

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board January 26, 2022

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

GEIST: Oh well, good afternoon. My name is Suzanne Geist and I represent District 25.

McCOLLISTER: Good afternoon. John McCollister, District 20, central Omaha.

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

VARGAS: Tony Vargas, District 7, downtown and south Omaha.

HUGHES: And on my right.

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PANSING BROOKS: Thank you. Hi, I'm Patty Pansing Brooks, Legislative District 28, right here in the heart of Lincoln. I'm sorry I'm a little bit late. I had a bill I was just attending to up on the floor.

HUGHES: Glad you're done.

PANSING BROOKS: Me, too.

LOWE: John Lowe, District 37, the southeast half of Buffalo County.

HUGHES: Very good. To my immediate right is my-- our committee counsel, Janice Satra, and on the far right is our committee clerk, Mandy Mizerski. We also have helping us today is Chloe Fowler. She is a senior from UNO, majoring in political science. She is our page today. So with that, we will open our hearing on LB814. Senator McKinney, welcome to the Executive Committee.

McKINNEY: Thank you, Chair Hughes, and members of the Executive Committee. LB814 acknowledges that racial impact statements are a tool for lawmakers to evaluate potential disparities of proposed legislation prior to adoption and implementation. They are similar to fiscal impact statements in that they assist legislators in detecting unforeseen policy ramifications as they pertain to racial disparities within our state. This gives legislatures the opportunity to amend their proposed bills to alleviate or even eliminate potential harm. Under this bill, every legislative bill that relates to the criminal justice system, the juvenile justice system, prisons, jails, probation and parole and that, if passed, may have a disparate impact on racial minority populations must be accompanied by a statement pursuant to the impact. This is an issue that Senator Vargas has been championing and has done a commendable job around this issue. I was inspired by this and decided to narrow the focus to legislation that deals with criminal justice because even though I believe they-- I believe they all should be used for all bills, I recognize some hesitancy from some at the blanket application and realized that the benefits of a more centralized application may help to improve the conditions of the criminal justice system within our state. It's not breaking news that relative to the greater Nebraska state population, black, Hispanic and native individuals are-- are overrepresented in NDCS admissions. In a report released by the sentencing project, it stated that in Nebraska, black residents are incarcerated at a rate nearly nine times that of white residents, and Hispanic and Latino residents are imprisoned at double the rate of white residents. Racial impact statements are a tool for us to evaluate potential impacts on these disparities prior to the adoption of a bill and allows us time to rectify them before

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they cause additional harm. This bill will also have additional benefits to taxpayers. A recent article published in the Omaha World-Herald entitled Paying the Price explained that laws passed in Nebraska that have heightened the penalties on certain offenses and steered hundreds of offenders from pen-- from federal prisons into our state system added to the tab for Nebraska taxpayers. My thinking is that implementing a system in which these types of impacts can be evaluated before bills are passed can help us alleviate the most antiquated consequences. In passing this bill, the state of Nebraska would be in good company. Nine states, Colorado, Connecticut, Florida, Maine, Maryland, New Jersey, Oregon, Virginia and our neighbor, Iowa have already implemented mechanisms for the preparation and consideration of racial impact statements. We cannot shy away from the conversation because it's deemed uncomfortable. What should be uncomfortable is that we champion our state as the good life state, but have in the past and currently continue to push forward legislation that will have potential negative impacts on minority populations across our state. We must ensure that we pass legislation with all Nebraska's-- Nebraskans in mind. It is clear that without racial impact statements, we will continue as a state to introduce and potentially pass legislation that continue to perpetuate systemic harm. I encourage you all to move this bill forward or to the floor to move our state into a better place. I am also open to any questions that you may have. Thank you for your attention and I welcome any questions. Thank you.

HUGHES: Thank you, Senator McKinney. Are there questions from the committee? Senator Vargas.

VARGAS: Thank you very much for bringing this, Senator McKinney, and for narrowing the focus. I just want to see if you can talk a little bit about-- because I think it's also helpful for education, for the public and for the committee. The nature of the data and what is actually in a racial impact statement. Can you talk about what it is and what it isn't in terms of the information provided?

McKINNEY: The nature of the data pretty much shows that if a bill was passed and dealt with, you know, raising a penalty, say, a new bill that would create a new felony within our state, it would show the potential impacts of what that would do to say, a community in south Omaha or north Omaha, and how just by forecasting, you can see how it would impact those communities and whether it indicates whether if you pass this and create a new felony for the state, how more than likely this group of individuals will most likely be incarcerated more.

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VARGAS: Thank you. I just wanted to make sure that we have clarity around that, especially for the economic impact that that can have for saving dollars and--

McKINNEY: Yes.

VARGAS: --and that ultimately, do any of these regional impact statements include policy recommendations or is it just data?

McKINNEY: No, it's just data. It just shows the potential impact.

VARGAS: Thank you.

HUGHES: Senator Geist.

GEIST: Thank you for bringing this and the discussion. I'm curious if, does this-- just data collection and reporting, or is this a science? Is there-- I'm wondering if-- if an impact statement is subjective or is it something that is-- is-- it's scientifically gathered? I don't really know how to explain what I'm asking.

McKINNEY: It's-- it's data collection and reporting similar to how we get fiscal notes on our bills, and LRO reaches out to different departments and entities to gather information.

GEIST: OK.

McKINNEY: And share within the fiscal note.

GEIST: So is there-- you said that other states have done this. So is there a method-- like a specific methodology that they use to gather this type of data?

McKINNEY: You-- I would say you look at different census tracts and-- and just go based off of research that is done throughout history in the past and see how past legislation, similar to a bill has affected these populations, but also takes into account the environments in which these individuals may arise from.

GEIST: OK, thank you.

HUGHES: Senator McCollister.

McCOLLISTER: Thank you, Mr. Chairman. What organization in the state would be tasked with to determine this-- determine this information or find this information?

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McKINNEY: LR-- LRO would be tasked with gathering and reporting this information.

McCOLLISTER: Thank you.

HUGHES: Any additional questions from the committee? Seeing none, you'll stay for closing?

McKINNEY: Yes.

HUGHES: Very good. So we will open up testimony to the LB814 and the proponents. So if you are in favor of this bill, I invite you to come up and testify. Any proponents? And if you could, if you're going to testify, come to the center-- to the front row so we can keep it moving, if possible, because we have a very short period of time. Welcome.

SPIKE EICKHOLT: Thank you. Good afternoon, Chair Hughes, and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska as their registered lobbyist in support of LB814. I want to thank Senator McKinney for introducing this bill. I think Senator McKinney explained the bill accurately and I think in response to what Senator Geist asked, I think the best way to look at this is that this is a fiscal note type situation or a tool, if you will, that the Legislature can consider when you look at bills that deal with criminal law and juvenile justice. For those of you who are on the Judiciary Committee and those of you who introduce bills in this area, one thing that is true is that for whatever reason or reasons, there is an overrepresentation of people of color, a disparate impact against people of color, all phases of the criminal justice system and the juvenile court system. Something is happening from the beginning of end-- from beginning of a criminal case when there's a police stop, all the way to the prison sentence where people of color are overrepresented. One thing that a racial impact statement tries to do is try to measure either for good or for bad a despair or a positive impact that any kind of bill that changes the law might have on that dilemma, that situation. Similar to a fiscal note, there is a certain science, and what I've passed out to you is that as Senator McKinney referred to earlier, Senator Vargas did do a bill on this a couple of years ago. I think there was also an interim study and maybe even a rule change. And I'm having circulated a copy of a report that was done by this Legislature, the Rules Committee in 2020 that sort of explained and envisioned how a racial impact statement might work. And in this example, or in this report, there are some examples of racial

impact statements that actually apply toward actual bills that were then pending before the Legislature in 2020. So that's sort of what the bill does. We'd urge the committee consider something like this. If you look at the bill, it proposes to apply in all bills that impact criminal justice or juvenile justice systems. But if you look on page 3 of the bill on lines 3 and 4, there still is the discretion, if you will, for the Executive Board to actually direct the Legislative Research Office to prepare those. In other words, even if you pass the bill, it would not necessarily mean that every bill that may affect a criminal law or every bill it may affect the juvenile court has to have a racial impact statement. It just would designate that on those bills that the Executive Board sees fit for racial impact statement could be created. I'd urge the committee to consider this. We feel it's a positive choice because if we don't do anything with respect to the system and look at it, that disparate impact will continue.

