

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 3, 2023

BRIESE: Good afternoon and welcome, everyone, to the Executive Board. My name is Tom Briese. I represent the 41st District and I serve as Chair of the Executive Board. We'll start off having members of the committee and committee staff do self-introductions, starting on my far right with Senator Clements.

CLEMENTS: Rob Clements, District 2.

SLAMA: Julie Slama, District 1.

ARCH: John Arch, District 14.

TREVOR FITZGERALD: Trevor Fitzgerald, committee legal counsel.

AGUILAR: Ray Aguilar, District 35, Grand Island.

LOWE: John Lowe, District 37.

RIEPE: Merv Riepe, District 12.

VARGAS: Tony Vargas, District 7.

BRIESE: Thank you. Also assisting the committee is our committee clerk, Sally Schultz, over on the far right and our committee pages-- go ahead and stand up, guys-- Francie Heeren from Omaha, who is a political science and sociology major at UNL; Maggie Massey from Omaha, who's a political science major at UNL. Thank you, guys. This afternoon we will be hearing three bills and we'll be taking them in the order listed outside the room. On the tables near the entrance, you will find the green testifier sheets. If you are planning to testify today, please fill one out and hand it to Sally when you come up. This will help us keep an accurate record of the hearing. Please note that if you wish to have your position listed on the committee statement for a particular bill, you must testify in that position during that bill's hearing. If you do not wish to testify but would like to record your position on a bill, please fill out the white sheet near the entrance. Also, I would note that the Legislature policy that all letters for the record must be received via the online comments portal by the committee by noon the weekday prior to the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We would ask if you do, do have any handouts that you please bring 12 copies. Give them to the page. If you need additional copies, the page can help you make more. Testimony for each bill will begin with the introducer's opening statement. After the opening statement, we'll hear from supporters of the bill,

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then from those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will then be given the opportunity to make a closing statement if they wish to do so. We ask that you begin your testimony by giving us your first and last name. Please also spell them for the record. Because the Executive Board meets over the noonhour and members have other hearings beginning at 1:30, we will be using a three-minute light system today. When you begin your testimony, the light on the table will turn green; the yellow light is your one-minute warning; and when the red comes on, we'll ask you to wrap up with your final thoughts. I would remind everyone, including senators, to please turn off your cell phones or put them on vibrate. With that, we will begin today's hearing with LB552. Welcome, Senator Cavanaugh.

J. CAVANAUGH: Good afternoon, Chairman Briese and members of the Executive Board. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the ninth Legislative District in midtown Omaha. I'm here to introduce LB552, which extends the deadline for the Legislature's Mental Health Capacity Strategic Planning Committee by one year. This is a cleanup bill. Last year we passed LB921, which was my priority bill. It also contained a provision from Senator Matt Hansen's bill, LB1223, which created this committee and required the hiring of a consultant to review inpatient mental healthcare capacity by November 1, 2022. Unfortunately, while the bill passed and was signed into law, there was no appropriation was made for the hiring of the consultant and so the committee could not meet that November 1 deadline. LB552 would correct the oversight and extend the deadline by one year to allow the committee the opportunity to review the findings and make recommendations regarding the necessary capacity for inpatient mental healthcare beds in state-operated and privately owned facilities. I understand the Executive Board has an amendment that would clarify the process by which the contract-- the consultant's contract, would be awarded, subject to approval of the Executive Board. And I have no objection to that amendment. I thank you for your time, and I respectfully request the committee advance this bill to General File, and I'd be happy to answer any questions.

BRIESE: Thank you, Senator Cavanaugh. Any questions for the senator? Senator Riepe.

RIEPE: Thank you, Chairman. My question is to be this on the scope of inpatient facilities very broad in terms of acute pediatric and the distribution, you know, across the state, hard to get mental health inpatient, probably in particular in the west. Will that be part of it? I'm new to the whole thing so.

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J. CAVANAUGH: So yes. Thanks for the question, Senator Riepe. This is not-- basically just being an analysis to figure out where we're at right now. And so not to put them anywhere or anything like that, might make some recommendations about where we could use some more and those sorts of things. But it's really just to find out the state of play.

RIEPE: Kind of inventory.

J. CAVANAUGH: Exactly.

RIEPE: OK. Thank you. Thank you.

BRIESE: Thank you. Senator Arch.

ARCH: So thank you for bringing this, by the way. It needed, needed to come. So the, the analysis is, is more than just how many beds are there. Right? It's what kind of demand, what kind of waiting list, what, you know, do we have capacity to take care of the demand that we have? Lincoln Regional Center would be part of that as well as maybe would, would private, private hospitals also be part of that?

J. CAVANAUGH: Yes, correct, Speaker Arch. Thank you for that.

ARCH: OK. And adult and pediatric. And so it's it's, it's, it's broader. I guess my only question and you don't have to answer it today, is whether or not there's a, there is a technical definition of inpatient. And, and it is-- it is not entirely clear whether or not psychiatric residential treatment facilities should also be considered as part of this. Acute inpatient is one thing; but under CMS sometimes they would-- they will refer to the psychiatric residential treatment facility as an inpatient. There isn't anything you have to respond to about that. But I guess that's just, just awareness of, of whether or not the scope of this should also include PRTFs as not just acute inpatient. But that's something you can discuss with your committee as well.

J. CAVANAUGH: Yeah, and I appreciate that point and I appreciate your input on this process up to this point as well. It's been helpful. And, and of course, if we do need to make changes before this bill would go forward to address that concern, I'd be interested in doing that.

BRIESE: Thank you, Speaker Arch. Senator Clements.

