

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 14, 2024
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AGUILAR: Good afternoon. Welcome to the Executive Board. My name is Senator Ray Aguilar. I represent the 35th Legislative District, and I serve as Chair of the Exec Board. We'll start off having members of the committee and committee staff to self-introductions, starting on my far right with Senator Clements.

CLEMENTS: Rob Clements, District 2.

BALLARD: Beau Ballard, District 21.

SLAMA: Julie Slama, District 1.

LOWE: John Lowe, District 37.

TREVOR FITZGERALD: Trevor Fitzgerald, committee legal counsel.

ARCH: John Arch, District 14.

JACOBSON: Mike Jacobson, District 42.

AGUILAR: Also assisting the committee is our committee clerk, Sally Schultz, and our committee pages, Julie Skavdahl from Harrison, who is a history major at UNL; and Molly Penas from Fort Calhoun, who is a political science major at UNL. This afternoon we'll be hearing 2 bills. Thank you. And we will be taking them in the order listed outside the room. On the tables near the entrance, you will find green testifier sheets. If you are planning to testify today, please fill out-- fill one out and hand it to Sally when you come up. This will help us keep an accurate record of the hearing. Please note that if you wish to have your position listed on the committee statement for a particular bill, you must testify in that position during the bill's hearing. If you do not wish to testify, would like to record your position on a bill, please fill out the yellow sheet near the entrance. Also, I would note that the Legislature's policy that all letters for the record must be received via the online comments portal by the committee by 8 a.m. the day of the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We would ask that if you do, do have any handouts that you please bring 12 copies, give them to the page. If you need additional copies, the page can help you make them. Testimony for each bill will begin with the introducer's opening statement. After the opening statement, we will hear from supporters of the bill, then from those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will be given the opportunity to make closing

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statements if they wish to do so. We ask that you begin your testimony by giving us your first and last name. Please also spell them for the record. Because the Executive Board meets over the noonhour and members have areas beginning at 1:30, we'll be using a 3-minute light system today. When you begin your testimony, the light on the table will turn green. The yellow light is your 1-minute warning. And when the red light comes on, we will ask you to wrap up with final thoughts. I would remind everyone, including senators, to please turn off your cellphone or put them on vibrate. With that, we will begin the hearing on LB298 [SIC]. Welcome, Senator Arch.

ARCH: Good afternoon, Senator Aguilar, members of the Executive Board. For the record, my name is John Arch, J-o-h-n A-r-c-h, and I represent the 14th Legislative District in Sarpy County. And I'm here today to introduce LR298. The Offices of Inspector General were originally created in statute, pursuant to various constitutional provisions granting it that authority to carry out the Legislature's obligation to exercise oversight over 2 areas that provide services that carry a high level of risk for the population served, child welfare and Corrections. That responsibility and intent did not change with the Opinion issued by the Attorney General on August 16, 2023. Over the past several months, the focus of the Executive Committee has been to address the constitutional concerns raised by the Attorney General's Opinion in a way that fulfills the Legislature's responsibility to exercise oversight. Soon after the Opinion was issued, the Executive Committee engaged outside counsel to assist in the process. As part of the process, the Speaker of the Legislature, the Chairman of the Executive Board, counsel to the Executive Board, and outside counsel have had discussions with the office of the Attorney General, members of the executive branch and the Public Counsel, the Inspectors General, and several members of the Legislature. The result of those discussions and additional deliberations within the Executive Board have led to a proposed path forward, with 3 separate but intertwined recommendations for consideration by the Legislature. Recommendation number one: the formation of a special committee. While the initial focus of the discussions was on the role of the Inspectors General, it became obvious that the issue of oversight by the Legislature was more complex and multifaceted. The legislative oversight function involves various entities and individuals, including the Public Counsel; Inspectors General of Corrections and Child Welfare; Legislative Performance Audit Office; 2 standing committees, Judiciary and Health and Human Services, all of which are not directly related or organizationally coordinated. The statutory authority is described in

various sections of law, with some overlap of language and scope of duties. Our current organizational structure has been the result of many years of responding to various calls for increased oversight, most often precipitated by critical incidences. Over the years, this effort to provide greater and more effective oversight has now become an opportunity to step back and have a broader assessment of the oversight function of the Legislature and how to better coordinate that function. The primary recommendation is contained in LR298: the formation of a special committee to study legislative oversight during the 2024 interim. The formation of a special committee would establish a process to consider the broader issues of legislative oversight, provide for additional input from multiple sources and stakeholders, and allow for thoughtful deliberation. The concern is that if we simply address the immediate issue of the Inspectors General, we will need to return and address the additional, broader issues of other legislative oversight functions again in the near term. It is also an opportunity that will be lost to better coordinate oversight and have a greater impact. A special legislative committee will provide the entire Legislature with an opportunity to better understand and coordinate our role of legislative oversight, with the goal of achieving a greater impact for the citizens of Nebraska. Multiple issues have been raised during our consideration of changes to the offices of Inspector General that need to be addressed. Simply rushing to fix the Inspector General issues I believe is shortsighted and could lead to serious unintended consequences. It is simply not possible to do this work during a short session while also tackling the larger, more immediate issues currently before the Legislature. The interim is better suited to address these larger and more complex issues. LR298, a legislative resolution creating a special committee to study legislative oversight, is before you today for your consideration. But before I discuss the details of LR298, I would also like to talk about the 2 other recommendations that are part of the proposed path to resolve the issues raised in the AG's August 16 Opinion. Recommendation number 2: amend certain Inspector General statutes. A second-- a second recommendation is to consider amending certain statutes to address some of the specific constitutional concerns raised by the Attorney General's Opinion of August 16, 2023. These changes are included in LB1321 and AM2360, which will be presented in the next hearing today. Further study will be required as part of the special committee's work before any additional, more comprehensive statutory changes will be introduced. The proposed resolution specifically requires a special committee to also include recommendations for additional draft legislation. Recommendation

number 3: establish access to information required for the performance of statutory duties of the Office of Public Counsel and Inspectors General. The final recommendation is to jointly develop with the executive branch a document that clearly delineates the required information and the process for the Legislature's Office of Public Counsel and Inspectors General to gain access to the necessary information to fulfill their current statutory obligations. This document memorializes the information and the process to ensure the ongoing functioning of both offices, while further consideration of legislative oversight proceeds under LB, excuse me, LR298. A Memorandum of Understanding has now been completed and signed by the executive branch, Senator Aguilar and myself on behalf of the Legislature, a copy of which has been distributed to the members of the Executive Board. This Memorandum of Understanding and Exhibit A will now allow the work of the Office of Public Counsel and the Office of Inspectors General to proceed while the interim study is conducted and further legislation is developed. We're appreciative of the administration in cooperating to ensure that we engage with each other in, quote, the spirit of dynamic compromise and in the, quote, tradition of negotiation urged by the AG in his Opinion. I would now like to return to LR298, the specific topic of this hearing, and discuss the substantive details of the interim study. A special committee will be appointed by the Executive Board with membership including the Speaker of the Legislature, the Chairperson of the Executive Board of the Legislative Council, the Chairpersons of Health and Human Services and the Judiciary Committees, 2 at-large members of the Executive Board, and 3 at-large members of the Legislature. In summary, the special committee will conduct a full review of the oversight function of the Legislature and as part of that process, may consider the current structure and organization of oversight functions of the Legislature, oversight functions of other state legislatures, current oversight conducted by any statutorily created board or commission, the interface with the executive and judicial branches, and any remaining issues raised related to the Opinion of the Attorney General issued on August 16, 2023. LR298 provides the Legislature with an opportunity to consider the best organizational structure and process to fulfill its complete oversight responsibilities. Rather than operating a structure that has been built over the years in reaction to events, the Legislature can now enter a deliberative process to structure a proactive system to provide the information needed for the body to legislate more effectively, its ultimate duty. With that, I will conclude my prepared testimony and attempt to respond to your quest-- questions. I will tell you that following my

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introduction there will be a representative from the executive branch and the Public Counsel, Julie Rogers, who will testify. But I am open to any questions you may have at this point.

AGUILAR: Questions for Speaker Arch? Senator Bostar.

BOSTAR: Thank you, Chairman Arch. Thank you, Speaker. Sorry, Chairman Aguilar, Speaker Arch. I guess my first question is why should we have confidence that legislation will still be necessary? Or in what way do you imagine legislation being necessary if we have an MOU operation?

ARCH: I think that-- I think that the Attorney General Opinion that was issued in August identified some things that we'll have to consider. And, and do I know for sure exactly what statutory changes would be-- you're talking about at the end of the LR at any point?

BOSTAR: Or LB1321.

ARCH: I think that's-- I think that's a matter for discussion. But I-- but I do believe that, that certainly by the end of the LR there will be some statutory recommendations.

BOSTAR: My second question is, so from your opening testimony, as well as the second whereas clause, which talks about from time to time, on occasion in response to a specific crisis within a government function and otherwise inform and assist with its work, Legislature establish various offices to study, inspect, examine or otherwise review operations of actions of the executive and judicial branches. I see the signatures here from the legislative branch as well as executive branch, but I don't see anything from the judicial branch, even though you're specifically citing in your testimony and we have written in the MOU that we're including oversight of judicial branch.

ARCH: So from the-- from-- my understanding is from the beginning of the-- of the office of-- Office of Inspector General for Corrections, that-- or Child Welfare that, that while in statute, the judicial branch has been included, in practice that has not been the practice. So, yes, we do want-- we do want interaction, and yes, we do want discussion with the judicial branch. That will be part of the LR. At the present time, we, we are in essence, putting into the Memorandum of Understanding our present practice, which involves the executive branch.

BOSTAR: Was the judicial branch asked to sign this?

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ARCH: The judi-- no, the judicial branch was not asked to sign this.
We, we--

BOSTAR: Why not?

ARCH: Well, first of all, we wanted to make sure that the present practice of the-- of the attorney-- of the Office of Inspector General was, was allowed to continue. And then we'll tackle the bigger issue later.

BOSTAR: Thank you.

AGUILAR: Senator Clements.