HUGHES: Thank you, Mr. Eickholt. Are there questions from the committee? Seeing none, thank you for your testimony today. Next proponent. Welcome.

WESTIN MILLER: Thank you, Senator Hughes, and members of the Executive Board. My name is Westin Miller, W-e-s-t-i-n M-i-l-l-e-r. I'm the director of Public Policy for Civic Nebraska. I want to thank Senator McKinney for bringing this bill. This is an issue that we've supported for a couple of years now, both as a proposed rule change by Senator Vargas and now as a bill. Usually I'm down here talking about elections and voting rights in the Government Committee, so my connection to this might not be super clear at first, but it's actually very simple. As long as Nebraska continues to disenfranchise people for felony convictions, we have a vested interest in making sure that that injustice isn't made even worse by disproportionately impacting black and brown Nebraskans. I don't want to be repetitive. I just want to address quickly two misconceptions that have consistently come up in previous years of having this discussion. First, there is a misconception that this is a new, untested idea. Second, there's a misconception that senators wouldn't ever be allowed to vote for a bill that had a disproportionate impact as laid out by the statement. Both of these misconceptions are addressed by our next door neighbor, so I'll just quickly talk about Iowa. As was mentioned by Senator McKinney, Iowa's been producing racial impact statements since 2009. I think you've been given an example. If not, I have a digital copy. I'd be happy to email to you. They're legislative services agency drafts racial impact statements for any bill affecting sentencing and parole policies. The Des Moines Register has called their impact, quote, modest. They did a review of 61 racial impact statements since 2009,

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and they showed that of the 29 bills showed to have a disproportionate effect on minorities, six of them passed both legislative chambers and still became law. Of the bills that were rated as having no effect or even had any positive effect on minority incarceration, 14 out of 35 became law. Civic Nebraska always wants to support policies that encourage evidence-based policymaking, and we want to encourage public trust in the legislative process. We think this bill furthers both of those goals, and I want to kind of end again with the most obvious but very important reminder. You do not have to act on the information in these statements, but it just seems really silly to pretend like that information doesn't exist in the first place, and that's currently what we're doing. So that's why we support LB814, and I appreciate your time.

HUGHES: Thank you, Mr. Miller. Are there questions from the committee? Seeing none, thank you for coming in today. Next proponent to LB814. Welcome.

REBECCA FIRESTONE: Good afternoon, Chairman Hughes, members of the Executive Committee. I'm Rebecca Firestone, R-e-b-e-c-c-a F-i-r-e-s-t-o-n-e, and I'm the executive director of OpenSky Policy Institute. I'm here today to testify in support of LB814 as an organization that supports evidence-based decision making and policy making. We focus particularly on fiscal policy, so I'm going to talk about some examples there. But I think that from our perspective of supporting the infusion of evidence into decision making and policymaking, this is an important bill to support. The manner in which state and local governments raise and spend revenue has major implications for racial and ethnic equity and historically, fiscal policy has too often increased racial disparities in income and wealth. Working to ensure fiscal policies provide equal opportunity to all people helps to promote economic prosperity. Can give you a couple of examples of how the data-- the Tax Cuts and Jobs Act passed by Congress in 2017 overwhelmingly benefited wealthy Americans, according to a study from the Institute for Tax and Economic Policy. And because white Americans are three times more likely to be among the nation's wealthy, this tax cut resulted in households of color largely being excluded from accessing its tax benefits. There are several policy areas here within the state of Nebraska where racial impact statements going forwards could potentially be beneficial-- be beneficial, such as an inheritance tax and-- or an income tax credit, as well as in several areas around our budget that could disproportionately affect communities of color. We also wanted to note that there are a number of data sources that are already available to help us in policy debates around the differential impacts of racial and ethnic

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disparities. A couple of examples are the Census Bureau's American Community Survey, the Kids Count Data Center, which just aggregates data at the state level, and the CDC's Health Interview Data Survey, which provides data disaggregated by racial and ethnic status. OpenSky is working to incorporate a racial equity analysis framework into the analyses that we produce, and we're seeking to do better in that area because we think it's important to have disaggregated data in order to support evidence-based policymaking. And therefore, we believe that there's value in the racial impact statements that are proposed by LB814, and I look forward to answering any questions you may have.

HUGHES: Thank you, Ms. Firestone. Are there any questions from the committee members? Seeing none, thank you for coming in today. Next proponent. Welcome.

MEG MIKOLAJCZYK: Good afternoon, Chairperson Hughes, and members of the committee. My name is Meg Mikolajczyk, M-e-g M-i-k-o-l-a-j-c-z-y-k, and I'm the executive director of the Nebraska Civic Engagement Table. Our organization's mission and-- and fundamental values are rooted in the proper carriage of democracy. A truly representative government by and for the people where all voices are heard. We're a member organization serving nearly 80 other nonpartisan, nonprofit organizations across the state who share in these values. The Nebraska Table offers strong support for LB814 today. We thank Senator McKinney for his work on this bill to promote a legislative process that values all Nebraskans and provides opportunity to reduce or eliminate harm to communities of color. We also thank Senator Vargas for his foundational work to include racial impact statements in this process. At the Table, we understand that LB814 would help legislators center fairness in their policymaking by having access to additional information regarding the impact of legislation on black, brown and indigenous communities. Of course, you know, it's no surprise that legislation has historically impacted and harmed racial minority communities differently than white communities, especially through, as you heard, criminal and juvenile justice systems. It's also well-established that interaction with the criminal and juvenile justice systems disproportionately harm people of color. One way this disparate impact shows up is through eligibility and ability to participate in civic life. For example, black people, indigenous people and people of color comprise 22 percent of our state population, but only make up 8 percent of the voting population. System involvement creates barriers to civic engagement and democratic participation, including through legislation that overtly strips people of their voting rights. As an organization supporting our communities and growing these civic engagement programs, we believe in

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eliminating any barriers that lead to underrepresentation at the voting booth, in elected office and at other levels of where power and decisions are being made. When black, brown and indigenous people are disproportionately impacted by the criminal and juvenile justice system, so is their ability to vote and otherwise exercise their right to civic participation and democratic processes. So as Nebraskans, we believe deeply in fairness for all people, and by making the effort to study the impact of proposed legislation on communities of color, policymakers have a really important opportunity to advance fairness and reduce harm. For those reasons, we ask you to support LB814. Thank you so much.

HUGHES: Thank you. I'm just going to tell you, thank you, Meg, if I can use your first name, because I can't pronounce your last name.
[LAUGHTER]

MEG MIKOLAJCZYK: Please do. Meg, is fine, thank you.

HUGHES: Hold on, hold on. Any questions from the committee members? Seeing none, thank you for coming in.

MEG MIKOLAJCZYK: Thank you so much.

HUGHES: Next proponent. Welcome.

