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Transcriber's Office

Executive Board Committee  
January 20, 2017

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[LB6 LB207]

The Executive Board of the Legislative Council met at 12:00 p.m. on Friday, January 20, 2017, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB6 and LB207. Senators present: Dan Watermeier, Chairperson; John Kuehn, Vice Chairperson; Kate Bolz; Ernie Chambers; Sue Crawford; Dan Hughes; John McCollister; Jim Scheer; and John Stinner. Senators absent: Tyson Larson.

SENATOR WATERMEIER: (Recorder malfunction)...12:01. We'll go ahead and get started. Thank you all for attending. Welcome to the Executive Board Committee meeting. My name is Dan Watermeier from Syracuse, represent the 1st Legislative District in southeast Nebraska. The committee will take up the bills in the order that are posted outside on the agenda. Our hearing today is the public part of the legislative process and your opportunity to express your position on the proposed legislation before us today. The committee members may come and go during the hearing. We get called away for various reasons. It is not an indication we are not interested in the bill. It's just part of the process. To better facilitate today's process, I ask that you abide by the following procedures. Please silence or turn off your cell phones. The order of the testimony will be the introducer, proponents, opponents, neutral, and then closing. If you are testifying, please make sure you fill out a green testifier sheet. They are located outside the entrance of this room in the middle hallway. When you come up to testify, please hand the green paper to the page. Please state and spell your name for the record at the start of your testimony. If you will not be testifying but want to go on record as having a position on a bill being heard today, there is a white sign-in sheet in the entrance where you can leave your name. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. Written materials may be distributed to committee members while testimony is being offered. Hand those to the page when you come up to testify, and we do need 12 copies. If you have written testimony but do not have 12 copies, please raise your hand and we'll have the page make copies for you. To my immediate right is legal counsel, Janice Satra. To my left is committee clerk, Laura Olson. The committee members with us today will introduce themselves and I'll start on my far left down here with the Speaker.

SENATOR SCHEER: Oh, I'm sorry.

SENATOR WATERMEIER: Go ahead and introduce yourself.

SENATOR SCHEER: Jim Scheer of District 19.

SENATOR MCCOLLISTER: John McCollister, District 20.

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SENATOR BOLZ: Senator Kate Bolz, I represent District 29 in south-central Lincoln.

SENATOR HUGHES: Dan Hughes, District 44, (inaudible).

SENATOR KUEHN: John Kuehn, District 38.

SENATOR CHAMBERS: Ernie Chambers, District 11.

SENATOR CRAWFORD: Good afternoon. Senator Sue Crawford, District 45.

SENATOR STINNER: John Stinner, District 48.

SENATOR WATERMEIER: Missing today is Senator Tyson (Larson) from northeast Nebraska. Our page today is Alex from Aurora, Nebraska. We'll start with the bills today in order and starting with LB6 from Senator Krist.

SENATOR KRIST: (Exhibit 1) Good afternoon, Senator Watermeier and members of the Executive Board. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I'm not going to read my whole introduction. You have a copy of it that I'd like you to read, put into the record if you would, please, on both of these bills. I'll make just a few comments from my opening, and I would invite you, please, to read the entire opening because it clarifies the necessity of this bill. And by the way, there's an e-clause on this so we can try to get it out as quickly as possible. We have someone called an Inspector General. She's been trained and certified on a national level to adhere to the standards of the IG profession. We've restricted her--I'm speaking of Ms. Rogers, Julie Rogers--we've restricted her to publicly reporting on these issues in the act only once a year. Now we have seen over just a recent history that we've had children who were seriously injured, who were sexually abused, who died in our custody. Those issues need to be brought to light as urgency would require. If she needs to report on an issue, she needs to report and it needs to be timely. The problem is that we may know legislatively; but without a public announcement and a public report, we can't garner the support that we need from all three branches of government and bring people together to have these conversations. That is essentially what this is about. It is not any extension of her ability. She always cannot tell about individuals by name or by association to a particular issue. That's in her charter. She can go to jail for doing that. So it's not expanding her role, to emphasize again. It is allowing her to report on a timely manner when we have issues in this state that are critical. And anytime a child is injured or a child is involved or there's sexual molestation or they die, seems to me is a pretty critical situation. So again, I invite you to read my whole introduction because there's some emphasis there where it needs to be. However, in the interest of time, I'll stand for any questions. [LB6]

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SENATOR WATERMEIER: Thank you, Senator Krist. Questions for Senator Krist? Thank you. I'll be accepting proponents at this time, LB6. Welcome, Inspector General. [LB6]