CLEMENTS: Thank you, Mr. Chairman. Thank you, Speaker Arch. On Exhibit A, item B states that DHHS will provide information to the Ombudsman/OIG. I don't see a similar paragraph for Corrections that says Corrections will provide information. It kind of gets referred to in item E(2) The Office will set up a shared access for NCDS and E(3) NDCS should provide requested information. There just isn't a-- I don't see a paragraph like item-- paragraph B.

ARCH: If, if I-- if you could hold that question for the, the OIG or the Office of Public Counsel behind or perhaps even the executive branch, I think they can address that.

CLEMENTS: But you would say that has been considered.

ARCH: Oh, yes.

CLEMENTS: Thank you.

ARCH: Yes.

AGUILAR: Senator Lowe.

LOWE: Thank you, Chairman. Thank you, Speaker. LR298 is creating a legislative oversight review special committee. Why don't we handle it in this committee?

ARCH: So, honestly, the thinking on that is that we have to somehow engage the, the Chairs of both Judiciary and HHS into, into this process. We want-- we want that broader involvement of the Legislature as well. I will tell you that as I-- as I considered this, well, first of all, there's 2 members of the Executive Board at large, plus

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Senator Aguilar, plus myself on this special committee. So there will be 4 members. But my intention should this go forward is that we would use the Executive Board and the LR298 in a-- in a similar fashion to what I did with, with the, the special committee on, on the Saint Francis contract. When we put LR29 together, we had the LR29 Special Committee plus the HHS Committee. We met together and, and so that we, we were all on board; and that would be my intention with this. While not-- while having a special committee, I, I will tell you that when I-- when I envision the work of this committee, it will be a little bit different. It's, it's-- it is not so much public hearings and all of that as it is-- as it is really work groups that we could form to work on specific topics of, of the issue.

LOWE: Will this committee need staff?

ARCH: Our-- the, the Executive Committee--

LOWE: Will provide the staff.

ARCH: I would say yes. And I'm sure the staff of the Speaker's Office would also be involved. And it also authorizes outside counsel to be-- to be contracted.

LOWE: Thank you

AGUILAR: Further questions? Senator Vargas.

VARGAS: Thank you very much, Chairman and Speaker. It's a follow-up. I have a question about why we wouldn't include the judicial branch since we named them in the MOU language, and maybe that's something that we should do, get to Senator Bostar's point. But I don't know if you want to answer that question, but that was the first. And the second question was around the MOU language. I'm used to in Executive Board we often vote for MOUs in committee. And I know that this right now, as stated, includes the chairman. And I wasn't sure that whether or not we have to actually make a vote in Executive Board to enter into an MOU to actually make this or whether or not the Chairman can just do it on his own. So I just wanted to see if you had any reaction to that or.

ARCH: That was a question I discussed with the legal counsel for the Executive Board. And my understanding is that the Chairman of the-- of the Executive Board does have the authority to enter into that type of an agreement.

VARGAS: Do you know what the differentiation is for when we do or do not take a vote on the Executive Board on MOUs like this? Because we've taken votes for whether or not we enter an MOU with NCSL or approve the funding for such things.

TREVOR FITZGERALD: If I could, Senator Vargas, generally, when there's a requirement for the full board to approve entering into a contract or similar action, it tends to be based on either statutory language or language in the resolution that created the special committee that's asking for the approval of the contract.

VARGAS: OK.

AGUILAR: Further questions? Seeing none, [INAUDIBLE] LB1321. Or are we--

DAVE LOPEZ: Good afternoon, Chairman Aguilar and members of the Executive Board. My name is Dave Lopez, D-a-v-e L-o-p-e-z. I have the privilege of serving as chief of staff to Governor Jim Pillen. I testify today on behalf of the Governor's Office in support of LR298. We agree with Speaker Arch that this LR creates a timely opportunity for the Legislature to conduct a comprehensive study of the various offices it has created to examine the performance of executive and judicial branch programs. And we look forward to engaging fully in that process during the interim period. We hope that the product of this effort is a new paradigm of legislative study functions that is consistent with constitutional separation of powers, that is focused on identifying systemic government performance issues toward the aim of informing you and your colleagues on necessary legislative improvements, and it conducts its work collaboratively and constructively across the branches of government. Although we may necessarily maintain a respectful disagreement as to the precise scope of any one branch of government's power of oversight over another, we fundamentally agree with the practical purpose of this LR, and we look forward to being a good faith participant in this process. Critically, LR298 will come into fruition in the context of the Memorandum of Understanding and Interim Information Sharing Agreement that the Speaker just summarized. It was signed this morning by the Governor, Speaker, and Chairman Aguilar. That agreement is the product of tough but principled negotiations between the Speaker and his team and our office. It is necessary because there is joint recognition that although the constitutionality of the Ombudsman and IG laws currently on the books were called into question by the Attorney General's Opinion of last year, it is in all of our interest to take the time

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needed to do a comprehensive review and hopefully overhaul, in our view, of those statutes and to do it right. To facilitate that work, we needed to strike a deal that would get through a constitutional limbo and that would provide legislative access to records, personnel and facilities at a level less than the problematic terms in current law, but more than the total shut out that some feared. I believe this MOU strikes that balance, and I'm grateful to the Speaker and his counsel and team for working with us to achieve it. Of course, its durability will ultimately be measured by how well the parties honor its terms. I can reaffirm, what I expect this committee already knows, just as we expect that our legislative partners will ensure their staff abide by the MOU's terms, the Governor has likewise committed to this agreement. And we will instruct our code agencies to honor it. Senator Clements, I'd certainly be happy to questions-- to answer the question you had about NDCS. But otherwise, I appreciate the committee's time and happy to answer any other questions.

AGUILAR: Senator Clements.

CLEMENTS: Thank you, Mr. Chairman. Thank you, Mr. Lopez. Would you comment on why there is a specific DHHS provision to provide information but not NDCS?

DAVE LOPEZ: Yes, Senator. So if you look on the second line, NDCS's is actually mentioned.

CLEMENTS: Oh.

DAVE LOPEZ: It just isn't split into a different paragraph. So we thought of both.

CLEMENTS: Thank you.

DAVE LOPEZ: Yep.

AGUILAR: Further questions for Mr. Lopez? Seeing none, thank you.

DAVE LOPEZ: Thank you.

AGUILAR: Are there any other proponents? Welcome.

JULIE ROGERS: Thank you. Afternoon, Chairman Aguilar and members of the Executive Board. My name is Julie Rogers, J-u-l-i-e R-o-g-e-r-s, and I serve as your Public Counsel. The Office of Public Counsel, more commonly referred to as the Ombudsman's Office, is a division of the

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Legislature and includes the Offices of Inspectors General. Our charge is to investigate complaints about state government and work toward resolution of issues through verification of facts, understanding policies, and investigating the circumstances around problems with state government, ultimately making recommendations for improvement. Because the office is independent of the agencies that it investigates, it is impartial in issues between administrative agencies and citizens and promotes reasonable and informal resolution of citizens' rights. In order for the Office of Public Counsel, including the Offices of Inspector General, to meet its statutory obligations and fully serve the Legislature in a timely and efficient manner, you need access to quality and confidential information from 4 general agency sources: people, records, facilities and critical incidents. We believe that the Memorandum of Understanding and the attached Information Sharing Agreement gives us the requisite access to quality and confidential information needed to do our work and to meet our statutory obligations. We are excited to get to work with regard to the array of serious complaints that we receive that we are obligated to not only inquire about, but to verify through study, confirmation of facts and talking with those who know issues best, ultimately making recommendations for any improvements needed. We understand that this is a temporary situation and robust work will continue with the special committee as outlined in LR298, that will provide a permanent solution to ensure this work continues. Government accountability is part of the backbone of democracy, and we remain dedicated to that mission. The MOU and Information Sharing Agreement will help us get there. This is a great opportunity to look at how legislative oversight can be strengthened in our state. We stand ready to help the committee as much as, as we possibly can, with our knowledge and expertise in the field of government accountability and its standards of principles for meaningful and true independent oversight. Thank you. I'm happy to answer questions.

AGUILAR: Questions? Seeing none, thank you. I'm sorry. Senator Bostar.

BOSTAR: Thank you, Chair Aguilar. Thank you, ma'am. I guess I'm trying to understand some of the function of the MOU. From what I understood from Speaker Arch when he opened and the questions that I asked, the point is to take the existing law that we had and put it into an MOU. But we have our laws. So here's my dilemma. We have the laws already in statute. And if the MOU serves to just acknowledge what's already existing in statute, I don't understand the purpose of the MOU when we have statutes. If the MOU is to create a separate agreement from what is in statute, then I don't understand why all of the parties cited in

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the MOU aren't signatories to the MOU. And I'm-- do you have thoughts on this?

JULIE ROGERS: Well, we have a mandate in statute that we are obligated to work towards, and we have not been able to do that because we do not have access to information. So I can only speak to what has been happening with our office and what we hope to do with an agreement. We have not been able to do our work with regard to DHHS and the Department of Corrections. So it is my understanding that with the Memorandum of Understanding, information will-- that we need to do our work, we will have access to that. So I'm not sure I'm the person to speak to things outside of what our statute. We have been trying to comply with our statute. We have been taking complaints. We've been trying to investigate complaints and we just-- we're stuck.

BOSTAR: Thank you.

AGUILAR: Further questions? Seeing none, thank you.

JULIE ROGERS: Thank you.

AGUILAR: Any other proponents? Seeing none, are there any opponents? Neutral testimony.