COLIN MCGREW: Thank you. Good afternoon, Chairman Hughes, and members of the Executive Committee. My name is Colin McGrew, C-o-l-i-n M-c-G-r-e-w. My pronouns are he and his and I'm a senior programming partner at Inclusive Communities here to testify for my support of LB814. Inclusive Communities is an Omaha based nonprofit that does human relations work to confront prejudice, bigotry and discrimination, and has been doing so for 84 years. As outlined in this bill and by Senator McKinney put in the opening, we know that racial disparities exist in people of color and racial minorities in this state. For instance, in a report prepared by the Center for Public Affairs Research out of UNO, noted that although in 2018, African-Americans only made up 5 percent of the state's general population, they made up 28 percent of the population experiencing incarceration, pointing to a large disparity that exists within Nebraska criminal justice system. Additionally, despite long-term declines in youth incarceration, the disparity at which black and white youth are held in juvenile facilities has grown. Black youth experience a rate of-- that they're four times more likely to be detained or committed to juvenile facilities in comparison to their white counterparts. With such observable patterns in the outcomes of

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Nebraskans based on racial identity, it would follow that all legislation, regardless of intention, would be subject to examination of its impact on people of color and racial minorities in the state of Nebraska. Race, unfortunately, continues to be a key indicator of outcomes and systems across our state, from criminal justice to health care to housing and education. It's the obligation of the Nebraska Legislature to serve all Nebraskans. The addition of racial impact statements would add a layer of transparency and intentionality when it comes to the Unicameral fulfilling its responsibility to the citizens it represents. As Senator McKinney and Mr. Miller pointed out in previous testimony, there's currently nine states that have similar legislation that implements racial impact studies. Nebraska has made important strides in addressing inequities within our criminal justice system and LB814 would simply equip Legislatures with the tools to do their due diligence when considering the impact of potential legislation. I'm a firm believer that the more information we have regarding the impacts of proposed legislation, the better, especially when we are talking about access and outcomes in our institutions and systems. I want to thank Senator McKinney for once again bringing this legislation forward and would urge the committee to advance LB814. With that, I want to thank you for your time and I'm happy to answer any questions.

HUGHES: Thank you, Mr. McGrew. Are there questions from the committee? Seeing none, thank you for coming in.

COLIN MCGREW: Appreciate it. Thank you.

HUGHES: Next proponent. Welcome.

NICK GRANDGENETT: Thank you. Mr. Chairperson, and committee members, my name is Nick Grandgenett. I'm a staff attorney with Nebraska Appleseed. Nebraska Appleseed is a nonprofit, nonpartisan organization dedicated to opportunity and justice for all Nebraskans.

HUGHES: Excuse me. Could you spell your name, please?

NICK GRANDGENETT: Yes, absolutely. My name is spelled N-i-c-k G-r-a-n-d-g-e-n-e-t-t. We would just like to echo all the points that the other proponents have made. But we'd also just like to highlight the fact that although we live in a representative democracy, generations of systemic inequalities have resulted in the underrepresentation of black, Latino, Asian and other communities in the policymaking process. The same communities that are most likely to be impacted by changes in the law relate to criminal justice and law

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enforcement. While LB814 is not a substitute for actual participation in the policymaking process, it at least ensures that all policymakers are better aware of how a proposed bill will affect communities. Given the substantial impact criminal justice legislation has on communities and lives in those communities, LB814 is commonsense approach to addressing racial inequalities and government efficiency. We would just ask that this bill be advanced by the committee. Thank you and I'm happy to answer any questions.

HUGHES: Thank you, Mr. Grandgenett--close enough. Any questions from the committee? Seeing none, thank you for coming in today.

NICK GRANDGENETT: Thank you.

HUGHES: Next proponent to LB814. Welcome.

SHAKUR ABDULLAH: Good afternoon, Chairman Hughes, and committee. My name is Shakur Abdullah, S-h-a-k-u-r A-b-d-u-l-l-a-h. I'm here today to-- as a representative of the Community Justice Center located here in Lincoln, Nebraska. We are a Restorative Justice Public Safety Agency. We offer restorative programming and education throughout the state in county jails. The-- all 12 probation districts and all team facilities operated by the state. We are here today to voice support for Senator McKinney's bill. We thank him for bringing it. We believe that is an essential part to helping build empathy. We think that if numbers never lie, there are numbers that have been provided to show that there is disproportionate treatment, especially in terms of people of color, and those things need to be addressed. What begins to happen a lot of times is because somebody is not directly impacted by a situation. It makes it easy for them to disregard it in terms of policy making. We think that this would be not a cure-all to helping broaden a wider perspective in terms of crafting legislation and how it impacts people that may not look like you, we think that it is a step towards that. Bryan Stevenson has said that a rich and guilty person fares better in this system than an innocent person that is poor. And unfortunately, as I have the opportunity to travel around the state and witness the impact of these laws that are oftentimes made, that is certainly the case. Maybe if this were passed last year, maybe legislation like LB28, which would have been directly impacting an individual in the state who was innocent, Ernest Jackson. Maybe it would make people think twice about trying to craft legislation that is one-sided. We believe that this is a step in the correct direction, and we applaud Senator McKinney's efforts again for bringing it.

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HUGHES: Thank you, Mr Abdullah. Are there any questions from the committee? Seeing none-- oh, Senator Pansing Brooks.

PANSING BROOKS: I just want to thank you for coming here today, Mr Abdullah, and for your advocacy on this and other-- and other things. Thank you.

SHAKUR ABDULLAH: You are welcome.

HUGHES: Any additional questions? Thank you for coming in today. Additional proponents to LB814. Any additional proponents? OK. Proponent? We will move to the opponents if you are opposed to LB814. Welcome.

S. WAYNE SMITH: Thank you, and good afternoon. I'm opposed to LB814. There are all types of disparities in the world.

HUGHES: Excuse me. Could you say and spell your name?

S. WAYNE SMITH: Oh, I'm sorry, yeah. S. Wayne Smith, S, period, Wayne, W-a-y-n-e, Smith, S-m-i-t-h. There are all types of disparities in the world, economic, height, weight, gender, age, education, strength, abilities, etcetera. This bill is a solution in search of a problem. The main causes of racial disparities are not differing levels of criminal activity, law enforcement, or legislative policies. Police go where there is crime. The main cause of racial disparities is the lack of fathers in the home. As Robert Woodson, a black of the Woodson Institute says, take race off the table. On the second page, you will see a memo that I sent to senators in January of 2018. This is when the Justice System Oversight Committee was addressing the prison overcrowding issue. In the long run, something needs to be done about the broken family. It seems to be the elephant in the room, and nobody will even discuss it. The statistics below point to the broken family as being a large contributor to the issues of disparities, regardless of race. Eighty-five percent of all youth in prison come from fatherless homes, twenty times the average. Seventy percent of youth in state operated institutions come from fatherless homes, nine times the average. Seventy-five percent of all adolescent patients in chemical abuse centers come from fatherless homes, 10 times the average. Eighty percent of rapists with anger problems come from fatherless homes, 14 times the average. Ninety percent of all homeless and runaway children are from fatherless homes, 32 times the average. There are no men on death row from intact families. Poverty for female-headed families with children is five times greater than poverty among married couple families. This subject needs to be

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studied and frequently discussed in the schools, churches and by politicians. On the next page I have copied some of President Obama's speech, and this is when he was talking about responsible fatherhood, no excuses. And this was June 21, 2010, and down at the bottom-- I'll just focus on the items there at the bottom. And he says, what we can do is send a clear message to our fathers that there is no excuse for failing to meet their obligations. What we can do is make it easier for fathers who make responsible choices and harder for those who avoid those choices-- choices. What we can do is come together and support those fathers who are willing to step up and be good partners and parents and providers. Please vote no on this bill. It will cause division and more harm than good. And again, as Robert Woodson says, take race off the table.

HUGHES: Thank you, Mr. Smith. Are there any questions from the committee? Seeing none, thank you for coming in today.

S. WAYNE SMITH: OK.

HUGHES: Additional opponents.

LARRY STORER: I'm sorry. I got here a little late. Good morning.

HUGHES: Welcome.

LARRY STORER: Larry Storer, 5015 Lafayette Avenue, Omaha, 68132. I'm here in opposition for various reasons. This will be probably--

HUGHES: Excuse me. Could you spell your name for us, please? Spell your name, please.