JULIE ROGERS: (Exhibits 2, 3) Thank you. Good afternoon, members of the Executive Board. My name is Julie Rogers, J-u-l-i-e R-o-g-e-r-s, Inspector General of Nebraska Child Welfare. The page is handing out my written testimony as well as our Annual Report from September of last year. Our Annual Report includes the entirety of the Office of the Inspector General of Nebraska Child Welfare Act in the appendix at the end in case anyone wants to refer to it. The Office of the Inspector General of Nebraska Child Welfare, or OIG, is charged with providing legislative oversight, ensuring accountability, and identifying systemic issues in Nebraska's child welfare and juvenile justice systems. Like all inspectors general, the OIG is expected and committed to holding government systems accountable for efficient, cost-effective operations, integrity, and high performance. Broadly, the OIG helps ensure that dollars being spent on Nebraska's system-involved kids and families achieve the best possible outcomes. Specifically, the OIG investigates death or serious injury of a system-involved child and investigates complaints of wrongdoing to children and families being served by or through our child welfare or juvenile justice systems. The OIG provides accountability and legislative oversight of Nebraska's child-serving systems by tracking issues and themes. System improvement recommendations are made both informally and formally. Charged with investigating problems in Nebraska's child welfare system, the OIG not only uncovers wrongdoing or serious oversight, but in every instance looks for system-wide implications. The OIG strives to provide a systemic perspective which can guide lawmakers, advocates, administrators, and other stakeholders in efforts to improve Nebraska's child-serving systems. We deal primarily in narratives: the statements, opinions, and accounts of individuals across the state. We review, evaluate, and investigate based on interviews, record review, and data analysis when data is available. A full investigation involves writing a formal report with findings and recommendations. The draft report goes to the Public Counsel. After response from the Public Counsel or Ombudsman, the report goes to the subject matter agency for feedback on the recommendations contained in the report. The report is considered "final" after any modifications are contemplated by the OIG. Unless the final report is distributed to attorneys in a juvenile court case when the subject matter is relevant to an individual child's welfare, the final report may only be shared with the Chairperson of the Health and Human Services Committee or the Chairperson of the Judiciary Committee, when disclosure is, in the judgment of the Public Counsel or Ombudsman, "desirable to keep the Chairperson informed of important events, issues, and developments in the Nebraska child welfare system." That is the extent to which our work product may be distributed, until our Annual Report. On or before September 15 of each year, the OIG shall provide a summary of reports and investigations for the preceding year. LB6 provides a process for summaries of our final investigative reports to be released to the public more than once a year currently allowed by law. Nationally, nearly all other Offices of Inspectors General release summarized reports of investigation when doing so is in the public's best interest related to

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government transparency or so that needed changes can be acted on in a timely manner. LB6 provides for legislative involvement in the decision to release summarized reports. Either the Chair of the Health and Human Services Committee or the Chair of the Judiciary Committee with the Public Counsel would consult with the IG to determine whether releasing a summary would be appropriate. I foresee a process where our office would create a summary, taking out all confidential information, present it to the proper Chairperson, and then a joint determination would be made about whether releasing the summary at the time would be in the best interest of the public. If you refer to our Annual Report, inside the first page you will see a Table of Contents. You will note several items under "Investigation Summaries: 2015-2016" and those chapters, if you will, is what we foresee as a summarized final report of an investigation, as contemplated by LB6. The Court Administrator has expressed concerns about the language in this bill. Pursuant to IG standards of independence and transparency, I would rather keep the act in its current form of limited release of information on an annual basis rather than add complicated language that may thwart the transparency of our work. LB6 would allow information from the important work of the OIG be released as needed for the public good. Thank you. [LB6]

SENATOR WATERMEIER: Thank you, Inspector General. Are there questions? Senator... Speaker Scheer. [LB6]

SENATOR SCHEER: Thank you, Senator Watermeier. Again, your statement and just trying to clarify your... [LB6]

JULIE ROGERS: Yeah. [LB6]

SENATOR SCHEER: You talk about meeting with the chairperson of one of the two committees. [LB6]

JULIE ROGERS: Right. [LB6]

SENATOR SCHEER: And then John would make a decision. But there's only two of you. So if it's a 50-50 tie, how can you determine if it's released (inaudible)? Would you maintain the ability then to do that regardless (inaudible)? [LB6]

JULIE ROGERS: I would. I mean, if it's a 50-50 split... [LB6]

SENATOR SCHEER: I mean, (inaudible)... [LB6]

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JULIE ROGERS: That's a good question. [LB6]

SENATOR SCHEER: ...something that you think is very important... [LB6]

JULIE ROGERS: Right. [LB6]

SENATOR SCHEER: ...yet whatever committee chair... [LB6]

JULIE ROGERS: Okay. [LB6]

SENATOR SCHEER: ...that you might be meeting says, well, I'm not so sure. [LB6]

JULIE ROGERS: Then I would tend to not release it. I would...personally, I would err on the side of not releasing it if that were the case. But that's a good point. [LB6]

SENATOR SCHEER: Okay. [LB6]

SENATOR WATERMEIER: Senator Kuehn. [LB6]