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CLEMENTS: Thank you, Senator Cavanaugh. There was discussion last year about a problem with competency hearings, people on a waiting list needing mental health competency. Is this connected to that issue?

J. CAVANAUGH: It is connected to that. And that-- I think there was a portion of LB921 that addressed some of what you're talking about in terms of the waitlist of folks who were sitting in. Well, I always think of Douglas County because that's where I come from. We have folks who end up sitting in Douglas County Corrections waiting to go get evaluated at Lincoln Regional Center. And so LB921 included a mandate that those counties be compensated for the time they're sitting there. That, yeah, that analysis and figuring out that would be part of the capacity necessity essentially looking forward to how we would alleviate that backlog.

CLEMENTS: All right. I was hoping that that would be considered with the study, but thank you.

BRIESE: Thank you, Senator Clements. Anyone else? Seeing no other questions, thank you for your opening. Any proponent testifiers? Seeing none, any opponent testifiers?

J. CAVANAUGH: Won't go far.

BRIESE: Anyone in neutral? Seeing none, you're welcome to close if you care to. Senator Cavanaugh waives closing. On LB552 we have, relative to written position comments, we have two proponent comments, no opponent comments. With that, we'll close the hearing on LB552. We'll open the hearing on LB713. Welcome again, Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Briese and members of the Executive Board. Good afternoon. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. Oop, do we need to change this? All right.

_____ : [INAUDIBLE]

ARCH: You got a job.

J. CAVANAUGH: Just want to look good on television. Here to represent the 9th Legislative District in midtown Omaha. I'm here to introduce LB713, which creates a forecasting tool to predict the impact of legislation on the Corrections population. LB713 would offer a locally based, data-driven analysis of our Corrections population on an ongoing basis. We'd utilize the Committee on Justice Reinvestment Oversight for this purpose, but I am open to other ideas as well. The

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most important goal is to give the Legislature the data it needs to make these informed decisions. Testifiers from the Office of the Inspector General for Corrections and the University of Nebraska-Omaha Center for Justice Research will give more technical detail on how this forecast would work. I realize our time is limited, so I ask for your favorable consideration of LB713 and I'm open to any questions.

BRIESE: Thank you, Senator Cavanaugh. Any questions for the senator? Seeing none, thank you for your opening. Any proponent testifiers? Good afternoon and welcome.

DOUG KOEBERNICK: Good afternoon, Senator Briese and members of the Executive Board. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k. I work for the Legislature as the Inspector General of Corrections. This bill is-- what's in this bill is something that our office has been looking at for quite some time. I've talked to people over the last few years because we think it's a very-- has a lot of potential as a tool to help not only the correctional system, but also policymakers in making decisions. The goal of this tool would be to continue to improve Nebraska's data-driven approach to criminal justice. It will allow us to plan for future needs and also predict impacts of major criminal justice legislation, the state's correctional population. And this would all happen on kind of an ongoing basis. So it'd be kind of a living, breathing tool. Right now we would go in and we would contract, the department would typically, and they would have somebody come in and do some of this, some of it, not all of it. And that might happen every five, six, seven years. This would allow us to keep doing it all the time and really provide us with a lot of good information. I know you have a lot going on over the lunch hour, so I think that's enough. We can provide you more technical information later, but for the sake of time, I can turn it over to Dr. Zach Hamilton from UNO. He is-- would-- can explain this much more than I can. He also has been involved in a lot of correctional things in the past. He's the STRONG-R assessment tool that the department uses he created. He created the classification tool for the Department of Corrections, and he's also completing a study on the state's classification system right now. So he has-- he's the expert more than I am. And I would gladly answer any questions you have, but I support this bill.

BRIESE: Thank you for your testimony. Any questions? Seeing none, thank you again. Next proponent testifier. Welcome.

ZACHARY HAMILTON: Hello. My name is Zachary Hamilton, H-a-m-i-l-t-o-n. I'm here. Thank you for having me here. I'm a professor at the

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University of Nebraska-Omaha, and also an associate director of the Nebraska Center for Justice Research. Over the last 20 years, we've seen the Nebraska population-- prison population increase, and this has created significant overcrowding within our facilities. This has caused serious pain points within the institutions and is coalesced around a staffing shortage that occurred recently as well. Within the last 15 years, there's been two points in which outside agencies have been brought in to examine the in and the outflow of the prison population, identifying adjudications, new incarcerations, returns to community, and relocations as well. At each point, those recommendations are provided with no follow-ups that are then planned in the future. And so bringing in these outside agencies is an important element to understand how our current population is operating. But what we're proposing within this forecasting model is to identify and monitor that situation consistently across time, providing quarterly or biannual or annual reporting of the same practices and the same statistics that have been provided by CJI and the Council of State Governments within that last 15 years. And by doing that, we can similarly provide a forecasting model that will identify any future legislation and how it might impact the current prison population and issues that affect overcrowding. And with that, I'll open it up to questions if you have them.

BRIESE: Thank you. Speaker Arch.

ARCH: We're not the only state that has issues like this.

ZACHARY HAMILTON: Correct.

ARCH: Is there not something off the shelf that, that can serve as a forecasting tool?

ZACHARY HAMILTON: Certain states do have forecasting models, but it's not an off-the-shelf requirement. It's not a tool that you preprogram. It's a matter of having people on the ground locally that work with your agencies and know how to properly use your data. Otherwise, it's bringing in agencies from outside that are essentially forced to drink from a fire hose and figure out your situation on the ground and report back.

ARCH: So a forecasting tool, what's, what's the-- I guess what's the-- what's the basis for that kind of a tool?