JOSEPHINE LITWINOWICZ: First of all, before we get going, I'd like-- be nice to have a microphone that I wouldn't have to lean over. I mean, things that we can do to [INAUDIBLE] We'll see how long it gets, because I don't know-- I can't figure out any other way to do it. That's all. That's why. Anyway, my name is Josephine Litwinowicz, J-o-s-e-p-h-i-n-e L-i-t-w-i-n-o-w-i-c-z. In the 30 seconds left now, I'm going to say-- I don't even know why we're talking about this. Inspector General, you know, if you really wanted to do it without the appearance of [INAUDIBLE] you could just-- half, more than half then inspector generals in the federal system are in bed with the organization. Why do you do it that way? You know, instead of just do it that way. Then you don't have to, because this appears bad. Because in the Office of Inspector General Act 1978 was created for the reasons. And I don't know why-- how many years they've been there, like 40 or something. And, you know, as far as the Governor going and, you know, wants to take it, you know, this is like, not fascism, but it's like authoritarianism. And it's frustrating because-- anyway, I actually went to talk to the Governor about something. And, he gave me 5 minutes and it was interesting. I'm getting off. OK, I'm going to get back on the rail. You know, I just-- I don't even-- I don't even

get. Why are we talking about this? There is a need for Inspector General, and it's not over-- overreach. Nobody complained about it, the significance [INAUDIBLE] that I know of. So that's a lot of years. And then we're shifting to a-- to, to a government that's looking more like, you know, a dictatorship. And, you know, when I think about [INAUDIBLE] digging in the dirt in football into a major program by a couple of All-Americans. You know, I said this story, you know, and the guy went up against-- on the second half of practice, he was a notable player for Notre Dame for the back to back number 1, number 2 seasons. And so I said, you know who's on the selection committee for college playoffs. So, you know. I mentioned that just to-- don't judge a book by its cover. I could build a habitat house. I can do renovation on old [INAUDIBLE] homes. And right here I got-- I got an assistant, I mean a graduate, you know, in engineering you get paid. So I went and saw the professor and I qualified to be accepted as his grad student. And that's, hadn't been in my field in 13 years. That's I got in because of the recommendation. So I just, you know, I get so many-- I get so much gestural violence.

AGUILAR: We need your final thought now.

JOSEPHINE LITWINOWICZ: Yeah. Let's just keep on [INAUDIBLE] you know. Get going and get better.

AGUILAR: Are there any questions? Seeing none, thank you. Any other opponents? Neutral testimony. Seeing none, for the record LR298 online position comments there was 1 proponent, 0 opponents, 0 neutral, and 0 ADA. Speaker Arch, LB1321.

ARCH: Thank you, Senator Aguilar. I want to talk just for a second in closing about some of the issues that I think we'll be tackling with this special committee. When we started-- when we started discussing statutory changes in particular that related to some of the concerns raised by the-- by the AG's Opinion, questions such as reporting relationships was, was one of those questions. How exactly does the Office of Inspector General, how do they relate to the standing committees, the chairs, subpoenas aside for a second, the chairs themselves? How, how should they relate to the committee chairs while maintaining independence? And, and so if not the Office of Public Counsel, then where should the IGs be, be, be housed physically as well as reporting relationship? The more we went down that road, we started-- we, we pulled up the statutes regarding Performance Audit, the Performance Audit Office. You will find remarkable similarities in the Performance Audit statutes as you find in the IG statutes. So then

what role exactly does Performance Audit play compared to the IG? See, I think when we get into-- when we get into LR298 into the special committee, I think we're going to see that there are two essential functions that can be provided by the Legislature. One is monitoring and one is auditing. And right now I think that those are kind of mixed, depending upon whether you're talking about the Performance Audit Office or you're talking about the IG Office, what-- the clarity that could come from defining that scope and knowing exactly what role each office and, and should that be-- should that be a division of the Legislature I think is going to be one of the questions. So there are-- and this is why I say when we-- as we-- as we continue to pursue that, what we saw was multifaceted, complex and an opportunity, an opportunity to step back and say if you just wipe the slate clean here and you said, what should be that oversight function of the Legislature, how should that function? What are those things you should be monitoring? When I was Chair of HHS and Saint Francis was having its difficulties, the CEO, Dannette Smith at that time, created spreadsheets and there were key indicators. And we said, well, we know that there are certain-- that there are certain indicators that we would be watching. And if those trends are going up, injuries, deaths, whatever the key incidences might be, if those trends are going up, we need to understand as a Legislature is there-- is there something that we should be resourcing? Is there something that-- is there-- is there-- is there something that we should be doing in our legislation to, to address some of those issues? Those are system issues. And so again, the opportunity to just kind of take a step back, take a look at what are the roles of the IG? What are the roles of Performance Audit? How should we-- how should we organize those within the, the organizational structure of the Legislature itself? And, and I think in the end we will be able to identify a monitoring function and an auditing function, and we will be-- will be able to clarify those much better at the end of this-- at the end of this study. So with that, I will-- I will stop and attempt to answer any questions you might have here at the end.

AGUILAR: Senator Jacobson.

JACOBSON: Thank you, Chairman Aguilar. Speaker Arch, I just have one question. I know we've talked a little bit about Performance Audit, and I know this specifically speaks really to the other areas, Ombudsman in particular. How do we proceed with Performance Audit in the interim? Business as usual? How do you see that working?

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ARCH: Performance Audit as-- is functioning as, as, as they have been. So I don't-- I don't see anything immediate on Performance Audit.

JACOBSON: Thank you.

AGUILAR: Senator Clements.

CLEMENTS: Thank you, Mr. Chairman. Thank you, Speaker Arch. Item C talks about the Ombudsman will ensure confidentiality and having confidentiality agreement. Item (4) of that on page 2 at the top: Imposing discipline if an employee breaches confidentiality. I'd like to see strict discipline if that happens. I had a comment from a person who thinks there have been leaks at times. And do you have-- do you have an idea of what discipline could be?

ARCH: Well, I mean, I think that if there's a violation of the agreement that the employee has made to that and that can be-- and that can be identified, then I think it's up to termination.

CLEMENTS: Thank you.

ARCH: Because, because the employee does, does make that commitment to confidentiality with this.

CLEMENTS: That agreement would include termination as a possibility.

ARCH: Absolutely.

CLEMENTS: OK. Thank you.

AGUILAR: Further questions? Seeing none, thank you.

ARCH: Thank you.

AGUILAR: That closes the hearing on LR298. Proceed to open on LB1321.

ARCH: Good afternoon, Senator Aguilar, members of the Executive Board. For the record, my name is John Arch, J-o-h-n A-r-c-h, and I represent the 14th Legislative District in Sarpy County. And I'm here today to introduce LB1321. By now, members of the board are well versed in how we got here. On August 16, 2023, the Attorney General's Office issued an Opinion stating that the current statutes governing the Office of Inspector General of Child-- Nebraska Child Welfare and the Office of Inspector General of the Nebraska Correctional System violated the separation of power provisions in Article II, Section 1 of the

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Nebraska State Constitution. Since the day the Opinion was released, I have been working closely with the Chairperson of the Executive Board, first former Senator Briese, then Senator Aguilar following Senator Briese's resignation, to respond to the AG Opinion. Drafted specifically to respond to portions of the AG Opinion, LB1321 clarifies and strengthens the Legislature's Office of Public Counsel and the Offices of Inspector General. Rather than sequentially going through the changes found in LB131-- LB1321, I plan to present the general categories of changes we sought to address. And there is a handout that has been provided to each one of you now, and that should follow my comments. First, LB1321 confirms the legislative control over the Public Counsel and the Office of Inspector General of Nebraska Child Welfare and the Office of Inspector General of the Nebraska Correctional System. The AG's Opinion took the position that the Inspectors General were functioning as independent agencies, despite the fact that both offices are clearly placed within and report through the Public Counsel's Office of the Legislature. LB1321 makes it clear that these offices are legislative offices by transferring the statutes governing them to Chapter 50, the chapter of Nebraska statutes governing the Legislature, and which contain statutes governing our other legislative divisions. With the transfer of these sections, the Offices of Inspector General are unambiguously identified as part of the Office of Public Counsel. As introduced, LB1321 changed the appointment process for the Public Counsel. AM2438 which you have in your committee materials alters the provisions in the bill addressing the appointment of the Public Counsel and the appointments of both Inspectors General. The amendment retains the current appointment process of the Public Counsel by a two thirds vote of the Legislature for a term of 6 years, rather than the current removal process by two thirds of the Legislature, the amendment provides for the removal for cause by a majority of the Executive Board. This change establishes a process for the Executive Board to take action should it be necessary during the interim when the Legislature is not in session. Additionally, to establish a more direct supervisory tie to the Legislature and the Executive Board, the amendment provides that the Inspectors General will be appointed by a majority of the Executive Board without a set term of office and with approval from the respective, respective committee Chair, the Chair of Health and Human Services for the Child Welfare IG and the Chair of Judiciary for the Corrections IG. The bill also contains a number of provisions adding reporting requirements for the IGs to both the Chair of the Executive Board and the respective committee Chair, including notification to both chairs prior to the public release of OIG

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investigative reports. Second, LB1321 outlines in statute the Legislature's already existing authority and legislative purposes for oversight by the Office of Inspector General, Nebraska Child Welfare, and the Office of Inspector General of the Nebraska Correctional System. Sections 19 and 39 incorporate legislative findings in both OIG statutes regarding the Legislature's inherent power to investigate, the Legislature's constitutional authority to require that state agencies provide information to the Legislature, the role of the OIGs in providing full-time legislative oversight and assisting in the development of legislation. In addition, Section 39 highlights to the correct-- in the Corrections IG statute the Legislature's constitutional authority to vest general control and management of state reformatory and penal institutions as determined by the Legislature. The bill also adds language in our general legislative statutes clarifying the duty of the Legislature to provide for both short-term and full-time legislative oversight of matters related to the operation of state government, Section 63. Third, LB1321 addresses the subpoena authority by updating both the Public Counsel and OIG subpoena language to mirror the legislative process, revised in 2020 with LB681, and removing the ability for the public counsel or an Inspector General to directly issue a subpoena. LB1321 revises the subpoena provisions to require that the Public Counsel and IGs request the issuance of a subpoena, instead of issuing them directly. Subpoenas on behalf of the Public Counsel may be issued by the Executive Board. Subpoenas on behalf of the OIG Child Welfare may be issued by the HHS Committee after Executive Board approval. Subpoenas on behalf of the OIG Corrections may be issued by the Judiciary Committee after Executive Board approval. Fourth, the Attorney General's Opinion focused extensively on the OIG's, quote, unfettered access end quote, to executive branch and judicial branch information, concluding such access was a violation of the Nebraska Constitution separation of powers clause. LB1321 makes a number of key changes to address the incorrect perception of the OIG's access to information, which includes removing OIG mandatory direct computer access. I want to pause here for a second. My understanding was that was not as originally put into statute. Later on that was entered. Originally it was-- it was taking a look at, at hard copy-- at hard copy records. Computer access was granted at a later time, but mandatory direct computer access has been removed, creating a process by which the executive branch may object to production or disclosure of legally privileged information to the OIGs, and negotiate terms of production or disclosure of such information. Clarifying that information shall be provided to the OIGs in the most efficient and timely way, in a