SENATOR KUEHN: Thank you, Mr. Chairman. I appreciate your testimony on this issue. I have a couple of questions regarding the confidentiality because I think we're in full agreement that protecting absolutely the identity of these children and maintaining the confidentiality throughout the process is absolutely critical to these children and juveniles. So first question would be with regard to the consultation of the respective committee chairs, while you are under statutory authority to maintain absolute confidentiality, what is the statutory protection of that confidential information once it goes to a committee chair, which might also then include committee staff or other employees that didn't have access to that highly sensitive information? [LB6]

JULIE ROGERS: Well, so currently that's who can see the confidential information. And I think that the act talks about if the Inspector General does give the report to someone or an entity they are under the responsibility of keeping that confidential, not only the confidential parts or names or but the entirety of the report. [LB6]

SENATOR KUEHN: Okay. And my second I guess is a question I would like you to respond to but also more of a statement that one thing that concerns me about incremental reporting is even if confidentiality is strictly maintained, we are a small state. And especially in the case of a high-

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profile issues involving children, there is media coverage. And even when the media coverage maintains some degree of confidentiality, I do believe there is a potential concern with intermittent reporting that's not aggregated for individuals to be able to make a connection between the identity of that individual and the situation even though all of the confidentiality has been maintained to the letter of the law. And so I just think we need to be very careful and should this advance that your office be especially sensitive to the nature of the fact that we are a small state with a limited number of daily papers that everyone reads and extend beyond just the letter of the law but also ensuring that those connections are not being able to be made to protect these children. And I welcome your (inaudible). [LB6]

JULIE ROGERS: Yes. And I completely agree with you. We take...we try to take great care in our Annual Report. We do have stories of individual children. And if the people involved in that story, they will know who they are. But we take great care to take out dates and names and try to summarize it so in the name of transparency and our work product that people can respond and see what's happening and identify the issues based on these individual stories that we're required to look at. But I agree, it's a tough balance. [LB6]

SENATOR KUEHN: Yeah. And my biggest concern is I do not want children who've already been victimized... [LB6]

JULIE ROGERS: Absolutely. [LB6]

SENATOR KUEHN: ...to suffer a second victimization... [LB6]

JULIE ROGERS: Yes. [LB6]

SENATOR KUEHN: ...at the hands of media or other interests. Thank you, appreciate it. [LB6]

SENATOR WATERMEIER: Thank you, Senator Kuehn. Senator McCollister. [LB6]

SENATOR MCCOLLISTER: Thank you, Mr. Chairman. I think I heard in your testimony that you base this on model legislation. Was that correct? [LB6]

JULIE ROGERS: No. The other IG offices across the country do release reports on an individual basis. We're a unique Inspector General's office because we are within the legislative branch, not the executive branch. Most other...all other IG offices are within the executive branch. [LB6]

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SENATOR McCOLLISTER: Understand, thank you. The triggering mechanism that you described in the document. [LB6]

JULIE ROGERS: Yes. [LB6]

SENATOR McCOLLISTER: Can you think of a better mechanism? You know, having two chairs... [LB6]

JULIE ROGERS: Yeah. [LB6]

SENATOR McCOLLISTER: ...with differing opinions... [LB6]

JULIE ROGERS: Right. [LB6]

SENATOR McCOLLISTER: ...is problematic. Would it be possible to add a third member that would... [LB6]

JULIE ROGERS: Yeah. [LB6]

SENATOR McCOLLISTER: ...maybe, you know, resolve those kinds of issues? [LB6]

JULIE ROGERS: In contemplating how this would go, I mean, on one end you have just an IG redacting the names of folks and the dates in a report which is on one side. And then you could do a summary that the IG decides. And then if the IG can decide with the Ombudsman...first, we have to go through a layer of process with the Ombudsman's office and they have to decide whether giving the report to the chair is in the best judgment. But if there is another person to add, I don't know if making the determination of what's in the public's best interest you might add to that specific determination maybe the Ombudsman or the Exec Board Chair maybe because it is the legislative branch. That's something to contemplate. But whatever the process is, I am open to whatever the best process could be. So a good determination can be made balancing all of the things, confidentiality and making sure the public is aware of how the government functions. [LB6]

SENATOR McCOLLISTER: Well, thank you. As discussion continues, perhaps we can look at that function. [LB6]

JULIE ROGERS: Okay. [LB6]

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SENATOR McCOLLISTER: Thank you, Senator. [LB6]

SENATOR WATERMEIER: Thank you, Senator McCollister. Senator Hughes. [LB6]

SENATOR HUGHES: Yes. Thank you for coming today. Thank you, Mr. Chairman. Releasing this information any time you deem it to be in the public's best interest, is that...in your mind, is that pretty much every case you look at or is there...I guess I'm looking for an example of... [LB6]

JULIE ROGERS: Okay. [LB6]

SENATOR HUGHES: ...when would be in the public's... [LB6]