ZACHARY HAMILTON: Right. To call it a tool essentially means that we're providing a series of reports and tracking your information

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across time. So essentially, we'd be gathering data from your Administrative Office of the Courts, as well as NDCS and Parole to identify that in and that outflow and to provide estimates in terms of new legislation that might be passed to say how is that in and outflow going to be impacted. So say, for instance, you brought up or proposed a bill that would expand sentences for weapons possession that would extend durations of time within prison. We could estimate how that would impact the overall prison population going forward.

ARCH: So is this a-- is this a piece of software that would be-- that would be written or are you going to take some data analysis software and apply it to this?

ZACHARY HAMILTON: It's a set of analyses that we would continue to provide on an ongoing basis.

ARCH: But my only-- my-- the reason I ask this is because it seems like every time we turn around we're developing our own software, which then requires people to sustain it. And like I say, we're not the only state struggling or wrestling with some of these issues of forecasting. And if there was something-- if there was something that we could purchase. Otherwise, I mean, you know how it is. And then-- and then you have to-- you have to upgrade it. And it's just it never ends. And so I would just encourage that if-- if we go this direction, that there would be some consideration of is there an existing piece that we could hire analysts to do. But if there is-- if there is existing piece so that we don't have to keep writing our own software and maintaining it, I think that's probably a good idea.

ZACHARY HAMILTON: Yeah, we're-- we're not proposing software at all. We're proposing the analyst part to continue to move forward.

ARCH: OK. Thank you.

BRIESE: Thank you, Speaker Arch. Senator Slama.

SLAMA: Thank you, Mr. Chairman. And thank you, Professor Hamilton, for being here. Obviously, prison populations is something that is at the forefront of this committee, this body's attention, but also in the front of my mind as well, and I'm sure many other members of the body as public safety. As we're looking at developing this, is there any way to also develop a forecasting model to estimate the potential increase or decrease in victims of crimes as a result of policies passing or not? Because, I mean, that public safety side is definitely at the top of my list in importance.

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ZACHARY HAMILTON: Absolutely. And I understand your concern. Yes. That-- that would be part of the process to-- to understand how returning individuals reentering from the community are impacting the community in terms of recidivism going forward. And as we see implementation of new programming, early releases, or changes in release time, we're able to track those effects going forward and identify how many of those individuals are returning. And we could further track victimization going forward as well.

SLAMA: Sure. No, I'm-- I guess I'm-- I'm thinking a little bit more on the front end for if we're passing statutes that would either increase, decrease prison population based on sentencing on the front end, how much we would anticipate potential victim rates going up or down based on bills we're passing. So a little bit more on the front end and not so much on the recidivism side.

ZACHARY HAMILTON: That's difficult to predict.

SLAMA: Sure. I understand, yeah.

ZACHARY HAMILTON: And I think if we were able to predict that, we'd be miles ahead. But yes.

SLAMA: Yes.

ZACHARY HAMILTON: No, in terms of estimating the impact of legislation on victimization, it's something that could be looked into. It's not something currently proposed within this. It's mostly focused on the impact of the correctional system and identifying that system impact.

SLAMA: Sure. Yep. Thank you very much.

BRIESE: Thank you, Senator Slama. Senator Riepe.

RIEPE: Thank you. Thank you for being here. This morning's World-Herald had a story in there projecting I think it was 3,000 beds at sometime in the future. I'm just curious. What's the source of their information?

ZACHARY HAMILTON: The source of their information, I believe, is the most recent CJI report and projecting the information going forward. So identifying the current overpopulation, the sentences of the individuals that are currently within the NDCS system, and projecting going forward how many more additional beds we need to be added to accommodate new influx.

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RIEPE: I've always found that assumptions are the key to whatever your outcome is. And so I assume they're going on what their assumptions have been for some time.

ZACHARY HAMILTON: It's-- it's about tracking the information, going back 10, 15 years and identifying how that-- those increases in the population have changed over time.

RIEPE: Are you telling me that they did it themselves internally?

ZACHARY HAMILTON: No. I'm--

RIEPE: Or you said it's teaching.

ZACHARY HAMILTON: I'm saying the most recent evaluation that was done by the Criminal Justice Institute that formulated the report that was published in 2022 probably formed the basis of most of their projections.

RIEPE: OK. Thank you.

BRIESE: Thank you, Senator Riepe. Anyone else? Seeing no further questions, thank you for your testimony.

ZACHARY HAMILTON: Thank you very much.

BRIESE: Any other proponent testifiers for LB713? Seeing none, any opposition testimony? Seeing none, anyone testifying in the neutral? Seeing none, Senator Cavanaugh, you're welcome to close. We have two written, excuse me, one written position comment in support of LB715. Thank you. Go ahead.

J. CAVANAUGH: Thank you, Chairman Briese. I'll be brief. I just wanted to comment on a few things. Senator Slama, that was a good point and I would certainly entertain trying to figure out how to integrate that into this sort of concept. Additionally, there is an amendment to this bill that's the same as the amendment to my previous bill that would grant this committee the authority to approve any contract if we were attempting to engage in that contract, which I failed to mention at the beginning. And Senator Riepe, the answer to the question about the World-Herald's article is actually I believe they're citing to the new Master Facilities Plan from the Department of Corrections 2022 National Facilities Report, which the page numbers are rather confusing, but I think it's page 4-6, which is pretty close to the back, lists that in the next ten years there will be a need for approximately 1,300 new male beds. In the short run, the replacement

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of 1,500 beds will meet the needs. However, closing NSP for rejuvenation will remove about 1,500 beds. So essentially that article I think is talking about the Master Facilities Plan, which I believe the Department of Corrections emailed to the Legislature, well, January 27 is the date on this. So that's-- that's the basis of that analysis. And that's kind of, you know, conveniently timed because that's exactly what I'm talking about here, is we have-- we're talking about building a new prison. Talking about if-- even if we build a new prison, we may need another new prison. It's just really important that we make those sorts of decisions in light of consistently available data. And we have a resource available to us locally that could potentially do that on a regular basis. And that's what we're trying to get to here.

