whether that's an accurate statement as a matter of constitutional principle and separation of powers, but if that is true, then we're missing an opportunity to find-- to investigate deaths, to investigate suicides, to investigate problems, to inform us so that we can make better policy because I do know this, that we can make some policy over probation. Right? We can still say if a juvenile is on probation, this and this should be true because the court can't legislate that, they can make up their own rules. So I do think that we have an issue unless somebody can resolve it. Nice thing about being the judicial branch, you get the last word on that, ultimately. If you-- if we pass this and somebody filed suit, but I do think it's an opportunity to try to find some middle ground if there is so that we can have information to inform our policy making process.

HUGHES: Very good. Are there questions for Senator Lathrop? Seeing none, thank you for coming in today. That will close our hearing on LB897 and we move to the next item on our agenda, LB1174. Senator Wayne. Welcome to the Executive Board.

WAYNE: Thank you, Chairman Hughes, and the Executive Committee. 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. We're still listed here because they could hire me as legal counsel so we could have multiple conflicts when we go to the Supreme Court, but anyway. (LAUGHTER)

HUGHES: Conflict and conflict.

WAYNE: So actually, I'm here today to talk about an interesting bill that was formulated about 14,000 feet in the air-- in the air, yeah on a mountain with Senator Hansen and I. We were talking about accountability and how when we come here, oftentimes there's a lot of committees have a lot of programs that have budget, some type of budget tied to it. And we never really get to question those programs because the only people they see is Appropriations. So they go to Appropriations, they ask for dollars and they either go up or down a little bit, but whether they're actually needed anymore is not there. We have the Performance Audit Committee, but we really don't have the Committee of Jurisdiction reviewing their programs. We might have an issue that comes in like Urban Affairs. We might have an issue that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

comes in DHHS, but overall they're funding and there's a lot of programs. There's programs as small as \$40,000, \$50,000 that we really don't know the purpose, but Appropriations gets briefs on it and not saying appropriators don't do their job, but oftentimes-- I've never seen a program in my last six years be eliminated. They usually somehow get funded or reduce funding. So the purpose of this bill, Senator Hansen and I, we had a fancy name, but I'll let Senator Hansen tell you about that, on the mountain. The purpose is really just to make the Committee of Jurisdiction where the expertise on the issues lie, come back in front of them and give a clear picture of their operations to justify why they exist. It'll give insight to legislatures to make sure that what they're doing makes sense and keeps moving forward. But in-- but also holds them accountable. It requires this report every five years. But in addition to the report, and it's not really laid out clearly, I think, in the bill, but I want to have a hearing on it. Now, I know for Government, that would be a long hearing so you might have to figure out how to do that. But at the end of the day, we as the committee should have them come in and truly justify their current budget, but not just their budget, that's Appropriations, their current existence of that program. And that's all that this bill would try to do. And with that, I'll answer any questions.

HUGHES: Thank you, Senator Wayne. Are there questions? Senator Hilgers.

HILGERS: Thank you, Mr. Chairman. Thank you, Senator Wayne. This reminds me of a bill, I think you and I dealt with when we served together on the Government Committee, with the boards and commissions. There had to be a report every year in Government. So when you-- I guess my question is a clarifying-- state entity. What do you envision are the-- is it the budget programs or is it actually specific state entities that, what would be the scope.

WAYNE: It would be every place that we put dollars, so if we put a-- the Arts Commission, think of some government, one on government, we put-- we give them state funds. Would they come to that committee and justify their existence. Right now, they don't. They just go back to Appropriations and say, we need more money. And they handed out the money but the core of the functionality of the Art Commission, maybe that needs to be changed. And maybe we don't know about it. Typically, as a body, we don't-- we're very reactionary. It's when we hear something, we go do something. This is a very proactionary report saying, tell me what you're doing, tell you how you testify, who you're serving, and they're the experts.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

HILGERS: Yeah, I would say when I-- when you-- I first heard about this bill, it reminds me of a referencing conversation that we have often, which is, we reference. We will often reference a bill that creates the program with the subject matter. The-- the committee and subject matter is jurisdiction, but if it changes the Appropriations, it almost always will go to Appropriations. It does seem wise to have a periodic review of with the subject matter committee, especially in the area of term limits, to look and see, should we still be doing this.

WAYNE: And that's part of the biggest concerns we have is term limits that we just don't know why some programs exist and only people who get to hear it is Appropriations.

HILGERS: Thank you, Senator Wayne.

HUGHES: OK. Additional questions. Senator Vargas.

VARGAS: As the sole Appropriations member here--

WAYNE: That's why I didn't-- (INAUDIBLE). (LAUGHTER)

VARGAS: For the record, and I'm speaking on-- John will probably weigh in here too. You know when-- and here-- here's my question, but here's my statement beforehand, which is when agencies, specifically state agencies come and testify, they make their case on sort of their continued existence, I would say. And you know, we evaluate and we probe and we ask about programs and services. But to your-- to your point, largely the intricacies of how it was created are not questions that we can get into. Right? So, and for big state agencies and big programs in the state agencies, you know, we don't know all the history behind that. But not every single state agency is-- so this would require-- would this require every state entity and any state code and noncode agency and any sub-programs to require a report, or are we just talking like large state agencies?