JULIE ROGERS: Yes. [LB6]

SENATOR HUGHES: ...best interest and when it wouldn't be. [LB6]

JULIE ROGERS: Well, in our Annual Report from the past fiscal year, we did one of our investigations in addition to doing death and serious injury of system involved, part of system-involved kids includes death and serious injury of kids who are in licensed day cares. So we had a number of babies that died of SIDS. And so we did one report and we call it our SIDS Report, it's a chapter in here, but some of our findings and recommendations we could have released the report. It would have gotten attention, maybe some safe sleep information would go out, and that would be highlighted. Because it's sort of in this whole report, there was nothing on safe sleep or how we can improve the licensing of childcare centers to deal with safe sleep. That would be an example of, I think, what would rise to the level of in the public's best interest. Not in the public's best interest if we don't find anything that needs improving. I mean, there are instances and we've had reports where we don't find...I mean, sometimes things just happen and everyone is doing their best and we don't have any recommendations. Or if it's particular to a certain agency and they have very specific...we get down in the weeds with these reports. I mean we are dotting the i's and crossing the t's. And maybe if we found that specific policies need to be changed one way or the other and that's really detailed to a certain agency, but not necessarily in the good of the whole public, that would not be something I would see as in the public's interest necessarily. [LB6]

SENATOR HUGHES: Okay, thank you. [LB6]

JULIE ROGERS: Yeah. [LB6]

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SENATOR WATERMEIER: Thank you, Senator Hughes. Further questions? Thank you, Inspector General. [LB6]

JULIE ROGERS: Thank you. [LB6]

SENATOR WATERMEIER: Further proponents for LB6? Welcome. [LB6]

KIM HAWEKOTTE: Good afternoon, Chairman Watermeier and members of the Executive Committee. I'm Kim Hawekotte, K-i-m H-a-w-e-k-o-t-t-e, and I'm the executive director at the Foster Care Review Office, and we are here in support of LB6. I think it's very important for all of us to realize that the Inspector General Office and the Foster Care Review Office both play very important key oversight roles, both within the child welfare and juvenile justice system. Both of us were created to ensure that the best interest of children remain at the forefront of everything that all of us do, from the individual child level to the policy and service level; and that both the Inspector General's Office and our office work very closely together in order to ensure that this does occur. But we do have very distinct roles that come in at different times. The Inspector General's Office investigates critical incidents, death and serious injuries. And they get in the weeds, and it is so important for all of us to look at those cases to be able to determine how we can prevent this from happening in the future because sometimes it does happen. On the other hand, the Foster Care Review Office is really created as an independent agency so we're not under the courts, we're not under HHS, we're not under the Legislature. We're run by an independent board that really allows us to look at all systems and to see which parts of a system are not working for the betterment of children. Our statutory duties are very clear. We track all children in out-of-home care, both from probation and child welfare. We complete thorough individual child reviews. In fact, this past year we do over 4,200 reviews on individual children. We advocate for those children's best interest because under our statute we can actually go into court, take standing, and fight for what the needs of these children are. And last but not least and just as important, we collect and analyze data from every review that we do in order to help educate all stakeholders as to what systemic improvements are needed. We have a very detailed individual case file review process. For those that aren't familiar with us, we have 57 local boards that meet every month. We have over 325 volunteers across this state that meet to really make recommendations to the court. We make these recommendations within two weeks of any court hearing so that the judge and the legal parties are aware of what our recommendations are. Also with regards to the data analysis that we always do, we have worked very hard for the last two years to create a new database in order to effectuate and have more up-to-date information. We have a 30-year-old database that had great information that nobody could access and use. So we have very strategically taken our time to be able to use this. Thanks to Senator McCollister, we also have LB297 that will be before each of you also with regards to the state really looking at a data warehouse and how we can incorporate these big data systems to be able to meet the needs of our kids that we currently have. But by doing this, this allows us

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to individually and immediately look at ways to solve problems and instead of having to wait every year. One of the important changes that you did two, three years ago now with regards to the Foster Care Review Office is that we have to submit quarterly reports and also annual reports. And you will see those. In fact, you'll get our Annual Report probably today or on Monday. But by doing the quarterly reports, just like what is looked to be done under LB6, it really allows us to drill down and look at specific systemic issues and make recommendations on how to solve those instead of waiting a year down the road. I also wanted to let you guys know currently in out-of-home care, because a lot of people don't know, we have 3,405 state wards under HHS and we have 949 probation youth in out-of-home care. So we're talking about 4,354 kids in this state just to put it around it. But one of the things that we really believe that LB6 will help do is the Inspector General needs the ability to involve all of the system stakeholders so that we can identify concerning issues. So when they look at a case and they make their recommendations to the agencies that the rest of us can then ensure that the agency is actually following those recommendations like they said they were, that kids are safe, or is that pattern still continuing. If our office was able to know this when we go in and do those 4,200 reviews, we can concentrate on those specific issues such as, you know, with regards to the day-care issue Julie Rogers mentioned. If we have children in out-of-home care that are in a day care, had they had the proper notifications? Do they know the way that children should be sleeping? If we don't know that's an issue, it's much harder for us to focus our staff to make sure that our staff are following through. So I see a very close relationship to both agencies for the best interests of our children so that we can continue to meet their needs. Thank you for your time. Just wanted to say how we work together because I think it's important as a system, and I'm open to any questions. [LB6]