manner that, that is least burdensome to the department or agency, and in a manner which maintains confidentiality of information and striking language providing for discipline or sanction for failure to cooperate with an OIG investigation. Additionally, LB1321 clarifies the OIG's interaction with law enforcement to mirror actual practice. The bill provides that law enforcement agencies may provide relevant information to the OIGs, and the OIG shall suspend an investigation upon request by a law enforcement agency. A final grouping of changes included in LB131-- LB1321 are either cleanup changes or can be classified as other. Most notably, the green copy of the bill strikes oversight of juvenile probation from the OIG Child Welfare statutes. This change was not to suggest that oversight of probation is unnecessary, but since the OIG has not had meaningful access to information from probation since juvenile probation was moved from the executive branch to the judicial branch in 2013, we originally thought it best to strike this oversight at this time. However, with the introduction of LR298 creating a special committee to review legislative oversight as a whole, I have reinstated the OIG Child Welfare's oversight of juvenile probation into my amendment, AM2438. Any changes to the legislative oversight of juvenile probation should wait until we have received recommendation from the LR298 Special Committee. Other cleanup changes in the bill include various cleanup changes to the Public Counsel and the OIG statutes throughout the bill; naming the Ombudsman statutes including the Office of Inspector General, the "Office of Public Counsel Act"; and updating statutory language on general access to agency information by the Legislature and clarifying that legislative requests for information, including from the Public Counsel/OIGs, are not subject to the limitations under the Public Records Act. Public Counsel Julie Rogers will testify following me along with both Inspectors General, but I would happy be-- I would be happy to try and answer any questions at this time.

AGUILAR: Questions for the Speaker? Seeing none, proponents.

JULIE ROGERS: Afternoon, Chairman Aguilar and members of the Executive Board. My name is Julie Rogers, J-u-l-i-e R-o-g-e-r-s, and I serve as the Public Counsel More-- the Office of Public Counsel, more commonly referred to as the Ombudsman's Office, is a division of the Legislature and includes the Offices of Inspector General. Our ombudsmandry model is a classical model which is characterized by the standards of independence, impartiality, confidentiality, and a credible review process. Importantly, classical ombudsmen are situated in the legislative branch of government. In order for us to do our work, we need access to the following 4 basic areas: information such

as case files and data. Most of this information would be deemed confidential in terms of public access, but is necessary for our office to fill its statutory obligations. (2) people. This includes people working for these agencies and the individuals served. (3) facilities. Both DHHS facilities and NDCS prison facilities. And (4) for the Offices of Inspector General, critical incidents. Without this information, our offices cannot meet our statutory obligations. Immediately after the Attorney General's Opinion was issued in August of 2023 regarding the constitutionality of the offices of Inspectors General, the OIGs, as well as our Ombudsman's Office, was denied access by DHHS and NDCS to relevant, crucial information for us to meet our statutory charge. The Ombudsman's Office, as a little history, opened on June 1, 1971, and in its history has never been denied information access from the state's 2 biggest agencies before August of 2023. As Senator Arch noted, the green copy of the bill would have changed the appointment process for the Public Counsel from a two-thirds vote of the Legislature to appointment by the Executive Board. AM2438 would restore the original appointment process, which was based upon model legislation developed by the United States Ombudsman's Association, while providing that the Public Counsel could be removed by the Executive Board for cause. I believe that LB1321 clarifies and codifies much of what the offices do and how we operate. To the extent that this has been somewhat of a misunderstanding of our roles and how we function, we are anxious to get back to our important independent work for the Legislature and for the public. Thank you. I'm happy to answer any questions you have.

AGUILAR: Senator Clements.

CLEMENTS: Thank you, Mr. Chairman. Ms. Rogers, regarding the confidentiality agreement mentioned in the MOU, do you-- will you have a confidentiality agreement with discipline in it?

JULIE ROGERS: Yes. One of the first things I did after I was appointed as the Public Counsel is worked with then the Exec Board Chairman at the time to come up with a confidentiality agreement. And that was in January of 2020. And so each person in our office has signed a confidentiality agreement. I'm happy to relook at that. We take confidentiality very seriously in our office. So I am-- it does have a disciplinary. I didn't bring it with me, but I can share it with you, but it does have disciplinary provisions in there.

CLEMENTS: Do you intend to include termination as a consequence?

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JULIE ROGERS: Yes.

CLEMENTS: All right. Have you had any breaches of confidentiality that you had to deal with?

JULIE ROGERS: No, not that I know of.

CLEMENTS: Thank you.

JULIE ROGERS: Yes.

AGUILAR: Further questions? Senator Vargas.

VARGAS: Thank you very much for being here. You mentioned the change regarding the removal by the majority of your position by the Executive Board. Is that-- you talked about the standards and practices of ombudsmen--

JULIE ROGERS: Yes.

VARGAS: --across the country. Is that a standard practice?

JULIE ROGERS: I think in the model for class ombudsman, which we are, removal has to be for cause. I think it's a balance between-- it falls under the independence of an ombudsman and having a set term of office with removal for cause. That would be in compliance with what the United States Ombudsman's Standards are. That's my understanding.

VARGAS: And based on what we heard from the previous hearing on the MOU-- and this is just for clarity for the Legislature and for our committee-- that let's say that there was a floor amendment on, on this bill, on LB1321. If there was a floor amendment that conflicted or invalidated the MOU, that floor amendment that we passed would indeed invalidate the MOU of the previous hearing. Is that your understanding? The MOU doesn't have as much binding. If we pass statutes to undermine that, that will have-- that will have standing.

JULIE ROGERS: I believe so.

VARGAS: OK.

JULIE ROGERS: But I-- in trying to meet my statutory obligations in the Office of Statutory Obligations, I would-- I would seek counsel on that.

VARGAS: OK.

JULIE ROGERS: In terms of running my office and what we try to do and the information we try to get in order to fact find, veri-- trust but verify, verify information, investigate situations.

VARGAS: Thank you. And do you see any changes from or a need to do more to clarify the language or some of the ability for the Chairs of some of the committees, let's say HHS or Judiciary, to have more of that line of sight or the ability to-- is there something missing or is there anything else that you-- is missing from this?

JULIE ROGERS: I don't-- I don't see anything missing for this temporary interim period. As the-- we discussed in the previous hearing, the LR298 Special Committee to address any of those Chair-- the involvement of committee Chair, Chairs or committee members in terms of communication with their offices. So if there is a formal relationship between the Office of Inspector General of Child Welfare and the Chairs of the Health and Human Services Committee and Judiciary Committee, there is a formal relationship between the Office of Inspector General of the Correctional System and the Chair of the Judiciary Committee. And they, they can receive from the OIGs confidential information. And in statute it talks about in consultation with Public Counsel then they can share confidential information with those specific Chairs. I think in terms of what the special committee looks into between the end of session and December is how to maybe strengthen some of the relationships between the committees and our offices so the information is more readily accessible and can help Chair, Chairs do their work.

VARGAS: Thank you

JULIE ROGERS: Yep.

AGUILAR: Further questions? Seeing none.

JULIE ROGERS: Thank you.

AGUILAR: Any other proponents? Welcome, Doug.

DOUG KOEBERNICK: Good afternoon, Senator Aguilar and members of the Executive Board. My name is Doug Koebornick, spelled K-o-e-b-e-r-n-i-c-k, and I have been the Legislature's Inspector General of Corrections since 2015. I'm not going to go over the bill. I think that was done very well by Speaker Arch. So I would just like to provide a brief history behind the creation of this office. In 2014, the Legislature established a special committee to look at

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correctional issues, with a specific emphasis on the Nikko Jenkins situation, including an examination of the use of segregation and the availability of mental health treatment within the Department of Correctional Services. However, as they conducted their investigation, other events emerged which resulted in a broader investigation. During their work, a number of significant issues of concern became apparent to the committee. A few included improper use of segregation, inadequate mental health treatment and clinical programming within the department, severe overcrowding, the use of a furlough program which resulted in nonviolent and violent offenders being placed in the community without notice or even supervision, pressure on the Board of Parole to parole individuals prior to their receiving recommended programming, and the miscalculation of good time. As a result, the special committee made several recommendations, including establishing the Office of Inspector General of the Nebraska Correctional System within the legislative branch, with the point of that office being to conduct audits, inspections, reviews, and other activities as necessary to aid the Legislature in the oversight of the-- that system. As a staff member to the Special Committee in 2014, I was in the room when the discussions about the committee's recommendations took place. Although there is not much in the legislative record actually regarding the establishment of the Office of Inspector General, the goal of the committee when making this recommendation was to make sure that the Legislature provided ongoing review to ensure accountability in our correctional and parole systems, so that the legislative branch knew what was actually taking place within them. The primary purpose of the office is to investigate serious issues as they emerge within the system, enabling the Legislature to address them through legislative means before they evolve into a larger crisis. In the last six months, our office, in our ability to provide such ongoing review and accountability, has been hindered in a substantial way. Our access to most of the information necessary to conduct our work was eliminated or reduced. Despite that, my team-- and I want to give a little shout out to Zach and Crystal in our office-- they've done a great job of trying to stay in touch to the best of our ability with events and changes taking place within the system since August. It is clear that the work of the Inspector General for Corrections is important and should continue. I am pleased to see that our access to information facilities has been restored, in large part, through the MOU that was signed today. I also look forward to assisting the Special Committee contemplated in LR298. In closing, I want to express my support for LB1321 and AM2438. It is vital that the work of the Ombudsman's Office and the Inspectors General move

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forward so we can continue to be an asset to the Legislature and its work. With that, I'd be happy to answer any questions.

AGUILAR: Questions for Mr. Koebaernick? Senator Vargas.

VARGAS: Thank you very much for being here. And thank you for your time and service. You mentioned that most of the information regarding access to information and facilities has been included. Can you speak to what hasn't been included in this in terms of access?