WAYNE: I think we're amenable to what makes-- what makes sense. I think the biggest thing is not just a report, but the committee having a hearing on that report. And so, I'm on Natural Resources and I'm learning all this new stuff. But you know why we have some different funds and maybe we can create some programs and make them work collaboratively, I just don't think the Appropriation process is where that decision is going to be made. I'm thinking now of DHHS, of maybe combining programs or moving a program somewhere else. That's going to be handled by the committee that-- that is in charge of that committee. But we won't know about that until it's too late. I mean,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

Appropriations is going to come and say, maybe we should move-- what happened last time, Lathrop, Senator Lathrop, by moving juveniles from underneath the Supreme Court to DHHS or vice versa. That was within the committee. But that was very reactionary because of issues that happened. But maybe we can get in front of those issues by having the committee look at those individual programs.

VARGAS: Yeah. And so we do do some of that. And that's the good part. We have conversations about where there is redundancies or whether or not-- and largely this is driven. We're seeing real inefficiencies or a lack of accountability. You know, we just-- we'll talk about doing business that needs still exist. And typically we'll find that some of these will be bills that are introduced to then consolidate or review it. But to your point, they're not getting into the nitty-gritty. So it would be helpful to sort of be able to look at how detailed you want to go because it's a lot of the sub-programs when they were created that were originally legislation that were created by a senator at one point 20 years ago. And then we don't know how it was created or why we continue to do it in that way. But we have-- we have historically actually gotten rid of some sub-programs because we didn't know enough about what they were doing. We didn't have enough accountability, didn't have reporting mechanisms. And then when they came and asked us for more funding, we said, we're not going to do it. But it's helpful to hear-- be helpful to be able to get a little bit more fine-tuned on how deep you want to go with that. So that would be helpful.

WAYNE: I will let Senator Hansen answer those questions. (LAUGHTER)

HUGHES: Any additional questions for Senator Wayne from the committee members? Seeing none, thank you. You'll stay for closing?

WAYNE: Yes.

HUGHES: Perfect. Next proponent to LB1174? Welcome.

B. HANSEN: Thank you, Chairman Hughes, and the Executive Committee. I know my colleague, Senator Wayne, eloquently explained a lot of the--

HUGHES: Senator Hansen, would you spell your name?

B. HANSEN: Oh, yes, sorry. I know, right? Ben Hansen, B-e-n H-a-n-s-e-n. And I think-- actually, I think Speaker Hilgers and Senator Vargas both almost kind of explained the bill themselves just by talking through it and the reasoning behind the bill, right? Some of the discussion we were having is in kind of a learning curve from

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

being on the-- we being in the Legislature as we create these entities and sometimes they just seem to continue into "perpetude," I guess, or perpetuate. And so we-- what kind of accountability is there to make sure that these entities that we do create, especially with term limits when we're gone after four or eight years, do they continue, are they still reliable? Do they still cost the taxpayer money? Are they as efficient as they should be? And so we had many acronyms for the name of this bill, and I think I just said the Taxpayer Accountability Act, you know. I don't know of a whole lot of other states do stuff like this. But for instance, we-- we were just discussing this in HHS. We have the the Barber Board. We have the Undertaker Board. What do they do? How much money do they spend? Where do they travel? Are they even needed anymore? And so I know they might go in front of Appropriations, saying, look, this is the money that we need. This is the reason why. But sometimes they actually go in front of the HHS Board now and we can ask just like Senator Vargas was saying, we ask some of those particular questions that maybe, you know, might either, you know, you know, explain the-- the-- the purpose of why they're there or maybe not. And I think that kind of gives us some greater insight, especially as state legislators, just to determine whether these small entities over time start to cost the taxpayer a lot of money. And so sometimes that's what happens. I don't know if that's what happens, but how do we know if they do have it or not? So we have the Elevator Board in Business and Labor. I mean, you know, they go under then some jurisdiction of the fire marshal and then like, are they even needed anymore? What do they do? Do they need more money or do they need more help or do they need less help? And so I'm hoping maybe some of those particulars can be worked out with these entities going in front of the appropriate board, and then we can actually flesh out some of those ideas and whether they're relevant or they're not because I don't know how else we know. So, and with that, I'll take any questions.

HUGHES: Thank you, Senator Hansen. Questions? Senator Vargas.