BRIESE: Thank you. Any questions? Senator Vargas.

VARGAS: I might have missed this. Thank you very much. So from the original language from the bill that was passed, was there a contract that was passed by the committee to do-- to do some of the initial work with an independent consultant?

J. CAVANAUGH: You might be on the last bill.

VARGAS: Oh, OK. Nevermind. No, we're fine.

J. CAVANAUGH: We moved fast.

VARGAS: OK. Very good.

BRIESE: Thank you, Senator Vargas. Anyone else? Speaker Arch.

ARCH: Just one other question. Your-- do you know for a fact Corrections does not have this type of forecasting today?

J. CAVANAUGH: I guess I don't know for a fact that. The-- the-- we don't have that information available to us at this point. And I think one of the things this bill is trying to solve is creating a clear data flow that makes that information available. You'd probably have to ask Department of Corrections, but it's my understanding that they have been hesitant to provide some of the information that this bill would make available to the analysis as well.

ARCH: OK. Thank you.

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BRIESE: Thank you, Speaker Arch. Anyone else? Seeing no other questions, thank you for your closing and thank you for joining us here today.

J. CAVANAUGH: Thank you.

BRIESE: That'll close the hearing on LB713 and I'll turn it over to Vice Chairman Aguilar to open the hearing on the next bill.

AGUILAR: Senator Briese to open on LB215.

BRIESE: Thank you, Vice Chairman Aguilar and good afternoon, Vice Chair and fellow members of the Executive Board. My name is Tom Briese, T-o-m B-r-i-e-s-e, represent District 41 and I'm here today to present LB215, introducing LB215 in my capacity as Chair of the Executive Board and at the request of the Inspector General of Nebraska Child Welfare and the Inspector General of the Nebraska Correctional System. The provisions of the bill are technical in nature, and I will largely defer to the Inspectors General to discuss them in greater detail. I'm also having the pages distribute a one-pager that summarizes the changes in the bill. But I do want to take this opportunity to talk about the history of both the Inspector General offices and the oversight role that the Inspector General play on behalf of the Nebraska Legislature. The Office of Inspector General of Child Welfare was created by the Legislature in 2012. The IG for Child Welfare's Office was one of 18 recommendations from the LR37 Interim Study Report in 2011, which was an extensive and thorough review of the Department of Health and Human Services' attempt to privatize the child welfare system in 2009. Creation of the IG for Child Welfare, along with other recommendations from the LR37 study were adopted by a unanimous 49-0 vote of the Legislature. Since the creation of the IG for Child Welfare, the Legislature has regularly added additional responsibilities to the office, including review of alternative response cases in 2014; juvenile room confinement in 2016; allegations of sexual abuse of state wards in 2017; and youth rehabilitation and treatment centers in 2020. Over the past decade, the IG for Child Welfare has made 106 recommendations for improvement to four of the five divisions in DHHS to private providers contracted with DHHS and the Administrative Office of Probation. Most recently, the IG for Child Welfare was instrumental in the Legislature's investigation into the contract with Saint Francis Ministries. The Office of Inspector General of the Nebraska Correctional System was created by the Legislature in 2015. The IG for Corrections was one of 16 recommendations from the Department of Correctional Services Special Investigative Committee's LR424 report in 2014. Creation of

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the IG for Corrections, along with other recommendations from the LR424 report, were adopted by a 47-0 vote of the Legislature. The underlying statutes have been amended twice since that time, really without opposition on any of the issues raised regarding the structure or operation of the office. The IG for Corrections investigates complaints and critical incidents, identifies systemic issues, and provides recommendations for improvements within our corrections systems. Both Inspectors General effectively serve as an extension of the Legislature's oversight functions and work under the Public Counsel or Ombudsman's Office in providing ongoing oversight of issues that our predecessors clearly identified as ongoing problems that warranted a more permanent form of oversight. As some members of the board may be aware, last session Senator Lathrop introduced a similar bill, I believe it was LB897, which was designated as a committee priority. But the bill failed to advance due to provisions in last year's bill related to an ongoing conflict between the IG for Child Welfare and the Administrative Office of Probation. As noted in committee counsel's memo, the primary provision opposed by Probation in LB897 was not included in LB215. I'm always willing to work with either the executive or judicial branches regarding concerns about the bill. Again, both the Inspector General of Nebraska Child Welfare and the Inspector General of the Nebraska Correctional System are behind me to testify, but I would be happy to try to answer any questions at this time. Thank you.

AGUILAR: Are there any questions for Senator Briese? Seeing none, first proponent. Welcome.