SENATOR WATERMEIER: Thank you, Ms. Hawekotte. Questions? Thank you again. Further proponents on LB6. All right, seeing none, anybody in opposition to LB6? Anyone here for neutral to LB6? Welcome, Mr. Steel. [LB6]

COREY STEEL: (Exhibit 4) Thank you, Senator Watermeier, members of the Executive Board. I'm Corey Steel, C-o-r-e-y S-t-e-e-l, and I'm the State Court Administrator for the judicial branch. I come today not in opposition, not in support, in a neutral capacity. My intent here today is not to eliminate this bill, kill this bill, do anything like that. My intent here today is to try to increase some of the language that's put into effect or proposed in LB6. There are many concerns that have been raised today with this committee as well that we have had in the administrative office of the courts and probation. Senator Kuehn hit the nail right on the head with our biggest concern is we're a small state and a very publicized state. And when something happens to a child or a kid or somebody with probation, there's publicity on that. And then if a report is released soon after that that says we are releasing a report on this issue that pertains to a case-- and I understand the confidentiality, they can't put name, they can't put those identifying issues. But for an example, two young individuals that were with Probation unfortunately were killed in

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Omaha and they were shot while sitting in their car. And if that summary states that we released a report on a system issue because of an incident that took place where two young individuals were shot in their car, that then points directly to that case. That then raises the attention and the confidentiality of the nature of the work that she does. And so that now highlights that specific case, the people know the kids, the people now know who their probation officer may be, they know the family, they know where this took place. So that's our main concern is we want to keep this as confidential as possible as well so that whether it be a group home, a facility, a kid, a family member or what have you, it cannot be traced back to that specific case. And so as you see in the proposed amendment that we have through the Court Administrator's Office, "A summarized final report of an investigation" that's our issue is because we fear that if it's just released that there was an investigation on this and it releases that summary or that report, that specifies there was a specific investigation that took place in order to have that. I am in full support of what Ms. Rogers talked about. If there's a systemic issue and the issue she used is spot on with there was a systemic issue with SIDS that we get that out there sooner or later, we do not wait on that because we as practitioners in this field need to know. We need to address those issues, whatever it may be. And so we have language that's proposed that talks about systemic issue instead of incident. To us, those are two different things. You can talk globally about we've done a number of investigations and this systemic issue has arose, therefore, we need a report now to address the issue instead of that specific incident. Senator Krist in his opening talked about issues. Julie Rogers talked about issues and themes, and that's been exactly what we're talking about as well when we talked about proposed change to that section of this bill. Our fear is it could be...go back to a probation officer that then would receive scrutiny, the family would go back through those issues. So those are kind of our concerns. And again, I think that we can continue to work through this legislation in order to be in support of that. That's why I'm here in a neutral capacity, not in opposition of it because I think that there is some good that can come from this. As we that are doing this work, we do the very best we can each and every day. But we know there are issues throughout the systems. And when those issues that come about by Ms. Rogers in her capacity, we need to act on those and we need to address those issues so we can have a better system. And so we're in full support of that premise. We just really fear that this can be pointed back to a specific case and that then would blow the confidentiality which in 43-4331 specifies that summary report is to be confidential. It is not a public document, nor should an investigation be public. So that's why I'm here today and willing to continue to work with Senator Krist and Julie Rogers to come with language that would really talk about issues instead of an investigation. I'm here to answer any questions that you may have. [LB6]

SENATOR WATERMEIER: Thank you, Mr. Steel. Any questions? Senator Bolz. I thought you had your hand up. [LB6]

SENATOR BOLZ: Thank you, Mr. Chairman. I'll just make a remark which is what I heard the Inspector General saying was a concern about specificity of language and getting the words

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right. And as I...and I appreciate the proposed amendment. But as I look at it, there maybe is a conversation to be had about what a critical systemic issue means, what detailed information means. And so I appreciate your willingness to continue working to get it right so that we do put something into place that everyone can work with. And the other maybe comment I'll make is that...and I don't mean to wordsmith in front of the committee, but I could envision a circumstance in which something is a critical systemic issue that needs to be addressed by one person or one stakeholder or an issue that needs to be addressed by multiple stakeholders but may or may not be critical. So I just think... [LB6]

COREY STEEL: Absolutely. [LB6]

SENATOR BOLZ: ...that maybe a little massaging is necessary here. [LB6]