VARGAS: Thank you for being here. It would be helpful to sort of weigh in on how detailed you want to go because there are a lot of sub-programs. And the unintended consequence which I know you don't want to do is, we could be having hearings like an ungodly amount of hearings in terms of-- for all the different sub-programs that would create a lot more work for agencies. And yeah, I will say that and-- and there is-- there are examples of entities, code agencies that do provide these types of reports. For example, for TNT and Appropriations, we have larger reports in the larger programs. We do some joint committees and studies and that-- so that look,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

Appropriations isn't one evaluating whether or not, let's say the-- you know, the-- the Bridge Program is doing what it's supposed to and then we get the quote-unquote grill them on whether or not it is or is not going right. It happens once a year. So there are examples of these sort of joint committees. You do that with Revenue too when we're sort of grilling the agency on those things. It would be helpful, I mean, if you want to expand it to then to look at the big-- like DHHS, we really don't do that or that much with DHHS, which is probably one of the biggest code agencies. I'd be curious to see how they're spending, but it would be helpful if we-- you know, I'd be in support of trying to expand some of these mutual ones that we can do where we have the largest spending and the largest amount of programs. You know, I'd be open to help-- (INAUDIBLE)

B. HANSEN: You're right, DHHS is probably one of the-- one of the largest, I mean, you know, committees with the most amount of entities, big or small that cost the taxpayer the most, right? And there's sometimes even being on HHS the last four years seems like there's some committees I've-- entities I've never even heard of yet. And what do they do and how many employees do they have? Are they doing what they're supposed to do? Are they doing what they're created for? I mean, I don't know, and sometimes it's nice to have some data, you know, some objective viewings about whether we're spending taxpayer money appropriately. And I think we don't have that. Sometimes it's hard to justify, you know, why we're spending all their money. And so I'm hoping maybe that's what-- I know the intricacies might need to be worked out a lot more with this bill, but I think it's the idea that hopefully we can kind of start and get the conversation started and maybe kind of work out some of these particulars about what kind of reports we want and how in depth they should go. So we just thought we'd at least kind of get the conversation started.

HUGHES: Very good. Thank you, Senator Vargas. Senator Slama.

SLAMA: Thank you, Mr. Chairman, and thank you, Senator Hansen, for testifying today. You did a great job of spelling your name. But just to build off of Senator Vargas' point, and you can respond to this if you'd like, I think that perhaps unintended consequence that may happen of having an ungodly amount of work to comb through all of these different boards and commissions-- and we'll see if my voice holds out for the end of this point-- really drives home the need for something like this. Because if we can't get a grasp on just how many of these boards and commissions we have and what they're doing, who is? So I don't know if you have any response to that.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

B. HANSEN: Yeah, one of the things we also discussed and everything, everybody at one time doing all this kind of stuff is like every year, have a certain like, you know, 30 percent have to be kind of-- every year they have to kind of bring a certain entity. So not all at one time, right? And I think as this goes on, each entity we then create every year, then we'll have that five-year time limit. So it's not all going to happen at one time. And you make a good point. And it's-- we're worried about the amount that we would have at one time, and I know the Fiscal note even mentioned that a little bit. That might create a little bit of strain on some of these committees. We have a whole bunch of things coming-- a whole bunch of entities coming at one time. That already tells us maybe that we have a lot of entities that we might need to kind of work through. So it's a good point.

HUGHES: Very good. Any further questions from the committee? Seeing none, thank you for coming in today.

B. HANSEN: Thank you for allowing me to testify. (LAUGHTER)

HUGHES: Any additional proponents to LB1174? Are there any opponents to LB1174? Anyone wishing to testify in the neutral capacity? Welcome.

KEN ALLEN: Thank you, Senator Hughes, members of the Exec Board. My name is Ken Allen. That's K-e-n A-l-l-e-n. I am the director of the Board of Barber Examiners, and I did get to meet with Mr. Hansen the other day. I just-- I have wave emotions on this. I understand where the bill is going. I totally do. I talked with Senator Wayne in the hall the other day. I get what he's doing. I still see a little bit of oversight, if you will. We do turn in-- we see Mr. Vargas and Mr. Stinner every year. They ask extensive questions on how the program goes. We turn in reports to the Fiscal Office and to the Attorney General annually, stating what our business is, how much we charge for each license. Everything is looked through. We don't always get what we ask for from Appropriations, and I totally get that. But we-- it's always good to have somebody looking over our shoulders. Now, if this committee wants to include noncode agencies, that's up to them. I don't know. We are a self-funded agency. OK? So our funny-- our money does-- are funny money-- our money does not come from taxpayer dollars directly. It's indirectly through fees of licenses. So being self-funded, I don't know if this is the exact fit for what he's trying to do. And once again, I appreciate Senator Wayne. I like his bill. I like the direction. I think there's some more ironing out of details that should be done. Other than that, if you have any questions for me, I do stand in the neutral position on this bill.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2022

HUGHES: Thank you, Mr. Allen. Are there questions from the committee members? Seeing none, thank you for coming in today. Any additional neutral testimony on LB1174? Seeing none, Senator Wayne, you're welcome to close. Senator Wayne waives closing. That will close our hearing on LB-- oh, we did have one position, a proponent letter on LB1174, comments-- position comments for the hearing record. That will close our hearing on LB1174. With that we are going to go into Exec.