DOUG KOEBERNICK: Thank you, Senator Aguilar and members of the Executive Board. Again, my name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k. I am the Inspector General of Corrections for the Nebraska Legislature. I am testifying in support of LB215. I want to thank Senator Briese for introducing this bill, which, as he said, is very similar to a bill heard by the Executive Board last year. With few exceptions, this bill is really a clean-up bill to acts of both the Inspector General offices. Many of the changes apply to both acts as seen from the handout that Senator Briese provided to you. To me, the most significant changes made to the corrections part of it would-- would include not requiring employees to report the filing of a complaint with our office. That actually applies to both offices, making it even more clear that the Division of Parole Supervision is included in the act. There's some confusion because they were in the Department of Corrections and they spun out, and so the language is not consistent throughout and it just needed to be-- have some fine tuning for that. And they're okay with that. Making it clear that the

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Office of the Inspector General and the Office of the Public Counsel have direct computer access to department records, not just the Inspector General and the Public Counsel. Earlier this past year, the department kind of interpreted the language to say that Ms. Rogers and myself were the only ones that had access to this. We just want to make it clear they are now providing access to both of our offices entirely so there's not a problem there. But we just want to clear that up. Requiring both the department and the Division of Parole to provide medical and mental health records of deceased individuals to both offices in order to investigate deaths. We are charged with investigating all deaths. There's some confusion or maybe a lack of clarity in the-- in the language right now with the department where they believe that we should not see the medical records for seven years. They basically allowed us to see them, but not now. This would just clarify that. It's very difficult to do a death investigation if you can't see medical records. And the intent is for us to do that. So we would like that change. And then requiring both Inspector General offices to refer matters involving staff actions that warrant criminal or disciplinary proceedings to the appropriate authorities, something we already do. But we just wanted to add that in there. There are some parts of the bill that may look like new language, but it is actually language moved between the sections in the statutes, including compliance requests made by the office and then language regarding investigations, audit, inspections, and reviews. We-- our office really prides ourselves in being open and transparent, and we receive complaints and information from a lot of people and a lot of groups. And in addition, investigating all deaths, we also review all significant incidents that take place. There is language in the intent section of the act that I have really taken to heart that directs the office to assist in improving the operations of the department and the Nebraska correctional system. And I believe in our seven-plus years, we have-- we have done that. We've worked with the Department of Corrections and the Division of Parole Supervision to do just that. While they may not always agree with the recommendations we make, I do believe they take them seriously and many times they do act on them to make improvements with how they operate their systems. I think you can look at the-- our extensive work on Corrections staffing as one good example for that. In closing, I want to mention that in a past position I was very fortunate enough to staff two special investigative committees of the Legislature, the Beatrice State Developmental Center one, and then the Department of Corrections and Nikko Jenkins one. In both of those instances, people died. And I'll just wrap up real quick. When I took that position, when I took this position, one of the main reasons I was-- I did so was to keep the

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Legislature informed so they wouldn't be caught off guard like they were with those two special investigations. I think that we've done that. I think--

AGUILAR: Your final thought.

DOUG KOEBERNICK: Okay. I think that the Legislature, the agencies we work with, and the public have all benefited from our work. And I want to thank the Legislature for all of your support.

AGUILAR: Thank you, Mr. Koebernick. Any questions for Mr. Koebernick? Senator Lowe.

LOWE: Thank you, Vice-Chair, and Mr. Koebernick, for being here today. You mentioned about the death certificates or looking into deaths.

DOUG KOEBERNICK: Yes.

LOWE: Can you go into a little more detail on that?

DOUG KOEBERNICK: Yeah. I mean, the statute requires us to investigate all deaths and serious injuries that happen within the department or the Division of Parole Supervision. So when we do that, we look at what happened out-- like, let's say something happened at the Nebraska State Penitentiary. We will look at all the incident reports that are completed by the department. We will watch video. We will listen to audio. We do all these different things to kind of investigate to figure out what happened. The part that we would like to just clear up is the medical records of that deceased individual. Right now, we are not allowed to see those. And if somebody has a medical episode, we'd like to learn exactly what that episode was, how it was treated, how it was acted upon by the department, things like that. That information is provided to, like, the grand jury so we can wait for the grand jury's result, you know, that they will tell us the cause of death. You know, an autopsy-- autopsy will be done as well too. But having our ability to look at that has been very helpful over the years. I don't know if that's helpful. It doesn't look like it.

LOWE: So-so.

DOUG KOEBERNICK: Okay.

LOWE: I think the grand jury should have its time with the-- with the medical records before it gets out but.

DOUG KOEBERNICK: Yeah. Yeah.

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LOWE: Thank you.

DOUG KOEBERNICK: Um-hum.

AGUILAR: Yes, Senator Riepe.

RIEPE: Thank you, Vice Chair. My question, is this an issue with HIPAA?

DOUG KOEBERNICK: That's a good question. And I don't know the exact answer to because we-- we're allowed to have those and there wasn't a HIPAA issue with it. I think, if I understand it right from the department's point of view, is the language says that there's an exception that says we don't have access to medical and mental health records. And that was in the child welfare statute, I believe too. For somebody who is residing within the department, when somebody dies, there's this question of like, okay, are they part of the department anymore or whether we can access their medical records. So it's a little unclear right now with the department. I mean, for seven, like I said, seven years we were allowed to look at them and they didn't raise any HIPAA concerns and they haven't raised the HIPAA concern. But they just think that-- my opinion is that they think the statute just is not quite clear enough. That's-- that's my [INAUDIBLE]

RIEPE: The reason I say that because I introduced a bill in HHS this morning, LB337, which would provide for, based on HIPAA approval, that would allow law enforcement, social work, and behavioral to better coordinate. I believe in that language it talked about, even on deceased patients. So assuming that goes forward, that might--

DOUG KOEBERNICK: That could be helpful.

RIEPE: --somewhat helpful.

DOUG KOEBERNICK: Um-hum.

RIEPE: Okay.

DOUG KOEBERNICK: Thank you, Senator.

AGUILAR: Thank you, Senator Riepe. Any-- Senator Bostar.

BOSTAR: Thank you, Senator Aguilar. Thank you, sir, for being here. Is-- how many years did you have access to medical records approximately?

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DOUG KOEBERNICK: About seven.

BOSTAR: Were there any problems that arose because you had access to medical records?

DOUG KOEBERNICK: Not that we were ever made aware of.