LARRY STORER: L-a-r-r-y S-t-o-r-e-r. Rather fire around, but this bill does nothing to benefit people of color or address your current situation. It was for major causes of disparities, yet the proposed solutions ignore every one of them. The bill does nothing to address these disparities or truly improve the lives of people of color. Now I am not a racist. I have a grandson that is biracial. I am here on his behalf also and people of color. I am opposed to what is creeping into our society that is called CRT. All of our legislative bodies say, oh, we're not talking about it and we're not teaching it, but it is on their agendas all the time. I have been going to the Douglas County Board and the City Council meeting in Omaha for about three years. I have seen this creeping into the resolutions and proclamations, often at times where people like me, who is not part of a nonprofit, don't get to go to the microphone because they are not invited. That's one of the problems with our public comment time set, bodies like this. If

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you choose to ask me a question, yes, I can go on. But if you don't, I'm done and I might get called out of order today for something I wanted to say. What I've submitted to you is part of my attempt to include testimony on LR14 because it is related. What I've said in that and in your copy is related. I watched two days of testimony last week. Some of the senators that testified are in this room. I'm only going to mention one senator's name, but the others are in this that I presume. I was amazed that Senator Wayne brought into the discussion of a constitutional convention, which is not brought in the theory of CRT. To discuss racism, etcetera, because he wasn't in the room in 1787, women were not in the room in 1787, that is one of the falsities that is being proposed out there over and above my voice. But we are not a democracy. We are not a representative democracy or a democratic republic. We are a constitutional republic that is unique to any other form. Democracies tend to fail. Look at Venezuela. You people are elected to represent us. The democracy would be the majority of people in this room tells you what to do. That's what democracy is. We'll take a vote right now for or against and then the bill is done and we don't have to waste taxpayer money anymore. But inserting these things does nothing. CRT is Marxist. And let me finish up with saying this: when black people realize that they are being used again by the Marxist theory of useful idiots and they realize that they're not going to get anything out of that--

HUGHES: Mr. Storer, your light is on.

LARRY STORER: They will be angry-- yeah-- they will be angry, and the people that pass these kind of laws will be responsible for that. Thank you.

HUGHES: Are there any questions for the committee? Thank you, Mr. Storer, for coming in today. Any additional opponents to LB814? Is there anyone wishing to testify in the neutral capacity? Anyone wishing to testify neutral? Seeing none, Senator McKinney, you're welcome to close.

McKINNEY: Thank you. I hope that--

HUGHES: We'll get to it. Senator McKinney.

McKINNEY: Oh, OK. So I hope that through the hearing and through the testimony that you, as the Executive Board, see the benefit that racial impact statements will have for our state. I think it's impossible to deny the racial disparities in our criminal justice system. And it's-- it's important that we look at the elephant in the

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room and address it to go forward, to make our country better and also make our state better as a whole as we move forward. I think this is vital. I think, especially with bills that deal with criminal justice, especially as referenced in my opening. There was a bill passed in 2009 that you could track back to more than likely the reason why we have a prison overcrowding crisis, which disproportionately affected individuals from black and brown communities. And this year, we're tasked with looking at criminal justice bills and potentially building a prison, and I think we need to make sure that we have things in place to ensure that we're making the best decisions possible as we move forward as the state, as we address the criminal justice system. This is not an undue burden on our state. I think it's needed. It's clearly shown that other states can pull this off, and I think we should join the rest of them as well. Thank you.

HUGHES: Thank you, Senator McKinney. Are there any questions? Senator Pansing Brooks.

PANSING BROOKS: Thank you. I just want to thank you for bringing this bill, as Senator Vargas did before, and it's, you know, it doesn't hurt to look at this. And if there are disparate impacts, then we should be able to take that information in with the decisions about fiscal impacts and every other kind of impact that a bill will make on our state and our people. So thank you for bringing this bill.

McKINNEY: No problem.

HUGHES: Thank you, Senator Pansing Brooks. Are there any other questions from the committee? Seeing none. We do have position comments for the hearing record on LB814. We have 17 proponent online position comments and 15 opponent online comments. That will close our hearing today on LB814 and our next bill up is LB975, Senator Wayne. Welcome to the Executive Committee..

WAYNE: Good afternoon, Chairman Hughes, and the executive members-- I mean, the members of the Executive Board. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is Douglas County, north Omaha and northeast Douglas County. The amendment that I'm passing around was an issue that was brought to us that basically says some people fear that the way it's written, people couldn't even testify on their days off. So we just clarified that if you're not scheduled to work, you can testify. So, I just want to know that's the amendment, and I support that amendment, and I hope this committee would adopt that amendment. But LB95-- LB795 actually contains the contents of LB489, which was advanced already last year

by the Government Committee unanimously and it's on General File right now. LB489 was originally introduced by Machaela Cavanaugh-- Senator Machaela Cavanaugh, and a green copy of that bill dealt with state contracts for child well-- welfare services. I added my name as a co-sponsor. Senator Machaela Cavanaugh withdrew her name and allowed me to use this bill as the way we got it done. We actually introduced the copy. It was on the website for over two weeks before the hearing. However, we just had a conversation with the Speaker's Office. I said I would reintroduce this bill just to make sure that there's no issues with the actual introduction. Under LB795, state officials and state employees would generally be prohibited from testifying at public hearings before the Legislature on any issue in their capacity other than neutral. This bill does provide for exceptions to this general prohibition-- prohibition. First, LB975 would permit employees of the Legislative Council to testify. In addition, some senators' personal staff introducing bills on their behalf, committee legal counsels, and others frequently introduce bills that are technical bills or when the senator is not there. This exception would also allow other legislative employees, such as Clerk of the Legislature, Division Directors and Ombudsman's Office, to testify in other than neutral capacities where it's necessary. Second, LB975 provide that state employees may testify on a bill if they choose to use unpaid or vacation leave or are not scheduled to work underneath the amendment proposed. And the basic premise behind this bill is very simple. Over the last five years that I've been here, we've seen more and more agencies come in and oppose bills. And from a fundamental perspective of separation of powers, there's two issues, and I think Senator Brewer, in his letter that I passed out, his op ed, does a great job of coining the phrase, preemptive veto. So one is the separation of powers issues here, but the biggest-- and there's two parts. One, the preemptive veto of an agency coming in and testifying against a policy issue. We're not talking about technical issues with the bill. That can be done in neutral capacity. If there's technical problems or how things are going to work, that is a neutral capacity function. But if we are having policy discussion, which this body is-- is obligated to do and that's what we do is policy, no other branch should be able to interfere with that process. That's why it's called separation of powers. So from a, from a legal standpoint, I think there's a fundamental issue with somebody testifying in negative or in favor. But what happens in the negative context is it actually changes how a bill is moved. No longer can it be on consent calendar. So if the agency doesn't want it, it's already made it more difficult, per our rules, to move a bill through the-- through the process. But then there's also this vote of confidence from the public. There's no-- the

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confidence that-- the public has to have confidence that when we pass a bill that agency will enforce it faithfully. But if they come in and testify against the bill, why would they enforce it faithfully? We saw that happen on Senator McDonnell's bill, for those who have been around the last five years, on rescue squads. And the agency refused to do it and then we write the rules and regs, and he had to come back and do another bill that said, you have to do it now, and they still haven't done it. That's the issue that we have with allowing them to preemptively veto bills. And I want to remind everybody that there's an opportunity lost when people-- when particularly staff are coming here to testify against bills, why are they not doing the actual work of enforcing our bills that we've already passed? Instead, they're here manipulating policy. But I want to remind everybody from a fiscally conservative standpoint, the Governor's Office, we already budget eight hundred-- \$685,000 for his PRO. They have a Policy Research Office that is their lobby arm to deal with us on every bill. To have an agency come in and do the same thing, to me, we're paying for it twice, and I think that's fundamentally wrong. If you remember how-- and it's not a knock on how the Government Committee is, but they have often a lot of bills tied in committee and in difficult discussions. This bill came out unanimously because we all agree that there is a separation of power issue and agencies should only deal with the technical part of a bill, not the policy discussion. That is critical as we move forward to make sure this body stands on its own when it comes to policy conversations. And with that, I'll answer any questions.

HUGHES: Thank you, Senator Wayne. Are there questions from the committee? Senator Lowe.