DOUG KOEBERNICK: As far as during the interim or what has happened since August?

VARGAS: No, as a result of this. You say that most of-- pleased to see that our access to--

DOUG KOEBERNICK: Oh.

VARGAS: --information is in large part and most of it has been addressed, but not all of it.

DOUG KOEBERNICK: Yeah. I think there are some things that we had access to before when we had access to the computer system that we could look at more specific events that took place within the facilities on a daily basis, so we could keep on top of what was going on in there and then decide whether we wanted to-- that we needed to review those things more often. That's, as of the way that MOU is written, we probably won't have that daily access to it. But I think that there are going to be some steps taken by the executive branch to possibly allow us to have access to that. So that might actually help us. This has all happened very fast in the last few days so I don't know the full impact of the MOU. But I think that it will get us to where we need to be to actually do our work and do it well.

VARGAS: And as a follow-up, in reference to the MOU, is there anything more that you would need? I notice that there's not timelines in the MOU. And I want to make sure that what you just said that what you need to be able to do the work is there. Is there anything else that you would want to see in the MOU or in this language that would ensure that this is moving forward in the way that you intended?

DOUG KOEBERNICK: I think right now I think I'm satisfied with what's in the MOU. I'm looking forward to the work of the special committee. There might be some things that happen as we move forward that we can bring to the attention of the special committee and work with them. So

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if there's something that does need to be addressed down the road, that's a great avenue, a way of doing that.

VARGAS: OK.

AGUILAR: Other questions? Senator Clements.

CLEMENTS: Question. Does your oversight include the Board of Parole?

DOUG KOEBERNICK: No, it does not include the Board of Parole. It includes the Division of Parole Supervision, which the Board of Parole oversees. But we don't have any-- we don't look at Board of Parole decisions or their process.

CLEMENTS: Supervision of persons who have been put on parole, you do look into the activities, how they were treated. What kind of activities would you look at?

DOUG KOEBERNICK: We primarily look at critical incidents that take place within parole. So if there's a parolee that has possibly died or been involved in like a serious incident, they report those to us and we look at those. That would be our primary function within the division of [INAUDIBLE] supervision.

CLEMENTS: OK. Thank you.

AGUILAR: Further questions? Seeing none, thank you, Doug.

DOUG KOEBERNICK: Thank you, Senator.

AGUILAR: Next proponent. Welcome.

JENNIFER CARTER: Good afternoon, Chairman Aguilar 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 OIG for Child Welfare was created over 10 years ago in 2012 as a result of LR37, which was a very thorough investigation, soft of a process and examination by the HHS Committee of a troubled attempt to privatize child welfare. Our purpose in being created was to provide increased accountability for the child welfare and juvenile justice systems. We do that through system monitoring, review, mandatory investigations of deaths and serious injuries, and recommendations for improvement. Over the years, we've had additional duties added to us, which is in the written testimony. And through our nearly 12 years, we've had a productive working relationship with the

Department of Health and Human Services. In the last 6 months, however, our office and our ability to provide the review and accountability we were tasked with by the Legislature has been significantly hindered in the-- after the Attorney General's Opinion. The most important impact has been the lack of notification of when a child dies or is seriously injured in the system. We are mandated to conduct the investigations that look at how those cases were handled before and where that resulted in a child's death or serious injury. However, we've only received 2 notifications of deaths, both in childcares. But the department had put out a report on October 31 that indicated there had been 6 deaths in the third quarter and an unspecified number of serious injuries. So our greatest struggle and concern has been that at this point we don't know whether or how many children may have died in state's care and custody. We don't know if that was the result of abuse or neglect. We don't know how many children have been seriously injured or what those causes might be. And we're not able to look at it and say, is this-- was this a mishandling or actually is-- are there just some flaws in our system, which is the other thing we look at. So I am testifying in support of LB1321 today because we believe it clarifies in really important ways what the OIG's duties and processes actually are as to what they were sort of presumed to be in the AG's Opinion. As has been discussed by the Speaker, clarification around subpoenas, clarification that we do have to law enforcement-- law enforcement investigations. Importantly for us, Section 23 creates a really important clarification in terms of notification of death or serious injury and having that align with our duties. We are grateful for the Memorandum of Understanding, which will allow us to once again receive these critical, critical notifications. And we're grateful for the introduction of LR298, and the continuing commitment to legislative oversight. And we stand ready and look forward to assisting the committee in any way that we can. I also want to acknowledge and appreciate that juvenile probation was removed from the OIG's jurisdiction in the bill as introduced. And we appreciate that AM2438 restores that oversight. I'd like to thank Speaker Arch and the members of this committee for their support of the OIG and for support of legislative oversight of our critical child welfare and juvenile justice systems. And I'm happy to answer any questions.

AGUILAR: Were you able to finish the line?

JENNIFER CARTER: Oh, yes. That was pretty much it. So I'm happy to answer new questions or address other ones that have been asked earlier.

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AGUILAR: Questions for Jennifer? Seeing none, thank you.

JENNIFER CARTER: OK.

AGUILAR: Any other proponents? Welcome, Corey.

COREY STEEL: Good afternoon, Chairman Aguilar and members of the Executive Board. My name is Corey Seel, C-o-r-e-y S-t-e-e-l. I'm the Nebraska State Court Administrator for the Administrative Office of Courts and Probation. I'm here today to provide testimony in support of LB1321, and I'll address the amendment at the end of my testimony. In 2012, the Legislature created the Office of Inspector General with the Ombudsman's Office to allow for inquiry and review of the actions of individuals, administrative agencies' responsibility for the care protection of children in the Nebraska child welfare system. In 2014, when service dollars for juvenile probation were transferred to the Nebraska Supreme Court's budget based on legislative authority, the Legislature also gave the authority to the OIG for oversight over juvenile probation, which was under the direction of the Nebraska Supreme Court. It is the judicial branch's opinion such oversight contradicts Nebraska State constitutional arti-- Constitution, Article II, Section 1, more commonly known as the distribution of powers clause. I quote: The powers of the government of the state are divided into three distinct departments, the legislative, executive, and judicial, and no persons or collection of persons being one of these departments shall exercise any power properly belonging to either of the other, 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 OIG to investigate and question judicial or judges' court orders pertaining to juveniles' cases raise grave constitutional concerns. Allowing the broad access to records that inform judicial decisions raises additional constitutional concerns. The independence of the judiciary is the fundamental element of our government. Judges must be free to adjudicate youth under their jurisdiction without the threat of investigation by another branch of government. The oversight of the Legislature sought as a result of the child welfare crisis in 2011 was the direct-- was directed to those children whose legal custody is placed with the state of Nebraska. Youth under supervision of juvenile probation are not in the state's legal custody, but only under court order of probation supervision. Nebraska. Revised Statute 29-2249 specifically designates the Office of Probation Administration as part of the judicial branch of

government under the directory-- under the direct supervisory of the Nebraska Supreme Court. We agree with the Attorney, Attorney General's Opinion number 23-008, August 16, 2023, that the Inspector General Act violates Nebraska Constitution in multiple respects. Many of the Inspector General methods of investigation authorized by the acts violates separation of powers. The report requirements also violate the Constitution. The duty to-- the duty to report specific incidents is not supported by the Legislature's constitutional investigational power and the obligation to make decisions. Inspector General recommendations and report on those decisions violates separation of powers. 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 in another branch of government is strongly opposed. We ask that you follow the direction of LB1321, and any oversight of juvenile probation by the OIG be stricken entirely as provided. We strongly oppose-- are in strong opposition to the AM2438 based on what I have stated in this testimony. This amendment was submitted yesterday without any notice, discussion or input from the judicial branch. Thank you, and I'm happy to answer any questions you may have.

AGUILAR: Senator Bostar.

BOSTAR: Thank you, Chair Aguilar. Thank you, Mr. Steel. I'm trying to understand. So you're in support of the legislation that would provide the legislative branch oversight over the executive branch, presumably because you think that's allowed. But if we were to have oversight over the judicial branch, then that becomes not allowed.

COREY STEEL: I'm not here to speak for the executive branch. I'm here to speak for the judicial branch. So I can't comment on-- that's a-- that's an executive branch to come in and fight for their const-- what they feel is constitutionally allowed or not. I'm here saying from the judicial branch perspective, oversight over our branch of government we feel is unconstitutional.

BOSTAR: Can I ask why are you a proponent of the bill?

COREY STEEL: Because the bill, the original LB1321, if you read it, strikes all of the clauses of any oversight of the OIG over juvenile probation.

BOSTAR: OK. Sorry, a couple more questions. Individuals under the supervision of juvenile probation in your testimony are not under the supervision or jurisdiction of the state. Is that correct?

COREY STEEL: So when a juvenile is committed to the-- to the Department of Health and Human Services, they are committed. They become a state ward and the state has care and custody of that individual. When they are placed on probation, it is a term of supervision. The court takes jurisdiction, but they're placed on a term of probation for supervision. We are not the guardian. We are not the individual that makes medical decisions. We are not the individual that has the same authority as when they're placed with the Department of Health and Human Services, where they are a state ward, and the state takes care and custody of that juvenile.

BOSTAR: Prior to juvenile probation being within the judicial branch, would individuals within juvenile probation at that time have been subject to oversight of the legislative branch of government?

COREY STEEL: OK, I'm going to answer that this way. We've always had oversight over juvenile probation in the judicial branch.

BOSTAR: OK.

COREY STEEL: In 2014, there used to be 2 ways a juvenile, when they came into court, they would be placed on probation by the court under current statutory framework, how we supervise under that court order and an arm of the court. Or prior to 2014, the court, if the kid needed services, supervision at a very high level, out-of-home care would be committed to the Department of Health and Human Services where then they were a state award for supervision by the Office of Juvenile Services. What took place in 2014 is the Legislature eliminated the supervision of Office of Juvenile Services, and said that the court can place the juvenile on probation only, and service dollars that were used for the high-end services with kids that were state wards was transferred to the judicial branch. So prior to 2014, there was no oversight for juveniles by the Inspector General for juveniles that were on probation. And again, we've always had probation under the judicial branch, juvenile probation.