BOSTAR: Thank you very much.

DOUG KOEBERNICK: Um-hum.

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

DOUG KOEBERNICK: Thank you, Senator Aguilar.

AGUILAR: Next proponent.

JENNIFER CARTER: Good afternoon, Vice Chairman Aguilar and members of the Executive Board. My name is Jennifer Carter, J-e-n-n-i-f-e-r C-a-r-t-e-r, and I serve as your Inspector General of Nebraska Child Welfare. Senator Briese has done a great job explaining our history, so I will just jump right in. As my colleague Doug Koebernick said, this-- this bill contains a lot of technical changes, most of which are in the summary, and I'm happy to talk about any in more detail, but I'd like to highlight two, one of which is that there was language around cooperation with the office and access to information in several different-- really about three different provisions. We moved those around, did not change the language, just moved where they were so that Section 10 provides a general duty to cooperate and have access to information. And then Section 12 now provides a more specific section on what happens during a full investigation. For the Child Welfare Act in particular, our key change in this bill is aligning the notice requirements of the OIG duties with, sorry, the notice requirements with our duties. So we have four main areas that we are mandated to investigate, one of which generally comes from complaints regarding violations of law or rules and regulations. But separately, there are three others. We have to investigate death and serious injuries of children in out-of-home care, death and serious injuries of children receiving services in the child welfare system or in juvenile probation, and deaths or serious injuries of a child in a case that has been investigated in the last 12 months. The statute, however, is only specific to requiring notices to death or serious injuries in out-of-home care. LB215 would correct this so that we would receive the notices for deaths or serious injuries of children receiving services or who have been involved in a case in the last 12 months. We obviously cannot investigate what we don't know about. So

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this would-- would correct that. I would say to this point, the Department of Health and Human Services has provided us with those notices. But I think it's still important to correct the language of the statute going forward. So other than that, I'm happy to take any questions on other specifics. I would say we are aware that there will be some opposition that challenges, as I understand it, not necessarily anything specific in the bill, but the very existence of our office. And I would just say, if it's helpful to the committee, we're very happy to talk about that. We believe this is a natural extension of the Legislature's power of oversight. And most importantly, our office has just always been about providing accountability for children who die or are seriously injured in the care and custody of the state. And the ultimate goal is to provide information, insight, and recommendations to the agency in our reports and to the Legislature to improve the child welfare system. We cannot instruct the executive branch to do anything. We have no power in that way. All we can do is recommend. And of the 106 recommendations we've made, 76 of them have been completed by the department. Eight others are in progress. And so we have really appreciated what we hope was a productive relationship to really make sure that-- that the system is doing what it should be doing for children and families, because I think that's ultimately the goal for everyone. So happy to take any questions, if I can be helpful on other details of the bill.

AGUILAR: Any questions for Ms. Carter? Seeing none, oh sorry, Senator Lowe.

LOWE: Thank you, Vice Chair. And thank you, Ms. Carter, for being here today and explaining what this-- the whole intent of this is. You mentioned investigations on children and in home and out of home.

JENNIFER CARTER: Yeah.

LOWE: What would that entail for in-home investigation?

JENNIFER CARTER: So usually it's just that the death has happened. So, for example, the child welfare system in general is moving towards and best practice would be to allow children to stay in their home as much as possible. But they may still be a ward of the state or they may still be involved with the department in terms of providing services, have case managers. So our job is not to investigate the actual death in terms of what happened. Child welfare does that. Law enforcement does that. We're looking at how did the-- how was the case handled? And even more importantly, when we look at the policies and procedures, often what we're finding is more if everybody did

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everything right, but there's still a gap in the system that might have helped prevent the death. That's the type of thing we're trying to look at. It is by statute also a performance review. So sometimes we're letting the agency know you have all the policies in place. They weren't executed. And so that's just the finding that we make. But otherwise, we're just trying to make recommendations to say, as we see how this is working, this continues to be a challenge. This may help fill a gap or maybe there are challenges in general in the system that we can let the Legislature know about. You know, we have had examples where we see caseworkers doing excellent work, documenting everything really well, but they can't find a placement. There's just nothing available or there are services that are still needed for those children. That's the kind of thing that we can highlight and bring to the Legislature also, because we by statute can also just make recommendations to the Legislature. And we try to, in our annual report, say here are some issues that we're seeing coming ahead and things that we might need to think about as everyone's working on the system.

LOWE: Would this or could this legislation allow you to do deeper investigations into an in-home incident?

JENNIFER CARTER: Not any deeper than we do now so for-- for the ones that we are notified of. I mean, we-- we will look at-- we'll get all of the-- we'll look at what the casework looked like. We usually ask for an autopsy. Oftentimes the autopsy piece is actually just more for us to determine if we have jurisdiction, because if it was something that was truly medical, you know, this occurred by chance, then that's not something we're going to look at because it's also not something the department could have prevented. So-- so I don't know that this-- this doesn't extend our authority in any way. It just is we've had this duty and we've, again, been able to do it because the department has been providing us with that information. We have not been getting that information from juvenile probation. But in general, we've been operating as we would continue to operate, we would just actually have notice of those deaths and serious injuries and ensure the notice going forward.

LOWE: You mentioned that there may be some opposition that come in with separation of powers.

JENNIFER CARTER: Yeah.

LOWE: Will this be found constitutional or unconstitutional?