LOWE: Thanks, Chairman, and thanks, Senator Wayne. Does this mean that if, say, the State Patrol, or another agency that wants me or you to bring a bill, that they can't come up and testify that this is what they want, they have to come up and testify in neutral?

WAYNE: They have to testify neutral, and as you know, Senator Lowe, sometimes neutral is positive or neutral is negative depending on who-- who's talking. But at the end of the day, if that's something they need, we can say-- we as senators can advocate for that. They can testify in a neutral capacity of-- of how technically the bill works. But I don't believe it's in the best interest of this body to allow another branch to influence our decisions. And I'll give you a prime example. How many times have we seen the Supreme Court come in or judges come in and testify in favor? Only a few when it deals with drug court. And even then, they're very, very careful about what they

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say, and it's more like we would like this, but if you don't, not our role. We don't have judges coming in and testifying negatively, saying we don't want you to pass a law. It is a clear separation of powers and this is political. Think about our staff. We wouldn't allow our staff to go in unless they took vacation and testify on a bill. That's our job and we got elected to do it, to take political positions or positions on policy. So I think they can still testify, just has to be in the neutral capacity. And I think our role as senators is to inform other senators that State Patrol had this issue and we're solving this issue. In neutral capacity, they can explain their issue and how that this bill will solve that issue.

LOWE: All right, thank you.

HUGHES: Senator Vargas.

VARGAS: Thank you very much for being here, and just a question, a couple of questions. Can you speak at all to the-- how other states are doing this and approaching this? You know, the case that you're making, which, you know, pragmatic-- pragmatic and valid about PRO and they do, you know, like, for example, just in appropriations, PRO will come and introduce and then they'll take their stances on specific subject matter issues and introducing a bill, which kind of to Senator Lowe, sometimes we'll have agency come and introduce a bill and it's just to introduce the bill, but it's not actually taking a neutral or supportive opposition or any type of position. But I don't know if you could speak to how other states or anybody in the region do this to make sure there's separation of powers.

WAYNE: It's kind of all over. And-- and the general position is, a state employee shouldn't-- cannot testify at a hearing on a public bill while paid. It's typically-- when I say general, it's anywhere about 23 states have similar, you just can't be paid. We have a unique situation where we have a lot of agencies coming in and testify, and it also comes down to our structure. There are a lot of hit-- because of the nonpartisan, everything has a hearing. In other states, where-- where it's a Governor who's Democrat and the Legislature is Democrat, they won't schedule hearings. So it's a different dynamic in a lot of other states. But making sure that we have a hearing on every bill, I think it just tips the scale, not only from the public's perspective we'll execute it fundamentally, but also from our body being hit with having to work a different angle to get a bill passed, because we can't use consent calendar, we can't do certain things. And so it's a preemptive veto.

VARGAS: Thank you.

HUGHES: Senator McCollister.

McCOLLISTER: Yeah, thank you, Mr. Chairman. I often experience where HHS will come up with wildly erratic fiscal notes as compared to the fiscal notes from the legislative staff. Is there any recourse that we could put together in your-- your bill that would eliminate some of these erratic fiscal notes?

WAYNE: We have tried to figure that part out, but because we do static fiscal notes where it's this time and this place, we don't think about how many like Social Security, we don't think about how many people will stay versus leave the state. We couldn't-- we couldn't write language technical enough to get that done. So we took this approach of saying, well, they-- at least they shouldn't be able to testify.

McCOLLISTER: Thank you, Senator Wayne.

HUGHES: Additional questions? I guess I-- oh, Senator Pansing Brooks.

PANSING BROOKS: Thank you, Chairman Hughes. I'm really sort of torn on this whole issue, Senator Wayne, and one thing I wonder about is, I mean, I am understanding your arguments, and I agree that too often they come in and it becomes a veto. It becomes a preliminary veto, as you said. Why is it PR-- I mean, why is the PRO OK then? That's-- that's also a preliminary veto.

WAYNE: Well, my answer to that is, they can have one. They shouldn't have both. So if agencies are going to work the Legislature and be the, the go-between between the Legislature and the Governor, then we need to get rid of PRO. It's just no point for both. That's-- that's, I guess, my answer to that is they can have one, but not both.

PANSING BROOKS: OK. And so we sat together on judici-- have sat together on Judiciary quite a bit and in that we've had Director Frakes coming in to tell us about all sorts of things about the prisons and everything like that. My feeling is, and I presume you think that too, that he has specific knowledge. So I don't think that you would argue about that. It's just you want him to come in and tell the state of the prisons without stating an opinion.

WAYNE: So for example, let's say that there is a bill to-- to close a prison at a time where we have overcrowding. Director Frakes will now become-- should not come in and say, I'm opposed to that issue. He should come in and explain in a neutral capacity, the technical

problems with that bill. Here goes all the people here. If we close a prison, there's nowhere to put them. Now is that negative testimony? Probably. But an official position is different than just giving a technical aspect of, of what's wrong with the bill and how the bill works. And that's all I'm asking for. We want your expertise, tell us how it works. It may be a negative effect on the bill, but these people are often appointed or selected by the Governor, which is a separate branch, and they shouldn't take official positions on policy. He has the ability to veto, if he doesn't like the bill. His agencies can put fiscal notes on them. There's-- there's plenty of ways that they're already involved but to have a real discussion about policy in an official capacity on an official position, I think it just distorts the process.

PANSING BROOKS: And I-- I'm not done, sorry. So I'm trying to also grasp the fact that I agree about the separation of powers, and so I'm trying to figure out, you know, because you're not saying that-- you're now saying that either PRO or the department should come in, not both, correct?

WAYNE: No, what I'm saying is we already pay somebody to lobby the body on what the Governor, any Governor believes. I'm saying as a state employee, we are paying people to come tell us yes or no on a policy decision that that is our job. I mean, we don't even-- let's think about this. We don't even let-- well, it's custom or tradition, we don't ask our staff questions if they're introducing a bill on your behalf because we as a body for the last 100 years have said that's a policy issue, and we're not going to put a staff member into that where they have to answer policy questions. We let them do a very technical introduction, and that's kind of it. We respect our own policy decisions more than we do then separation of powers at this point.

PANSING BROOKS: That's a good point. I know that-- and my initial reaction was that people should be paid, that they could still come in and be paid. I do-- I'm thinking back to the fact that staff members from the President who have come in generally are not on us, they're not being paid by the prison. So it's only executives that are being paid by the state when they come in. So it's-- it's a really interesting point. Thank you for bringing this.

HUGHES: Thank you, Senator Pansing Brooks, I guess a couple of questions I have for you. So you've made some very good points, have certainly got me thinking, but you know, the separation of powers that the administration administers the government. The Legislature, we

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legislate, we create laws. The Judiciary they judge, you know, they're the arbitrator. So I can see a clear difference between why the judicial branch shouldn't be involved in the making of laws, since they are the ones who will interpret the laws that we make. But I do think there is a point that the administration should have a voice because they are administering what we do, and they probably have some expertise, if you will, in that subject matter that we are looking at changing or adopting or whatever. That-- that making any sense?

WAYNE: It does, and I think they still have a role at the committee level and at the-- on the floor level through PRO. It's not unheard of for a director of an agency to be in the lobby and pulling people out, explaining problems with the bill or the reasons why this will help. So I think they still have a role. The question is, what are-- what are we signaling to the public if we're passing legislation that the enforcement of it has already taken a position against? And then, why are they-- why are they involved in the beginning of the process when they already are involved through the process and at the end with the veto? So I'm just-- I'm just trying to make a demarcation point of.

HUGHES: Sure. So what's the difference between this bill that you brought today and the one that was in Government last year?

WAYNE: That amendment will be the only difference to clear-- not people who are not working. Honestly, this was just a conversation I had with Speaker Hilgers, and he just wanted to make sure that because of the nature, some agencies have contacted individuals saying they didn't know about the hearing and so I'm just being a nice guy. [LAUGHTER] I might prioritize my one on the floor. I mean, that's just.