COREY STEEL: You bet. [LB6]

SENATOR WATERMEIER: Thank you, Senator Bolz. Senator McCollister. [LB6]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. You change the triggering mechanism in your recommendation, do you not? You said both committee chairs have to agree... [LB6]

COREY STEEL: Oh, we did. We addressed that as well and I'm sorry I forgot. I left that out. I wrote that down here as well. We had noticed that as well that the same thing that was mentioned here is that if Ms. Rogers and it goes to one... [LB6]

SENATOR McCOLLISTER: Either, either... [LB6]

COREY STEEL: ...either one of the committee chairs, our concern was that, too, is does the report then get...if the committee chair says no, does Ms. Rogers still have the authority in statute to do that? So it would be really a moot point because Ms. Rogers on her own could release that if her and the committee chair did not agree because there's no mechanism in place to say yes or no or what's if one does and one doesn't. [LB6]

SENATOR McCOLLISTER: Would you be agreeable, Mr. Steel, to a third member in that group that would make the decision in case of a deadlock? [LB6]

COREY STEEL: Yeah, and that's I think why we proposed the "and" instead of "or" there. [LB6]

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SENATOR McCOLLISTER: Okay. [LB6]

COREY STEEL: So it says that both the Inspector General or all the Inspector General, the chairperson of the Health and Human Services Committee, and the chairperson of the Judiciary Committee so there would be three individuals that would come together to determine is this a critical issue and should we do a report on it. [LB6]

SENATOR McCOLLISTER: So all three would be voting members so to speak. [LB6]

COREY STEEL: Correct. [LB6]

SENATOR McCOLLISTER: Okay. Thank you, Mr. Chairman. [LB6]

SENATOR WATERMEIER: Thank you, Senator McCollister. Other questions? Thank you, Mr. Steel. [LB6]

COREY STEEL: Thank you. [LB6]

SENATOR WATERMEIER: Further neutral testimony? Senator Krist to close. [LB6]

SENATOR KRIST: The continuity in this issue has been and will continue to be the legal counsel of the Executive Board, Julie Rogers, and Mr. Steel. We've worked through issues in the past four years together hand in hand, and I will participate in making sure your concerns are alleviated in any way possible. But I have to make a statement. I was part of the original legislation on Health and Human Services that created the position of the IG. I was instrumental and carried the bill that reorganized the foster care office. We did it deliberately. And I can't imagine two better people being in charge of those two organizations than Kim Hawekotte and Julie Rogers. And remember, Julie does this all the time. She just does it once a year. So systemic probably needs to be addressed, the number of people voting on an issue, and confidentiality is nothing new. On the Performance Audit Committee, we're given things that are not releasable ever unless it goes out in the report. So we can work through this. But I think it needs to happen sooner than later. We have critical incidents and death of children. There's about 36, 37... [LB6]

JULIE ROGERS: That's on sexual abuse (inaudible). [LB6]

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SENATOR KRIST: Sexual abuse, all right, that need to be addressed. And that investigation for her should wind up in the March time frame. [LB6]

JULIE ROGERS: Hopefully. [LB6]

SENATOR KRIST: So if we put an E clause on this and get it out there, it may be in the best interest of public release for those issues, and it may not be. It may not be. Thank you. [LB6]

SENATOR WATERMEIER: I guess I have a question, Senator Krist. I gave you this amendment, this proposed amendment from Mr. Steel. Did you have a chance to look at it at all? I mean, would you give me... [LB6]

SENATOR KRIST: No. I just saw it this morning and, you know, we were kind of busy on the floor. I don't have inherently. I read it, I understand what his purpose in doing it. My problem, and I will express this--I've expressed it to Mr. Steel earlier and I'll express it again--we're not changing the process. We're changing the delivery system basically, the timeliness of the information. If we could have saved...in the situation that Ms. Rogers brought up, if we could have saved one kid for SIDS for safe sleeping habits six months earlier than waiting for the report to come out, it would be worth saving one life. I do understand his concerns. This has always been the concern between the two agencies is how much information is put out on their officers as well as the data. So we'll work through it and hopefully very quickly. And I would ask you when we come back with you collectively to Exec, as soon as you can, to get it out as soon as you can. [LB6]

SENATOR WATERMEIER: And I guess I'll ask again, that's my question. Today if you had your druthers on this amendment, proposed amendment, you'd be in opposition to the amendment, right? [LB6]

SENATOR KRIST: No. [LB6]

SENATOR WATERMEIER: You would not be. [LB6]

SENATOR KRIST: No. I think it needs to be tweaked some. [LB6]

SENATOR WATERMEIER: Okay, a little bit further tweak. [LB6]

SENATOR KRIST: Yes, sir. [LB6]

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SENATOR WATERMEIER: An exact tweak? [LB6]

SENATOR KRIST: My tweak would be defining the systematic issues and the urgency by which it would go out. And that would override, I think, part of the amendments as well. [LB6]