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JENNIFER CARTER: I mean, I am a lawyer, but I haven't dug into it very far. I would say certainly if there are specific provisions that anybody's concerned about, I-- we'd be very happy to talk about that. In terms of generally speaking, my understanding is that, and just my broad general understanding, is the Legislature has oversight powers and this is a natural extension of that and has been delegated to this office with a lot of benefits in that there's a lot of confidentiality that we have that we can maintain in these really sensitive cases. To me, it's the-- similar to the LR29 Committee or some of these investigative committees. It's the work that the Legislature is allowed to do, compel testimony even, but gather that. And-- but it has sort of been delegated to this office for specific expertise and with a lot of protections around it to allow us to-- we're really just fact finders. And as I-- as I like to analogize it, agencies have to tell us when their house is on fire. And then our job is to say, I think this is why your house went on fire. Here's how I would probably put it out. And I would get some smoke detectors for prevention. But we cannot call 911. We can't pick up the hose. We can't buy the smoke detectors. We can just say, here's what happened and here's the recommendation. It is totally up to the executive branch to decide if they're going to do that or not. And frankly, that's information, too, for the Legislature to then decide we should appropriate money for some more smoke detectors or that type of thing. So that's kind of how we-- our role plays out in this pretty carefully crafted statute that we've had to both be certified as IGs. And Nebraska has actually done a very good job in setting up their statute, because it very clearly defines our duties, our access, our responsibility for confidentiality.

LOWE: All right. Thank you.

AGUILAR: Further questions? Senator Bostar.

BOSTAR: Thank you, Senator Aguilar. Thank you, Ms. Carter. It's good to see you.

JENNIFER CARTER: You too.

BOSTAR: Just broadly because I don't really have a sense of it, how many cases do you work?

JENNIFER CARTER: So we last, and I'm going to forget the specific number, but last year in our annual report, we received over 400 complaints and incidents. So a portion of those were incidents. A lot of them were complaints. We also review grievances to see how the

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department is handling those, because ultimately what an Inspector General's job is and is about good government is it-- is the department working as it should? And so we review things in that way. We have, I believe we have at least 11 serious injuries that we're still reviewing. We have more. I'd have to-- I should-- I don't know why they're escaping me because we just did our annual report, but we have a few deaths remaining. We have about 20 deaths on the probation side that have not yet been investigated. So we just try to-- we are a small but mighty group and we just try to get the investigations done as we can. It's always obviously in hindsight. So and then when bigger issues like the St. Francis contract or what happened at YRTC Geneva, when there's a crisis in the system that we can be helpful with, we do that as well.

BOSTAR: All right. Thank you.

AGUILAR: Any more questions? Senator Vargas.

VARGAS: Less, just less question. I know for a few of us that have been on the committee for a couple of years, a lot of the information, not just from you but from Mr. Koebernick, have been really helpful for that oversight capability that you mentioned, not only with child welfare, but corrections and for our work in Appropriations it's helpful information for us to have, especially as we're considering better and more increased resources for things. So I just wanted to acknowledge that. I appreciate your work.

JENNIFER CARTER: Thank you.

AGUILAR: Any more questions? Seeing none, thank you, Ms. Carter.

JENNIFER CARTER: Thank you.

AGUILAR: Any more proponents? Seeing none, opponents. Welcome, Mr. Steel.

COREY STEEL: Thank you, Vice Chair Aguilar. Good afternoon, Vice Chair Aguilar and members of the Executive Board. My name is Corey Steel, C-o-r-e-y S-t-e-e-l. I'm the Nebraska State Court Administrator for the Administrative Office of the Courts and Probation. And I'm here today again to provide testimony in opposition to not only LB215, but the Office of Inspector General. One correction as we have been here from the administrator's office each time a bill has come forth in opposition to any oversight with the judicial branch, as well as any amendments to the bills that have come forward. In 2012, the legislative-- Legislature created the Office of Inspector General

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within the Ombudsman's Office to allow for inquiry and review of actions and individuals, administrative agencies responsible for the care and protection of children in the Nebraska child welfare system. In 2014 when service dollars for juvenile probation was transferred to the Nebraska Supreme Court's budget based on the legislative authority, the Legislature also gave authority to the OIG for oversight over juvenile probation, which is under the direction of the Nebraska Supreme Court. LB215 further expands the authority and overreach of the OIG of Nebraska Child Welfare. It is the judicial branch's opinion such oversight-- oversight contradicts Nebraska State Constitution Article II, Section 1, more commonly known as Distribution of Powers Clause. I quote: The powers of the government of this state are divided into three departments, the Legislature-- legislative, executive, and judicial, and no person or collection of persons being one of these departments shall exercise any power properly belonging to either of the others except as expressly directed or permitted in this Constitution. Investigations that encroach on another branch of government's given authority is unconstitutional. Adjudication of a juvenile is an express power reserved to the judicial branch. Legislation that allows the OIG to investigate and question judges' court orders pertaining to juvenile cases raises grave constitutional concerns. Allowing broad access to-- to records that inform judicial decisions raises additional constitutional concerns. The independence of the judiciary is a fundamental element of our government. Judges must be free to adjudicate youth under their jurisdiction without the threat of an investigation by another branch of government. The oversight the Legislature sought as a result of child welfare crisis in 2011 was directed to those children whose legal custody is placed with the state of Nebraska. Youth under supervision of juvenile probation are not in the state's legal custody, but only under court order of probation. Nebraska Revised Statute 29-2249 specifically designates the Office of Probation Administration as part of the judicial branch of government under the direction-- direct supervisory authority of the Nebraska Supreme Court. The newly introduced language in LB215 further extends the reach of the-- and exacerbates the separation of powers conflict. Examples include additional reporting requirements; broadens authority to more general scope by stating other investigations, audits, inspections and reviews as necessary; removes OIG's 14-day timeframe to determine if a full investigation will be pursued; broadens cooperation, disclosures and record production to any time for any reason; bypasses a court order needed for confidential record information; adds public disclosure for failure to cooperate, and shortens the written report response from 30 to 15

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days. As previously stated, since the Office of Probation Administration operates within the judicial branch of government under the direct supervision of the Nebraska Supreme Court, oversight by the OIG and another branch is strongly opposed. We ask that any oversight of juvenile probation by the OIG be stricken entirely. I have provided a copy of an amendment that would strike other language pertaining to juvenile probation completely out of the OIG Act that we deem is a constitutional overreach.