HUGHES: Strike that from the record. Senator Vargas.

VARGAS: Thank you. So-- so operationally here, is the intent that there just isn't a state agency voice testifying in a judgmental capacity on a bill and in the record, but you have no problem with them being in a judgmental capacity and what they say?

WAYNE: Yeah, I mean, I can't control what they say, but-- but when people look at where is State Patrol on a bill, they say against it. And we pass it, how are they going to faithfully execute it? That is a problem in the public. But yeah, they should stick to technical, but I know-- I know reality and people, they'll probably venture off into what they like and don't like. I'm sure people from agencies are going to be opposed to this bill, which proves my point. This is a internal

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policy in front of the Executive Board because this deals strictly with the Legislature. And there are people from agencies who are going to come here and oppose this bill. That proves my point that we don't have separation of powers.

VARGAS: So the-- that-- that makes sense. If somebody is coming in so they're taking either unpaid vacation or compensatory leave, are you also requiring or asking them to then testify in a personal capacity?

WAYNE: Pretty-- I mean, pretty much. I mean, I can't-- I can't personally tell them to say that. But I mean-- I mean, look at the federal government, you don't-- you don't, I mean, they couldn't come here and take a position. They have strict laws on that. The point is, is we shouldn't be paying people to take political positions. If they want to take it, they should do so. I mean, how many disclaimers do we hear in our hearings are like, I'm not testifying on behalf of this organization, but we don't do that. I mean, we're here saying this is on behalf of an agency and we're not going to-- we don't like this bill. That just is weird to me. There's no other way. I mean, that's the best I can say it, it's just weird to me.

VARGAS: Thank you.

HUGHES: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Part of how I'm reading this is that institutions like the University of Nebraska wouldn't be able to allow somebody to come, including faculty to-- unless they take a day off. Is that the intention?

WAYNE: For power-- no, this is for in front of the Legislature. But yeah, they would have to take a day off.

PANSING BROOKS: At a hearing or--

WAYNE: Absolutely, because the first thing we always hear them say is we're not here representing the University, I'm here in my individual capacity.

PANSING BROOKS: Unless, they are here representing the university.

WAYNE: Then-- then if they're are-- but if they're advocating in a policy decision, I don't think that's the role.

PANSING BROOKS: [INAUDIBLE] the university?

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WAYNE: Yeah, I mean, we can clear that language. I don't care if they're-- I mean, the university isn't part of my separation of powers situation.

PANSING BROOKS: OK, thank you.

WAYNE: I mean, we can have an amendment on that.

PANSING BROOKS: OK.

HUGHES: Any other questions for Senator Wayne? If not, you'll stay for closing?

WAYNE: Yes.

HUGHES: OK, very good. We will open up to proponents to LB975. Are there-- is there anyone wishing to advocate or be a proponent to LB975? Seeing none, are there any opponents to LB975? Welcome.

LAURA OFFER: Good afternoon, Chairman Hughes, and Executive Board members. My name is Laura Opfer. That's L-a-u-r-a O-p-f-e-r, and I'm the policy analyst for the Nebraska Children's Commission. On behalf of the commission, I'm testifying in opposition to LB975. For those of you who aren't familiar, the Nebraska Children's Commission was created in 2012 by the Legislature following an extensive LR and HHS committee investigation of Nebraska's child welfare and juvenile justice systems. In 2019, legislators agree that the commission should continue to provide a permanent leadership forum for collaboration of child welfare and juvenile justice systems. For administrative purposes, the commission sits under the Foster Care Review Office, which is also an independent state agency. The commission is the umbrella organization for five statutory committees, Juvenile Services, Strengthening Families Act, Bridge to Independence, Alternative Response and the Foster Care Reimbursement Rates. So these five committees and the Commission are comprised of leaders and experts who represent all three branches of government, along with public and private sectors. In addition to their regular job duties, these professionals take on additional responsibilities of serving committees to collaborate, collect data, conduct research and recommend system improvements for children involved with the child welfare and juvenile justice systems. Along with supporting the statutory committees, we also serve as an expert resource and submit annual reports to the Legislature. We are required to make recommendations to the Legislature related to child welfare and juvenile justice systems reform. LB975, as written, would prohibit us

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from taking positions on legislation directly related to the recommendations developed in accordance with our very statutory charge. Our scope with-- with legislation is traditionally limited to identified priorities and direct recommendations voted on by committee and/or commission members. As an example-- as an example, Senator Walz introduced LB541 on behalf of the Foster Care Reimbursement Rate Committee, and we testified in support of that legislation in 2021. LB975 would limit our ability to support similar legislation directly related to our statutory responsibilities. In conclusion, we urge you to consider the impact LB975 would have on independent agencies under the state of Nebraska, such as the Nebraska Children's Commission. I would be happy to answer any questions you might have.

HUGHES: Thank you, Ms. Opfer. Are there any questions from the committee? Senator Vargas.

VARGAS: So you are-- you are a sub-agency. You're an independent state agency. Is your interpretation that you would still apply because you're not a direct state agency?

LAURA OPFER: Yes, because I, myself, am an employee of the state of Nebraska.

VARGAS: OK. In your opposition testimony, my understanding is with-- with taking a stance, but-- but my understanding is under Senator Wayne's bill, you would still be able to take a stance, but would have to take the unpaid leave. So is your issue with-- or your opposition to having to take the leave or just in not being able to take a stance?

LAURA OPFER: It's in not being able to take a stance in relation to our statutory responsibilities to the Legislature and our connection to the Legislature. I think we had difficulty understanding how we would have legislation introduced. That's a direct recommendation from our Commission and then not be able to testify in support of that bill.

VARGAS: OK, my interpretation, and I really thank you for your work because there are great policy recommendations coming out from the Commission, at least my interpretation is you would still be able to testify in opposition or in support of a bill, it just wouldn't be on paid time or under the exceptions of the amendment. But I appreciate you coming to testify.

LAURA OPFER: Thank you.

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HUGHES: Additional questions from the committee? Senator Lowe.

LOWE: Thank you, Ms. Opfer for coming in today. This just seems funny that we had no proponents, and with this bill there would be no opponents, but everybody would be coming in testifying in the neutral if we passed this. And so how would you-- how would we look at that when the bill comes to the floor that there were no proponents or no opponents? What's your feeling on that?

LAURA OPFER: I think if we could only testify in a neutral capacity, that would be-- that wouldn't necessarily represent the true opposition or support of a bill and I think that was another concern that we discussed.

LOWE: All right. Thank you.

HUGHES: OK. Any additional questions? Seeing none, thank you for coming in today.

LAURA OPFER: Thank you.

HUGHES: Next opponent. Welcome.

MONIKA GROSS: Thank you, Chairperson Hughes, and members of the Executive Board. My name is Monika Gross, M-o-n-i-k-a, last name, G-r-o-s-s, and I'm the executive director of the Foster Care Review Office, and I offer this testimony in opposition to LB975. The Foster Care Review Office is also an independent noncode state agency created by the Legislature in 1982 to track children in out-of-home care or foster care in Nebraska, to review children's cases utilizing local volunteer citizen review boards, to collect and analyze data related to the children, and to make recommendations on conditions and outcomes for Nebraska's children in out-of-home care, including any needed corrective actions. The FCRO statutory duties include submitting quarterly and annual reports to the Legislature. As an oversight agency, we're required to make recommendations to the Legislature related to children in foster care, and sometimes those recommendations result in proposed legislation. If we appear and testify in a neutral capacity on a bill resulting from a recommendation that we made, then it seems like we're lukewarm or equivocal on our own recommendation. Or we could appear and say we are testifying in a neutral capacity, but the substance of our testimony is really in support or opposition. Either way, it feels intellectually dishonest and lacks complete transparency. LB975 is also, I believe, in direct conflict with Nebraska Revised Statute,

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Section 43-1302 [1], which is-- describes the FCRO's purpose and duties. So in pertinent part, the purpose of the office is to make recommendations regarding foster care policy to the Legislature. And it goes on to say in pertinent part, the executive director of the office shall make policy recommendations. In some instances, there may be no one else who appears to testify on a particular bill, especially if it's a bill that impacts only that agency. If I were to come and testify on-- on a bill on my own time, would I be testifying in my official capacity or would I be testifying in my individual capacity? Over the years, the FCRO has appeared and testified in support of several bills each legislative session when the bill was related to a recommendation that the FCRO made in its annual or quarterly reports. And usually it's accompanied by relevant data. The FCRO has also appeared and testified in a neutral position on bills, especially when we had data to share with the committee, but the bill was not necessarily related to a recommendation that we made. The FCRO was created by the Legislature 40 years ago to fulfill a need. And the Legislature relies on the expertise of the FCRO in matters related to children and youth in out-of-home care. And the Legislature continues to fund the FCRO because of the quality of our work product, the expertise of our employees and the value that it brings to the Legislature. Thank you and I'd be happy to answer any questions.