SENATOR WATERMEIER: Okay. I just want to make clear that you had a chance to put that on the record which way you were on that so thank you. [LB6]

SENATOR KRIST: Right. I've never disagreed with Corey for very long. [LB6]

SENATOR WATERMEIER: Okay. Senator Crawford. [LB6]

SENATOR CRAWFORD: Thank you, Chair Watermeier, and thank you, Senator Krist. Just so we have on the record, do you have concerns about the shift in terms of having both committee chairs agree or is that something you still want to discuss or consider? [LB6]

SENATOR KRIST: You can never project far enough ahead to say that good personalities and good leadership skills are going to be in charge of our committees. Maybe it's a good safeguard to have a three-point because I think in almost every one of these incidences that are brought up jurisdictions will flow between Health and Human Services potentially and the Judiciary Committee. I'm not so sure that the Ombudsman is the tiebreaker, although he's part of that process. She described the process to you. The Ombudsman weighs in from the very beginning when she has a report. So if we need to have a tiebreaker, I would say it would be two senators and our IG because she is our watchdog in this behalf. And we'll talk about that also. But I'm hesitant at this point to say these are the two positions. I just think we need to work through there. [LB6]

SENATOR CRAWFORD: Thank you. [LB6]

SENATOR WATERMEIER: (Exhibits 5, 6) Okay. Thank you, Senator Crawford. Further questions for Senator Krist? Thank you, Senator Krist. We'll close the hearing on...oh, excuse me. To read into the record for LB6 we had Christopher Eickholt from the ACLU in support and Juliet Summers from the Voices for Children in support of LB6. And this will close the hearing for LB6. And we will open the hearing on LB207. Senator Krist. [LB6]

SENATOR KRIST: (Exhibits 1, 2) Okay. LB207, again, I've given you my narrative, the entire transcript of what I would introduce. I won't go through the whole thing. I'd invite you, please, to read through it. This is...I hesitate to call anything a cleanup bill because it's never a bill that's too

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easy or a cleanup. There's always some speculation. But I have to say that when the act was put into place there were things that were not potentially thought of in terms of unintended consequences. And this, I'm sure Ms. Rogers will walk through it so I don't want to waste your time doing that. There is, however, an amendment that you've already been handed out which legal counsel has reviewed. And I keep pointing at Janice again because it's that conversation, the continuity that's afforded over the last four years with Ms. Rogers and Corey Steel, the courts, and your legal counsel. But I think it was never anticipated that someone would come back and say the Legislature has to pay for an attorney for a person who is being either questioned or whose data is being collected. If that person feels uncomfortable enough, they can provide their own attorney or a supervisor. That's never a question. But for us to get in the habit, having sat where you sit, there's going to be constant challenges to legislative process; and lawyers can cost a lot of money as we found in the last few years. So I feel very strongly about that amendment because I think it sets a dangerous precedent for the legislative body. [LB207]

SENATOR WATERMEIER: Questions of Senator Krist? All right, thank you, Senator Krist. Those proponents of LB207. Welcome again, Inspector General. [LB207]

JULIE ROGERS: (Exhibit 3) Thank you. Members of the Executive Board, my name is Julie Rogers, J-u-l-i-e R-o-g-e-r-s. I am your Inspector General of Nebraska Child Welfare. You have our Annual Report from September of last year. Our Annual Report includes the entirety of the Office of the Inspector General of Nebraska Child Welfare Act and the appendix at the end if you care to reference it. The OIG is charged with providing legislative oversight, ensuring accountability, and identifying systemic issues in Nebraska's child welfare and juvenile justice systems. Specifically, the OIG investigates death or serious injury of system-involved youth and investigates complaints of wrongdoing to children and families being served by or through our child welfare or juvenile justice systems. The OIG provides accountability and legislative oversight of Nebraska's child-serving systems by tracking issues and themes. System improvement recommendations are made both formally and informally. LB207 amends the Office of the Inspector General of Nebraska Child Welfare Act to clarify provisions within the act. Now in our fifth year of existence, we have had time to experience how the act functions. The changes in the bill come from questions or concerns in doing our work on a day-to-day basis over the past year or so. The clarifications in LB207 include allowing agencies to correct factual errors in reports, providing private parties and private agencies to respond to recommendations in our reports, shortening the time period for private parties to respond to our reports from 45 days to 30 days--and please note public agencies only have 15 days to respond--clarifying that legal fees will not be the responsibility of the OIG, and adding the same whistle-blower-type language that the Ombudsman's Office follows to the OIG Act. I'm happy to answer any questions you may have regarding any of these changes contemplated in LB207. Thank you. [LB207]

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SENATOR WATERMEIER: Thank you, Inspector General. Questions? Senator Crawford.  
[LB207]