BOSTAR: So-- and we've talked about this a little bit before, but do you agree that the Legislature could, if it chose to, eliminate probation altogether?

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COREY STEEL: Absolutely. I think the Legislature has the authority to place probation in the executive branch if they so choose.

BOSTAR: OK. Does the, the-- going back to the LR hearing, does the court, to your knowledge, have any interest or intent to sign on to the MOU?

COREY STEEL: I have not seen the MOU. I was not aware of the MOU. Nobody discussed anything with us regarding an MOU. So I can't comment to that because I haven't seen it. I haven't been asked about it.

BOSTAR: Would you be willing to follow up with the Executive Board after you've had a chance to check on that?

COREY STEEL: Absolutely.

BOSTAR: Thank you very much.

AGUILAR: Further questions? Seeing none, thank you. Mr. Steel.

COREY STEEL: Thank you.

AGUILAR: Any other proponents? Welcome.

JOANNA LINDBERG: Hello, my name is Joanna Lindberg and I-- you don't want my address. You just want me to spell the name, J-o-a-n-n-a, Lindberg is L-i-n-d-b-e-r-g. And Senator Raymond Aguilar and members of the Executive Board of the Legislative Council, I am testifying in support of LB1321. The League of Women Voters supports policies and programs that respect the rights, promote the well-being, and ensure the safety of those in the state's care, including Nebraska's children, the accused and sentenced offenders, both juveniles and adults. The availability of a complaint process to investigate citizen concerns is essential to a representative government working with the most vulnerable. The staff work toward resolution of concerns in an unbiased manner. Their professional report following the investigation provides guidance to all concerned. We thank the Executive Board for the extra support it will provide to oversee and assist this program, and we implore the board to vote yes and pass this bill out of committee.

AGUILAR: Questions? Seeing none, thank you. Any other proponents? Welcome.

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FRAN KAYE: Hello, Senator Aguilar and members of the committee. My name is Fran Kaye, F-r-a-n K-a-y-e, and I'm representing myself, both as a longtime prison volunteer and activist and as a retired UNL professor with a Ph.D. in American Studies. Thank you for allowing me to speak to you this afternoon. I'm here to support LB1321, and I will focus on Sections 38 to 58, which deal with the Inspector General of the Nebraska Correctional System since that is where I have the most expertise. I argue that Attorney General's Hilgers' Opinion that the Office of Corrections Inspector General is unconstitutional is incorrect. And I attached a long argument on that. It's overly broad in its interpretation of the Shepherd case, on which most of the analysis is based and overly narrow in its interpretation of The Federalist Papers, the definitive account of the meaning of separation of powers. So, in a sense, LB1321 is unnecessary. Since the Opinion has become de facto law, however, I support LB1321 as a reasonable substitute that takes account of Mr. Hilgers' objections to the position. No one disputes that the position was created in the first place because of horrible mistakes, Nikko Jenkins. We need consistent, professional outside oversight of our prison system. We need an Inspector General who can act quickly in a crisis, provide careful analysis of long-term situations, and compile annual Corrections systems reports with suggestions for improvement for the Legislature and for the citizens of Nebraska. LB1321 specifically states the right of the Legislature to require investigations of state facilities to prepare for legislation and cites Nebraska's Constitution giving the Legislature management of state reformatory and penal institutions. LB1321 provides the Inspector General with access to correctional records and facilities. The bill also provides that NDCS and parole workers are expected to comply with requests. I read all the Inspector General's reports to date and have found them extremely useful in understanding the issues current in Corrections, and informing the education and lobbying activities on behalf of prison reform that I currently pursue with a number of community groups and as an individual. I have also had cause to call directly upon the Inspector General on behalf of incarcerated individuals and have found their intervention swift and in one case, probably lifesaving when an inmate was being treated for COVID when he actually had an impacted bowel. Our troubled prison system needs a dedicated professional Inspector General's Office. While LB1321 is an unnecessary dilution of the IG's powers, it still maintains enough of them to do considerable good and no harm for the state. Please support LB1321.

AGUILAR: Questions for Dr. Kaye? Seeing none, thank you.

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FRAN KAYE: Thank you.

AGUILAR: Any other proponents? How about opponents? Welcome.

JOSEPHINE LITWINOWICZ: Good afternoon, Chairman Aguilar and members of the committee. I am just-- I just want to say before the time starts, please, I would like to sit back, promise I won't [INAUDIBLE] instead of leaning over [INAUDIBLE] every time. I hope it doesn't get to be [INAUDIBLE]. Anyway, could we please start over.

AGUILAR: Fine.

JOSEPHINE LITWINOWICZ: OK. Thank you. I am writing to make sure your-- sure your staff [INAUDIBLE] I come here to the [INAUDIBLE] box--

AGUILAR: Could you give us your name, please, spell it.

JOSEPHINE LITWINOWICZ: My name is Josephine Litwinowicz, J-o-s-e-p-h-i-n-e L-i-t-w-i-n-o-w-i-c-z? And anyway, I'm half alive-- I am alive, but I'm also dead. I tell you, this is-- this is-- I don't know what we're doing. And the two biggest areas that we screwed up in child welfare-- and by the way, we're still stealing the [INAUDIBLE] money, kind of lumped up [INAUDIBLE] but-- and the prison system, which is a disaster. So we're going to remove oversight and that's assinine, sorry. I don't get it. Oh, and I forgot to mention, just, just to be complete, I probably would have been able-- I probably could have played Division I football if I wasn't injured. And I could have played at Nebraska. The guy next to me spent 11 years in the NFL and started in the Super Bowl [INAUDIBLE]. I just wanted to get the, you know, I'm done. So, you know, yeah, I just-- I'm baffled. We got a runaway train in Trump. My God, look what he's doing now. Saying just frivolous stuff. Anyway, I'm getting off the track. So we need oversight, and we need-- and we needed an oversight yesterday. And [INAUDIBLE] but man, we're falling apart. I'm sorry. When we have such a troubled system, Corrections and child welfare, and we're going to get rid of the people that are going to, you know, jump in or report on it, hopefully aren't in bed. You should actually groom someone for embeddedness, you know, into their respective agencies. [INAUDIBLE] really. I didn't even really listen to what was said. You know, and Hilgers' Opinion, [INAUDIBLE] opinion. Anyway, I don't even know what to say. Thank you for letting me speak.

AGUILAR: Any questions? Seeing none, thank you. Welcome.

MATTHEW FRANKEN: Thank you, Senator Aguilar, members of the committee. Thank you for giving me the opportunity to speak to you this afternoon. My name is Matthew Franken, F-r-a-n-k-e-n. In my professional life, I'm a detective with the Lincoln Police Department. I've been employed by them since May of 1997. I'm also the vice president of the Lincoln Police Union, and I'm here to speak on behalf of them today. In addition to that, I'm here to speak on behalf of my teammate and friend, Mario Herrera, who was murdered by a juvenile that was on probation. To be clear, I'm not here to blame probation for anything related to Mario's murder. I'm here to advocate for his family in the hopes that someone starts asking questions about how we got to the point that a violent juvenile offender who had already committed multiple violent crimes was even in the position to shoot and kill someone from law enforcement. The person that killed Mario was caught and released multiple times before he was committed to an unsecure facility in Omaha, Nebraska. Some of the crimes that he was caught and released for included being a felon, being in possession of a stolen shotgun. I want you to ask questions about how problems are solved and how future problems are avoided. Most agencies, large or small, accomplish this goal through communicating effectively with partners in their industry. Early in my career, juvenile probation and Lincoln police officers would team up for a program called Project Safe Neighborhood. Through that project, our respective agencies worked to enforce the orders of juvenile judges. In my opinion, projects like this helped to identify problems and stop them before they became bigger problems. This project and nothing like it exists anymore in Lincoln, Nebraska. There is no more communication or collaboration as to how the orders of the judges get enforced. I would ask you, how are the juveniles in the community being held accountable? If crimes that the juveniles are committing are more violent than they were even 5 to 6 years ago, is there any correlation to that? As an investigator, I have access to computer systems that allow me to see information that has been compiled by the state. This helps me to effectively connect the dots of violent cases that I work on. Information and sharing of intelligence is the lifeblood of what I do. As an example, this computer system allows me to run your license plate and I can almost instantly tell whether or not you have insurance on your vehicle, as required by the state. As it is now, there could be a person on probation, juvenile probation, standing right in front of me. And because of the way the system is set up, I cannot even tell you whether or not they're on probation, much less tell you whether or not, what the conditions of their probation are and how the judge would want those enforced. This lack of information

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cripples our ability to investigate and enforce laws. Additionally, juvenile probation collects GPS information that the state pays for. I do not have information readily available to me to help make the citizens safer in that regard either. In summary, we're all more effective when we collaborate. The citizens are safer and the taxpayer money is spent more wisely when we all help one another. We avoid tragedies and increase public safety when we are helpful and share information. I would challenge you to look at almost every tragedy in your personal life. Now, I want you to think about the tragedies that you know about and have played out on the world stage. I would argue that the number one thing that led to the tragedy was a lack of communication between the parties that were involved, that had the power to do something. Please ask the questions that will help us to avoid another tragedy. The only way you can do that is to include juvenile probation on LB1321.

AGUILAR: Can we have your final thought?

MATTHEW FRANKEN: Thank you, sir. While I'm testifying in opposition to this bill as it currently is written, and we appreciate the Speaker adding language to include juvenile probation, we need actual, effective and measurable oversight of juvenile predation. Thank you, Senator Aguilar.

AGUILAR: Thank you. Questions from the committee? Seeing none, thank you.

MATTHEW FRANKEN: Thank you, sir.

TIM CRONIN: Thank you, Chairman Aguilar, Senators, for your time.

AGUILAR: Welcome.