VARGAS: Thank you very much, Ms. Gross. Any questions? Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for coming, Ms. Gross. Sorry, I just wanted to say I appreciate you and the work of the Children's Commission with Ms. Opfer. Those-- your positions and your ability to speak to the Legislature on policy positions is very important to me, so I'm really torn on this idea. So I appreciate you coming--

MONIKA GROSS: Thank you.

PANSING BROOKS: --and your testimony today. Thank you.

MONIKA GROSS: Thank you.

VARGAS: Thank you very much. Any other--

PANSING BROOKS: And also you made one other good point that if you come on your time off, then are you really only testifying for yourself or are you able to testify on behalf of the PR-- or the policy research or sorry--

MONIKA GROSS: The CRO.

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PANSING BROOKS: CRO, sorry, yeah. So that's a very good point. Thank you.

VARGAS: Any more questions? Seeing none, thank you very much, Ms. Gross.

MONIKA GROSS: Thank you.

HUGHES: Next opponent. Welcome.

HOBERT RUPE: Welcome. Good afternoon, Chairman Hughes, and members of the Executive Board Committee, one committee I thought I'd never would be in front of testifying. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I have the privilege of serving as executive director of the Nebraska Liquor Control Commission. I was also as a small noncode agency, you know, when I read this bill had some issues in that it appears to create a legal conundrum for me. Of 53-117[9], which is one of the earliest statutes in the commissions in the act, which sets forth the jobs and duties of the commission is, that the Commission shall make-- shall investigate the liquor laws enforcement in our state, other states and make recommendations to the Governor and by and through him to the Legislature for amendments to the act. And we often do. Every time you get that lovely-- every fall our legislative letter, which I know you read right away because it's the most scintillating thing in your inbox, we'll go through the issues. Normally, they are very technical and I'll be-- acknowledged by that. Sometimes they are actually more responsive to changes that we're seeing in the changing environment. Last year, we recommended some changes based upon some of the executive orders which had been executed during COVID. For instance, to allow easier sales of certain products within-- within reason. And so, normally when I am in front of-- when I appear in front of a committee, I appear neutral because my job is to be, hopefully, the neutral fact-giving person that's going to represent. I don't have a particular financial bone on one side or the other, or politics on one side or the other. So generally we will appear neutral, except if a item appears that was on our legislative letter. Often those are technical changes, and I might be the only person testifying in support of those. You know, sometimes very rarely we will take an opposition position. Usually those would have-- if there's a significant unintended consequence of the act because as I like to describe the Liquor Control Act, it's a quilt of many different parts that have been stitched together over the last 80-plus years. And often somebody will have an intention to change part of the act, not realizing there's a negative repercussion which could have health, safety, welfare or tax liability issues. So in that

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respect, you know, we-- we try to stay in our own lane. We try to be as the commission statement, the commission says, you know, the power-- you know, the Legislature has given the commission the power to regulate the sale of alcohol and under the powers that Legislature gets under the 21st Amendment. And we try to do that in fair and unbiased reasons, but we often will have to take a natural policy position within that, and I think it would be somewhat intellectually dishonest for me to come in as a neutral person and say, yes, I'm neutral, but we really, really need to tighten this technical change, because we're trying to update our computer system, make sure things more easily accessible by Internet, which is an actual bill we have this year, which I anticipate may be the only person in the room testifying to later on when it comes to my general affairs next week. So with that, I would just like to say, I think this is a-- a sledgehammer swatting a fly in a lot of ways. I'm not sure. I can't say that there haven't been separation of powers arguments which have probably raised as Senator Wayne has brought up. But a lot of state agencies which are designed to be your technical experts for the state, this again and perhaps have a-- a deleterious impact. And more importantly, I would always err on the side of, of being above board and saying, do we like it or do we not like it. So with that, I see my time has expired. I'll be happy to answer any questions.

HUGHES: Thank you, Mr. Rupe. Are there any questions from the committee? Senator Vargas.

VARGAS: Thanks for being here. Do you think if you testify neutral, but have testimony that's in opposition, that the senators would-- would hear the opposition and try to make-- I'm trying to get to the root of the issue here.

HOBERT RUPE: I think they would hear that. You know, my concern goes also to the weird could undermine both a historian and a lawyer in that if I'm looking at a legislative record from 10 years ago trying to-- it gives an impact as to what a Legislature wants. I'm looking primarily at the proponents and the opponents because they're the people who came in and made a stand. The neutral people, I might get to. I mean, it's probably not the highest level. And so I'm thinking that's somewhat being a little intellectually dishonest if we're looking back in time to see who actually took a position one way or the other. I think the senators at that time will listen to me. I would hope that I've been at this job long enough that I would have engineered some respect for my positions that the commission would take and my knowledge. Can't guarantee that. They have to listen, they don't have to believe me. But I'm more worried about what impact this

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might have later on. I-- if I'm still able to testify against a bill, isn't it better for me to be clear that if I'm in opposition to it, it's on the record. I just, you know, there's enough hypocrisy in the world without adding more to it, from my perspective.

VARGAS: Thank you.

HUGHES: Thank you, Senator Vargas. Are there any other questions? Seeing none, thank you for coming in today, Mr. Rupe.

HOBERT RUPE: Thank you.

HUGHES: Next opponent. How many more people do we have to testify because we are running up against our clock? OK, very good. Welcome.

SCOTT SMATHERS: Good afternoon, Chairman Hughes. Good to see you again, members of the committee. My name is Scott Smathers, S-c-o-t-t S-m-a-t-h-e-r-s. I'm executive director of Nebraska Sportsmen's Foundation, a 501(c)(3) nonprofit, on behalf of sportsmen and women in the state of Nebraska. You're wondering why am I in front of the Executive Board regarding LB975? Some of you are aware of the fact that in 2014 I was appointed by Governor Heineman to the Natural Resource Commission as one of the 14 appointed members, which in Natural Resources Commission is in charge of seven financial funds regarding water and soil and dam issues in the state of Nebraska. Back in 2015, my first year when I received a W-2 at the end of the year of 2014 for tax purposes, I asked the HR department at DNR, am I considered a state employee because I got a W-2 from the state? We are officially statutorily listed as part-time employees for the state of Nebraska. As a volunteer who is reimbursed for per diem, which we have no choice to deny, we must file per diem paperwork when we're a commissioner. We've tried to skip it, and they paid me for six months at a time. So my question with LB975 in-- I'm going to shorten this up, I know we're against the clock. But most of the senators in this room, we've met privately in your office before hearings regarding our position on a bill. If I'm considered state employee, my day job, I've testified on over 450 bills in the last dozen years in this building. That jeopardizes my ability to earn my living if the statute in the language in LB975 is not changed, which Senator Wayne says there's an amendment which I have not been able to read yet. That's our concern. How many more are like me? I also question the transparency factor of having agencies testify in a neutral capacity. The tone of my language or the tone of my voice will clearly dictate my position on a particular matter, whether I'm neutral or not. And as I said, part of my job is to meet with those senators prior to the hearings to

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understand the capacity of the bill. Why are they bringing it? Senator Hughes, you and I have spent many, many times across the table, sometimes pleasantly, sometimes the state agency directors are not so pleasant, correct? But that's an effort that occurs, and I'm going to do that with every single senator on that committee. And when it reaches the floor, we will have those conversations. So I don't understand where LB975 removes that-- the agency capacity of weighing a bill one way or another. The big issue for me, as I said, is and how many of us are volunteers on commissions appointed by the Governor serving our state? And now we may be jeopardized depending upon what the language of this amendment is. I have a day job. And I'll tell you, I would not be a commission member if I have to lose my day job to do so. With that I'll close because I know we're against the clock.