SENATOR CRAWFORD: Thank you, Chairman Watermeier, and thank you, Inspector General. When you gave your briefing at the beginning of the legislative session, you talked about the fact that your office, in addition it has its findings and then people respond to findings, and then your office is following up in terms of identifying if they've made the actions that they've said they were going to take and their response to the findings... [LB207]

JULIE ROGERS: Right. [LB207]

SENATOR CRAWFORD: ...or they didn't reject those findings. So I was wondering what the implications are for private parties in terms of this change. I mean, do you currently already track any of that for private parties? Or is the recommendation or finding on a private party just posted and that's the end of it? How does that process of follow up and tracking changes for private parties get impacted by this change? [LB207]

JULIE ROGERS: I don't think it would be impacted at all. According to the act, in our Annual Report we are required to not only report on the recommendations that our office has made but if agencies, and I would include private agencies... [LB207]

SENATOR CRAWFORD: Okay. [LB207]

JULIE ROGERS: ...how much progress they've made in implementing those recommendations or not. So...and I don't think that the changes contemplated in LB207 would affect that at all.  
[LB207]

SENATOR CRAWFORD: All right. Thank you. [LB207]

SENATOR WATERMEIER: Thank you, Senator Crawford. Further questions? Senator Kuehn.  
[LB207]

SENATOR KUEHN: Thank you, Mr. Chairman. I would appreciate kind of your rationale. I understand the role that many private agencies play in providing input on these various reports. I'm concerned about the vetting of those agencies and how we ensure that the private agencies who would then contribute to a public report actually have the expertise and authority to be included in that public report. I mean, can I just go out and start a nonprofit... [LB207]

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JULIE ROGERS: Yeah. [LB207]

SENATOR KUEHN: ...and then just comment at will and (inaudible) included or? [LB207]

JULIE ROGERS: Well, no. So let's say a child dies and they're a ward of the state and they are being served by "Happy Family Agency." So we do an investigation on the death. We find that we make recommendations to Health and Human Services on the government side and then we make some recommendations about how "Happy Family Agency" can improve their operations. Because when we do an investigation, we get all of private provider...and it's not just any private provider. It's the private provider who has contracts with the Department of Health and Human Services in that case so they are taking government money to serve these children or this child in particular in my example. Then if we make recommendations, right now those private entities can only respond with...if we have made factual errors, then they can respond. Well, we might make recommendations for their improvement and there's no vehicle right now that these private agencies can respond to say, hey, we don't agree with your recommendation because you missed this or because we are already have a group who's trying to improve things or whatever the reason is. So we think it's important that not only public agencies but private agencies who are involved in taking government money and we make recommendations for improvement that they get the opportunity to respond to recommendations as well. [LB207]

SENATOR KUEHN: Appreciate that, thank you. [LB207]

SENATOR WATERMEIER: Thank you, Senator Kuehn. Further questions? Senator McCollister. [LB207]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. When a death occurs as you described just now, you're certainly not the only agency that reviews the situation. The police have been there. What, any other governmental body come in there and review what occurred? [LB207]

JULIE ROGERS: So law enforcement, they do the criminal investigation. We do not do criminal investigations. I would say that licensing might do their own look at the situation if something bad has happened with a licensed facility. I am not sure of the processes within Children and Family Services, but I know that they take a hard look at specific cases when a child dies. I don't know of any other formal investigation into a child death or serious injury that would make recommendations other than our office. [LB207]

SENATOR McCOLLISTER: We've been talking about confidentiality here today. Are those same groups you just spoke about, do they have the same obligation and commitment? [LB207]

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JULIE ROGERS: Confidentiality? [LB207]

SENATOR McCOLLISTER: Yeah. [LB207]

JULIE ROGERS: Like the Division of Children and Family Services and the Department of Health and Human Services as the umbrella, absolutely. [LB207]

SENATOR McCOLLISTER: But the police probably have reported that accident on the news, have they not? [LB207]

JULIE ROGERS: Yes. So if...that's how some but not all death or serious injuries get media attention. It's when there's been a criminal investigation and then something has been filed in court and there are public records. So that's usually when the media reports on those tragedies. So it's gone through a criminal investigation. [LB207]

SENATOR McCOLLISTER: Thank you. Thank you, Mr. Chairman. [LB207]

SENATOR WATERMEIER: Thank you, Senator McCollister. Further questions? All right, thank you, Inspector General. [LB207]

JULIE ROGERS: Thank you. [LB207]

SENATOR WATERMEIER: (Exhibits 4, 5) Further proponents? All right, seeing none, moving on to opponents to LB207. Seeing none, anyone in the neutral capacity of LB207? Senator Krist, closing. Senator Krist waives closing. Thank you. We have to read into the record on LB207 Christopher Eickholt with the ACLU in support and Juliet Summers with the Voices for Children in support. This closes the hearing for LB207. Thank you all for attending. I would ask the committee to stick around for just a second. [LB207]