TIM CRONIN: My name is Tim Cronin, C-r-o-n-i-n. I've been a Lincoln police officer for the last 24 years, and currently an investigator with Lincoln Police Department. I'm here today for the-- with Lincoln Police Union. I also am the brother-in-law of Mario. I'll take you back 3 years. It was a pretty tough day for me and my family. I was working the street when it-- when the incident occurred. I responded to the area after hearing "officer down." And I was searching backyards when I was grabbed on my back by another fellow officer and advised me my brother-in-law had got shot. The next probably 10 days is a whirlwind, making phone calls to family members, sitting in Omaha. It was tough. Ten days later, Mario passed. We had a huge

support from the community from Omaha, Lincoln, everybody. But why we're here today is we know who is to blame for Mario's death. But we want to make sure that anything like this doesn't happen again. And there's certain things we think that could have come into play that didn't prior to this incident and murder of Mario happening. Several of those what my coworker, Investigator Franken, advised you guys about. One of the main things that stuck with me through this whole tragedy is my niece, Celia [PHONETIC]. She's the same age as Felipe. She didn't understand how this kid is on run or escaped from a facility that you could just walk away from, had a gun, traveled to the southern region of the United States freely. And she's the same age, and she's in school at Pius and she's doing her, her activities. She just couldn't get over it that they're the same age and the drastic difference of the two. While we don't blame anybody but Felipe, we just wish the system was a little bit better. It could have worked out prior to that. But we-- what we need is your help and your voice to help us so this won't happen again. My sister, my nieces, my nephew all spoke on Mario's behalf several times and they're tired. They don't understand how the system works like I do or we do. But they know the system could have been different, and the outcome maybe could have changed or may be changed for someone in the future. My coworkers, we've all taken steps so this potentially doesn't happen again to us. But we feel like the juvenile justice system or the probation has not. Just like Investigator Franken said, there's several aspects that could assist us and they just don't at this time. We continue to see incidents that mirror Mario's cases. But thankfully nothing has risen to the same level of violence at this time. We need your help. I'm asking that please do not advance this without including actual and effective oversight of probation.

AGUILAR: Questions for the officer? Seeing none, thank you. Next opponent. Welcome.

JOSEPH VILLAMONTE: Senator Aguilar and all members of the Exec Board, good afternoon. Thanks for having me. My name is Joseph Villamonte, J-o-s-e-p-h V-i-l-l-a-m-o-n-t-e, and I'm the president of the Lincoln Police Union. Today I'm here to represent the exceptional men and women of the Lincoln Police Union. Today, the police union would like to express our opinion on LB1321. In addition to my duties as Lincoln Police Union president, I'm a member of the department's gang task force and have been since 2018. During my time on the task force, I've been involved in numerous investigations involving juvenile offenders. These investigations range from narcotics, auto thefts, burglaries, assault, robbery, and homicides. In many of these investigations, the

juvenile offender was already justice involved and many times was on juvenile probation. One example of chaos these juvenile offenders have caused was a group of juveniles in the age range from 14 to 17, committing numerous auto thefts and ultimately obtaining a firearm. The group began to steal occupied vehicles by assaulting their victims with the firearm. And in one case, they pointed the firearm at a victim and pulled the trigger and luckily the firearm malfunctioned. Law enforcement was able to locate these juveniles on one occasion, and they led over 20 law enforcement officers on a citywide chase, causing significant danger to the public and officers in the process. The lack of consequence over the past several years has negativity-- negatively impacted the public, law enforcement, and ultimately the youth involved. With proper supervision, we can collectively create an environment to build upon accountability, ensure the youth does not reoffend. Additionally, this lack of consequence has resulted in a number of youth gangs and gang members progressing to more and more violent behaviors. As these groups have all become more brazen with the lack of structure and accountability, this violence will lead to an increased risk to the public and law enforcement. I would ask as the president of the police union to not advance this bill without actual and effective oversight. Thank you for your time today, and I'd be happy to answer any questions.

AGUILAR: Any questions from the committee? Seeing none, thank you. Next opponent. Welcome.

PATRICK DEMPSEY: Good afternoon, members of the Exec Board. My name is Patrick Dempsey, and I'm honored to represent-- I'm sorry, P-a-t-r-i-c-k D-e-m-p-s-e-y. I'm honored to represent the Omaha Police Officers Association before you today. With 14 years of service within the Omaha Police Department, I bring forth concerns on behalf of my fellow officers regarding the current legislation under consideration. Probation has long been an integral component of our criminal justice system, serving as a vital tool for rehabilitation and reducing recidivism. However, I stand before you not to advocate against probation itself, but to address the critical need for enhanced oversight and transparency within this system, particularly from the perspective of law enforcement. In 2016, there were only 2 juveniles who had been arrested for 4 or more times for felony crimes. That's in Omaha. In 2023, that number in Omaha has increased to 35 juveniles who have been arrested 4 or more times for 4 felony crimes. I can provide numerous examples. I will share just one harrowing incident to illustrate the gravity of the situation. In October of 2023, a young man named Lamarantae Swift lost his life to gun violence, with 5

additional individuals sustaining gunshot wounds. Shockingly, one of the suspects in this tragic event was on juvenile probation at the time. Rather than being detained, he was placed on nonsecure facility, from which he promptly absconded from. While evading authorities, he committed the heinous act that claimed Mr. Swift's life and injured 5 others. Another individual who was with this suspect and has been charged with murder had been recently discharged from probation unsuccessfully. The Omaha Police Officers Association has tirelessly advocated for reform in this area, notably securing the passage of a bill in 2023 granting law enforcement access to crucial probation information through NCJIS. Regrettably, despite assurances that this data would be reinstated within 90 days of the legislative session's conclusion, law enforcement still lacks access 168 days later. This information is not accessible to law enforcement today. This failure to restore access to vital probation information severely compromises our ability to uphold public safety. In light of these concerns, I implore this committee to reevaluate the current legislation being discussed. Accountability and transparency are paramount in safeguarding our communities. The OPOA is opposed to LB1321 as it stands and does appreciate Senator Arch's amendment. I would appreciate this bill to have a clear language, sorry, that has clear language as to the oversight of probation. With that, I'll answer any questions.

AGUILAR: Any questions? Seeing none, thank you.

PATRICK DEMPSEY: Thank you.

AGUILAR: Next opponent. Welcome.

PAUL FEILMANN: Good afternoon. I wanted to apologize. I'm running a little bit late. I, I wanted to get to this hearing. I didn't realize it was public, but I really wanted to talk briefly about my serious concerns about the prison system, having done advocacy. My name is Paul Feilmann, F-as in Frank-e-i-l-m-a-n-n, 317 Clear Creek Drive, Yutan, Nebraska. I've done-- I retired from mental health about 8 years ago and began getting involved in criminal justice reform. And the person that gave me all the information was Doug Koebnick. At the time, there were, I think, 300 people sitting in solitary confinement. I volunteered with the prisons. I met Mr. Ballard, legislator Ballard at the prison actually. We were in the Circle of Lifers group. I volunteered there for 7 years. And the things that were going on around the Nikko Jenkins time and the things that Doug Koebnick was involved in investigating were, were so horrendous that

the, the conditions in the prisons were ripe for serious problems to occur, including injuries or death to staff. There's numerous injuries and deaths that have occurred historically in the prison system. Things had gotten better, actually, with a lot of oversight and input. And the Legislature actually raised the pay raise for staff. Ernie Chambers even advocated for pay raise. But a lot of the information that was coming was coming from Doug Koebernick, and he investigates all the injuries to staff. He investigates injuries to residents. He looks at all this stuff and keeps a shining light on all of that stuff and really forced a lot of changes to occur because of documenting those sorts of things. And that's all I wanted to say is his role right now-- and just briefly, I haven't even been involved in things lately. But I can tell you things are not good. In Tecumseh, you had 5 guys involved in a fire within the last 6 months, lit themselves on fire, and 2 of them died. Not a good sign of mental health. Then you've had numerous serious injuries to guards. I've been involved with-- Doug used to give me information on that stuff. He can't get information now. You have guards with serious traumatic injuries that have occurred because of overcrowding and the kinds of conditions that the Inspector General looks at, and he has done amazing work looking at all these things and all these facilities and providing feedback to the Legislature, to the Governor, to the public about what needs to happen to make things better. And without that oversight and without awareness of what's going on, the risk that we run is one of these days, you're going to be attending a death of a staff inside your prison. The police are at risk outside. But I'm telling you, inside the prisons, if you go and look at the injuries that have occurred to staff just in the last 6 months, I also work with a family whose son had been incarcerated. He committed suicide in solitary confinement. So I just wanted to let you know that it's really critical somebody be doing oversight and supporting that effort.

AGUILAR: Appreciate it. Thank you. And I need clarification. You want to be listed as an opponent or--

PAUL FEILMANN: Opponent of-- opponent of [INAUDIBLE] proponent-- yeah, I [INAUDIBLE] so proponent of LB13--

AGUILAR: 21.

PAUL FEILMANN: --21. Yes, a proponent of that.

AGUILAR: Any questions from the committee?

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PAUL FEILMANN: Thank you for letting me speak on that.

AGUILAR: Thank you. Next opponent.

TIFFANY PELLEY: My name is Tiffany, T-i-f-f-a-n-y, Pelley, P-e-l-l-e-y. And I hope everybody hears me today because it's serious. I'm coming to you guys as a parent of a troubled youth that I put in the system five years ago as a defiant child or teenager that had some mental health issues that I couldn't help her. So, you know, it takes a village. I reached out to the next step. And, you know, with the probation, I've been dealing with the Sarpy County probation for 5 years. They successfully discharged my daughter from probation December 1 by accident, because they didn't take it out of the court order. And they were like, oops. County attorney's response: Well, if you file an appeal, I will drag it out until she's 18 because she turns 18 in June. Now, my daughter went from being that testy juvenile to a nonstop runaway. And I know everybody says, oh, they run away because of something in the home, this or that. No. Now I'm starting to see she was running away because my daughter is now a full-blown drug addict. When I leave here, I have to go find my daughter because she's gone again. I've tried working through Ombudsman. I tried reaching out to as many people, and it falls on deaf ears everywhere. Probation forced-- they had my hands tied pretty much to where I had to pay my own money to hire an attorney because they tried to place my daughter in a foster home with a felon who just got out of federal prison, whose dad was living in the basement, who got out of prison, however long ago for killing an Omaha police officer. And this foster home was going to get \$10,000 a month because my daughter was on an IEP so that's a disability. Nobody would listen. You know, when I-- and I, there's some of you in this room that I've reached out to and I was not the best person because I was a broken mom. No mom should be heartbroken and helpless like I am. Every day I wait for the call that my daughter's dead. And I used to say that from day one, but now it's so real that me and my husband had had conversations of like, what will we do for her funeral? And it's, it's everything I say I can back it up with every bit of proof. But if you guys don't get oversight on probation, because that's my experience, then this is a breeding ground for a bunch more Nikko Jenkins. I've met a lot of juveniles that my daughter's been in different placements with, and-- because I'm just-- I try to talk to them or what, you know, and it's, it's sad. They, they are being failed unbelievably. My daughter has never been charged with a criminal charge, never followed one rule of probation. I would have known my daughter was using fentanyl back in August if they would have violated her for her dirty UA daughter

because she never had a clean one. She was testing dirty for benzos the whole time and opiates, and they were, like, oh, maybe it's her medicine. Didn't look into it because after the fact we found out it wasn't her medicine. She was doing fentanyl or blues is what they call it. I know it's too late to help my daughter, and that's a very hard thing to accept because that's my baby. But normally I could lay back and just let it go because my fight's over. I can't help my kid, but this is not OK. No parent should ever be in the situation I was in because it was not OK. I almost took my own life because nobody would help me. And that's all I got.