HUGHES: Thanks, Mr. Smathers. Are there questions? Seeing none, thank you for coming in today.

SCOTT SMATHERS: Thank you.

HUGHES: Next opponent? Welcome.

KRISTEN LARSEN: Good afternoon, Senators. My name is Kristen Larsen, K-r-i-s-t-e-n L-a-r-s-e-n, and I'm here on behalf of the Nebraska-- Nebraska Council on Developmental Disabilities to testify in opposition to LB975. Although the council is appointed by the Governor and administrated by DHHS, the council operates independently and our comments do not necessarily reflect the views of the Governor's administration or the department. We are federally mandated independent council. We're comprised of individuals and families of persons with developmental disabilities, community providers and agency reps who advocate for systems change and quality services. The council serves as a source of information and advice for state policymakers and senators, and when necessary, we take a nonpartisan approach to provide education and information on legislation that will impact individuals with DD. The council exists as authorized in federal public law 106-402, the Developmental Disabilities Assistance and Bill of Rights Act of 2000, and by Nebraska Executive Order issued by Governor Exon on 3-11,1971. State councils on duty are federally funded self-governing organizations charged with identifying the most pressing needs of people with DD in their state. The Federal Administration for Community Living, Office of Intellectual and Developmental Disability Programs is the council's oversight agency. State councils are committed to advancing public policy and systems change to help those individuals gain more control over their lives. Key activities include conducting outreach, providing training and

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technical assistance, removing barriers, developing coalitions, encouraging citizen participation and keeping policymakers informed about disability issues. Nebraska's DHHS Division of Public Health serves as the council's designated state agency. The DSA receives accounts and disperses the ACL federal funds based on the council's federally approved state plan. As a council executive director, I'm employed by the council through DHHS to advocate for systems improvements in quality services for people with DD. This work includes reviewing and recommending state and federal developmental disability statutes, regs and policies, and submitting comments to appropriate entities on the council's behalf. As noted in the DD Act, council staff are allowed to educate policymakers, including state senators. Since the council's house in public health, I'm considered a state employee. LB975 would place substantial limits on the ability for me or other council staff to provide expertise on a variety of DD matters and to educate and inform state senators on legislation that affects people with DD and their families. Based on the federal legislative mandate, state DD councils are uniquely positioned to provide advice to local, state and federal Legislatures and other policymakers on the specific needs of people with DD. So that even if our position is different from the others, it's a unique role that we'd have. So we serve as a one-stop shop for policymakers and agency reps, contributing to the overall improvement of policy, legislation, systems design, access and improved delivery of services. This bill would impede council staff efforts in the important work. Thank you for your consideration.

HUGHES: Thank you, Ms. Larsen. I'm sorry, we made you read really fast.

KRISTEN LARSEN: That's OK. I practiced at home before I came.
[LAUGHTER]

HUGHES: Are there any questions from the committee members? Seeing none, thank you for coming in today and being patient.

KRISTEN LARSEN: Thank you.

HUGHES: Is there any additional opponents? Anyone wishing to testify in the neutral capacity? Welcome.

JUSTIN HUBLY: Thank you, Senator Hughes, Senator Lowe, Senator Vargas. My name is Justin Hubly, J-u-s-t-i-n H-u-b-l-y. I'm the executive director of the Nebraska Association of Public Employees and they've asked me, Local 61, a labor union, we represent about 8,000 state

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employees that work for 50 different noncode and code agencies across 340 work sites across Nebraska and 600 different job classifications. Ironically, I'm here to testify in a neutral capacity on this bill. I do want to thank Senator Wayne. The amendment that was offered here was important to us, and he listened. We're a little concerned. We want to make it as easy as possible for our members to -- we represent frontline workers, to give you information on bills that are important. And so this amendment says that they can use vacation time, originally just said had to be on unpaid time, which was a little unclear on if you're using your vacation time, are you being paid or are you not being paid? Our members will only come and testify before the Legislature in their personal capacity. They're not authorized and could in fact be disciplined for taking official positions on behalf of their agency. But we just want to make sure that the senators can appreciate that we want our members to testify. Members of the Judiciary Committee heard a lengthy testimony recently from prison workers, and that was really important testimony that we wouldn't want the bill to limit, and I don't think that this bill does, given the amendment. So we wanted to thank Senator Wayne. And just briefly testifying in a neutral capacity so that our members can continue to come and educate you and take positions in their personal capacities.

HUGHES: Very good. Thank you, Mr. Hubly?

JUSTIN HUBLY: You got it. Thanks.

HUGHES: OK, any questions? Seeing none, thank you for coming in.

JUSTIN HUBLY: Yep.

HUGHES: Any additional neutral testimony? Seeing none, Senator Wayne, you're welcome to close. We do have position letters for the hearing record. We have one proponent and two opponents.

WAYNE: Thank you, Senator-- Chairman Hughes. Simple issue, we can eliminate code agencies. That won't be a problem, but I think it's preposterous to think they're going to look at committee statements for the impact of legislation. No court looks at it. Nobody doesn't look at the floor debate, if the legislation passes. Oftentimes bills don't come out of the committee, nowhere in the shape that it was introduced. Lastly, we're talking about agencies can still provide recommendations. Underneath both scenarios of the Foster Care Review Board and everything else, they are solving the issue. They are solving a technical problem with the situation. So they are coming to testify about the problem and how this bill solves it. It's that

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simple. We are paying people-- agencies to take policy positions and it sounds good. It makes us feel good because it deals with children, etcetera, etcetera, but let's take some extreme policy positions and say, if we're comfortable with having DHHS and other people come in here and testify on extreme positions, the most controversial policy decisions that we'll argue about and filibuster on the floor. We're paying-- we're letting taxpayer dollars take those positions, but it's OK because it's not extreme. I disagree. I think it's not OK at all. Thank you.

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

LOWE: Thank you, Chairman. Thank you, Senator Wayne, for eating up our lunch hour. I was just looking at the committee statement of LR14. I just brought it up because it came to my mind. And there are, I think, 13 proponents and 3 opponents and no-- nobody in the neutral on that one. Now, when it comes to the committee, we hear the testimony. We can understand whether or not neutral is in favor or neutral is not in favor just by the way of the testimony. But when we're up on the floor and I decide to go look at a bill to see who came and testified in favor of the bill or against the bill, I would look at this and if there had been three directing agencies that came in opposed to it and 4 were proponents, could they all be listed neutral and I wouldn't know which way those agencies were going.

WAYNE: Then I would offer a compromise. A compromise would be eliminate the code agents, the noncode agencies, and then require only the director who is politically appointed to that position to be the only one who testifies. That they can't have staff testify. Because we don't allow our staff to testify and answer policy questions. But oftentimes in committees, it is staff members who are testifying in front of eight-- in front of agencies, I mean, in front of this body and taking political positions that they can't answer. And so they dance around it. They're not-- they're not the expertise that we're claiming that's coming before us. They're taking a position saying this is a bad bill, here's the reason. And when you ask policy questions, they're like, I can't-- I'm not authorized to say that.

LOWE: All right. Thank you, Senator Wayne.

HUGHES: OK, thank you, Senator Lowe. Any additional questions? Seeing none, thanks, Senator Wayne.

WAYNE: Thank you.

HUGHES: That will close our hearing today on LB975 and motion to adjourn.