AGUILAR: Thank you. Any questions? Thank you very much. Next proponent, opponent, I'm sorry. [INAUDIBLE] Welcome.

AARON HANSON: Thank you. My name is Aaron Hanson, A-a-r-o-n H-a-n-s-o-n. I am the Sheriff of Douglas County, Nebraska. I'm here to testify reluctantly as an opponent. And it's-- and I say reluctantly because I know everybody in these systems, whether it's probation or DHHS or adult corrections, probation, parole. I know everybody is working very hard, very well- meaning individual people, individual entities to try to find solutions. But we're not anywhere near the environment that can find us holistic solutions. When we talk about separation of powers, when we talk about constitutional boundaries, when we talk about territorial disputes, that makes sense to us. That makes sense to folks like us: policymakers, folks that are boots on the ground, administrators. You know who it doesn't make sense to? It doesn't make sense to that mom who just testified. The business owner who has their small business completely and repeatedly victimized by repeat offenders, they don't know what that means. The juveniles themselves, the high-risk repeat offender juveniles that are trending and getting worse, like Detective Dempsey just discussed; 1,000% increase in Douglas County since 2017 on repeat juvenile offenders. We're not talking about a juvenile offender being arrested for multiple felonies at one time. We are talking juvenile offenders that are committing more felonies in succession over and over with no place to put them, not enough adequate infrastructure to give them the care that they need, without appropriate behavioral health infrastructure services to help deflect their trajectory. We need sunshine over the entire process. I just want the entire. How do you do that in a way that keeps us in line with constitutional boundaries? It's not a me thing. That's a you thing. That has to happen, though, because we have to think about the end users, the kids, the parents. If we don't do it right, we're arguing about building another prison. We're gonna need 2 or 3 more if we don't do it right in all of these different system

points. I'm asking you to be thoughtful. The mother you just heard from, her daughter's case was recently successfully discharged. Even if you wanted to see it, you can't because it doesn't exist in the eyes of the law. We need holistic solutions. And I thank you for your attention to these issues.

AGUILAR: Any questions for the sheriff? Seeing none, thank you. Any other opponents? Any neutral testimony?. Welcome.

ALLISON DERR: Thank you. Good afternoon, Chairperson Aguilar, members of the board. My name is Allison Derr, A-l-l-i-s-o-n D-e-r-r, and I'm an attorney at Nebraska Appleseed, a public interest advocacy organization. Appleseed's position on this bill is neutral because our position is mixed. And to be clear, that's based off of the bill as introduced and its amendment. We were not aware of the MOU until today. Appleseed and our child welfare program work to ensure Nebraska's child welfare system is upholding the rights of all youth and families it is serving. We work to monitor the system and hold it accountable if it's failing those within it. As a result, we believe in the importance of true, independent oversight of the child welfare system and those in charge of it who provide perhaps one of the most important roles of the state, protecting and serving children and families within its care. This Legislature has wisely chosen the Inspector General of Child Welfare to serve in that role. And in that office's time, it has provided vital, objective, informed and extremely important insight and accountability to that system. This oversight has been especially important when the system itself has harmed youth, including death and serious injuries while in care. But to continue providing this important independent oversight, their office must have true access to the information, records, facilities and government officials that make up the system. So to the extent LB1321 weakens the Inspector General's ability to do their job, including weakening access to all important they need-- all the important information they need, then Appleseed has reservations. Allowing state officials to object or potentially draw out access to records through legal proceedings when they are public entities, and often the subject of these investigations, we are concerned. On the other hand, we understand this bill to be in response to the Attorney General's Opinion questioning the Inspector General's constitutionality. So to the extent this body and your legal counsel believe this bill is the path to ensuring the Inspector Generals remain and can do their work, then we support it generally. However, if it passes, we do implore this legislature to take its role within the bill seriously, to actively and effectively support the Inspector

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Generals' investigations and continue defending its important role. We truly believe the Inspector General true objective oversight and complete government transparency is so important to ensuring children and families within the state's care are safe and that their rights are upheld. We thank Senator Arch and the board for your attention on this and work to defend the Inspectors General.

AGUILAR: Questions for Allison? Seeing none, thank you.

ALLISON DERR: Thank you.

AGUILAR: Next neutral testimony. Welcome.

ANAHI SALAZAR: Good afternoon, Chairman Aguilar and members of the Executive Board. My name is Anahi Salazar, A-n-a-h-i S-a-l-a-z-a-r, and I am a policy coordinator with Voices for Children in Nebraska. Nebraska children deserve systems that respond to their risks and needs thoughtfully and with care, keeping them safe while allowing them to grow into healthy and adjusted adults. We are sharing testimony in a neutral position today on LB1321 because we believe that the watchdog offices addressed in the bill are both necessary and already constitutional. As a child advocacy organization, we are particularly focused on the Office of the Inspector General for Child Welfare. And with the amendment, we do not oppose the bill's clarifications with regard to that office's role, scope, purpose and responsibilities. We believe it is very important that the OIG be empowered to investigate and make recommendations for systemic improvement for both child welfare cases with the Department of Health and Human Services and juvenile justice cases with the Administrative Office of the Courts and Probation. At Voices for Children in Nebraska, we have seen over the decades how all 3 branches of government are deeply committed to the children of our state. Agency leadership, leadership at both DHHS and Juvenile Probation is dedicated to providing a high level of care and have frequently been partners at the table in reforming how our state responds to children and families in crisis. At the same time, the stakes for each individual child served with these systems are too high, and external checks are not only beneficial, but necessary to prevent against human error, potential abuses, and systemic flaws that require correction. The Ombudsman and the OIG serve a critical purpose in this regard. When children are placed in the care of the state, even with the best of intentions and all the efforts in the world, things can go wrong, sometimes with, with tragic consequences. It is our duty as the adults with responsibility to take every measure to ensure that those tragic

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consequences do not repeat themselves. The OIG plays a critical role in doing so by investigating when a child has died or been seriously injured in state care, or when someone has had such a traumatic experience, experience that they have chosen to speak up and make a complaint. Over the years, the OIG's investigations and reports upon juvenile room confinement, sexual abuse of children in foster care, the health and safety crisis at the Youth Rehabilitation and Treatment Center at Geneva, and more have been critical in drawing attention to harms experienced by Nebraska children. As an external watchdog, the OIG's position to identify patterns and make systemic recommendations to avoid future similar events. At Voices for Children in Nebraska, we support the statutory authority already granted to the OIG because when it comes to the safety of our state's children, our agencies should have nothing to hide and everything to gain from open investigation and recommendations. When tragedy strikes, our children deserve nothing less than our best efforts to safeguard them against future harm. We thank Chairman Arch for bringing this bill and amendment and appreciate your time and attention.

AGUILAR: Thank you. Questions for Gillian [SIC]? Seeing none, thank you.

ANAHI SALAZAR: Thank you.

AGUILAR: Next neutral testimony. Seeing none, Speaker Arch, welcome to close.

ARCH: Thank you, Senator Aguilar. I just want to close with a couple of thoughts. One, I hope that as a result of this hearing today we've all gained a greater appreciation for the complexity of these issues and their interrelationships with each other, and the need for additional serious discussion. We have-- we have work to do obviously. I want to talk about the MOU for a second and its relationship in particular to the LR, because what the MOU does is it restores the Public Counsel's Office and the OIG's access to much of the information, people, and facilities that they had prior to the issuing of the Opinion in August. I asked a very specific question, and they were very involved, the, the-- both IGs as well as-- as well as the Office of Public Counsel, very involved in the drafting, in particular of the exhibit. Will this provide you the information necessary to fulfill your statutory obligations-- current statutory obligations? And the answer was yes. And so I believe that going forward with that MOU was absolutely necessary. So what that does is it gives them access now to what they need to do their work while we continue to

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work on bigger issues of the oversight of the Legislature. You heard today that-- you heard today that we do have issues with probation, that, that that needs to be addressed as part of the-- as part of our LR and will be addressed. We didn't include the judicial branch in this MOU because they, they have not given us access to the-- to either to the OIG of Child Welfare, to the information, since the statutory oversight of juvenile probation was put into law. So we didn't pursue an MOU with the judiciary branch because there's nothing to restore. That has been the practice. They have not given us access. So with that, we, we, we did discuss with the executive branch. They did agree to open access back up. And Exhibit A is, is really the how of how we will now exercise our access so we can fulfill our, our obligations. I might mention that this MOU remains in effect until the end of the next legislative session, so we have time to work not only during the interim, we also have time to work on statutory changes in the next session. And, and hopefully we will resolve these issues and, and, and find a way that we can continue to exercise our obligation and our-- and our right to provide oversight in a constitutional manner. So with that, I will-- I will end my, my close.

AGUILAR: Thank you. Are there any further questions for Speaker? Seeing none, thank you, Mr. Speaker. And I want to thank all the testifiers today. And for the record, online comments positions were proponents 6, opponents 1, neutral 2. No ADA. Thank you, everyone. That ends the hearing on LB1321.