AGUILAR: I have to cut you off.

COREY STEEL: Thank you and be happy to answer any questions.

AGUILAR: Thank you. Questions? Senator Arch.

ARCH: Thank you. Thank you, Mr. Steel, for coming. I-- set the OIG aside for a second. What-- what's your understanding of the Legislature's right to know? You have got-- you've got youth in probation and-- and-- and something happens. Does the Legislature have a right to know? What-- what's your understanding of that?

COREY STEEL: A right to know in the sense of what took place with that individual specifically?

ARCH: Yeah. Yes.

COREY STEEL: In my opinion, that is within the Nebraska judicial branch. If we have issues or concerns, let's say in this instance where the OIG has oversight over a death investigation, we do internal investigations and report to the Supreme Court. Anything that takes place with any adult or juvenile that is with us under the supervision of probation has a review, internal review process, and that is then shared with the Supreme Court who has oversight over those cases. Okay? If there are concerns and issues that the Legislature may have, I think they have a vehicle and a mechanism in order to do that, which would be-- which would be to have a hearing to discuss those issues or those concerns, where we would then put forth evidence in the sense in that manner.

ARCH: The-- the report then that is provided to the Supreme Court, is any of that public information?

COREY STEEL: The report from the OIG?

ARCH: No. Your internal investigation. You have-- you have-- you have an event with the youth in probation. You say you investigate it

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internally and you-- you submit that information to the Supreme Court. Is any of that public information?

COREY STEEL: No, sir.

ARCH: Thank you.

AGUILAR: Senator Bostar.

BOSTAR: Thank you, Senator Aguilar. Thank you, Mr. Steel. It's good to see you. So on the claim that this oversight is unconstitutional, has that been tested in court?

COREY STEEL: No, sir. Nobody has challenged at this point. The Supreme Court cannot bring a case on themselves.

BOSTAR: Sure.

COREY STEEL: So we would have to have a challenge to the OIG interview process or something like that that would be challenged in order for the Supreme Court to enact any type of decision. But we have been in opposition from day one, from the very original start of, which, again, with the administrative office.

BOSTAR: Understood. So I-- I understand that the idea of having the separation of powers. It-- what I-- what I think I'm struggling with is the concept that the judicial branch shall not be questioned. It doesn't seem to me that the Office of the Inspector General can overrule the courts or alter their determinations in any way simply to gather information. You also referred to a threat of investigation. What's the most serious consequence that can come from the-- that investigation that is being, by your words, threatened? What can happen to the courts at the end of the conclusion of that investigation?

COREY STEEL: So based on the OIG and, and the language within here, they can do an investigation. They can interrogate and investigate a probation officer, which they must present evidence and they cannot not speak to the OIG. And anything that-- that's found out within that, that would be turned over to authorities. So that's potentially self-incrimination by our staff if something was said, something was done, what have you. No legal recourse in the sense of attorneys or those types of things, which we've had issues with in the past and which was a strong opposition last year where there was a-- there was something put in the legislation that did not make it, but that a staff member could not have an attorney present during the

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investigation or during the questioning of the OIG. It simply comes to the fact that these individuals are placed on probation by a judge. The judge outlines the order of which a juvenile shall comply with direct probation for, whether it be placement or supervision within that court order. And probation goes forth and complies and puts in place the order of the court. So anything that comes back to an issue with placement, an issue with the way that things are handled through probation, as far as why did probation make these decisions, those are all directed back to a court order. And so it's-- it's really a function of discrediting the order of the court. And again, if we have judges that feel that if I put this in place, it could come in question down the line, that-- that is a-- is a big issue within our court structure.

BOSTAR: Thank you. And to be clear, I'm not an attorney. I don't serve on the Judiciary Committee. And so a lot of this isn't something that I deal with frequently or am comprehensively familiar with. You talk about probation. Probation is an option for a judge, my understanding as a-- as a sentence, because the Legislature created that statute. Is that correct?

COREY STEEL: So it goes back to the Constitution, which is-- which gives the legislature the authority to place it in the executive branch or the judicial branch. It's been placed and chosen to be in the judicial branch, both adult and juvenile probation, at that point in time.

BOSTAR: Could the Legislature abolish probation?

COREY STEEL: Yes.

BOSTAR: So it seems to me that if we have the power to control some of these elements, it's an order from a judge, and I understand that. But we have a great deal of authority within this realm, it seems. Isn't there some inherent benefit to the Legislature having information available to it in order to ensure that the systems that are by the creation of the Legislature, working appropriately to optimize they are providing the results we all want in order to make sure that the system is functioning to the best of its abilities?

COREY STEEL: Yes, I agree with that statement. I think there's many mechanisms that are already put in place for that. For the fact that we-- we give-- there's many legislative statutes that require reports, data, those types of things that we do provide to the Legislature on an either annual or biannual basis. Those are-- those are taken care

of and those are done. But-- but the fact comes to the Legislature entrusted the judicial branch with the authority of probation. The Constitution really is specific in the sense that you've entrusted us to perform that duty, but yet you still want to make sure and have tentacles and arms in to review internal cases of what is taking place.

BOSTAR: I understand. And I thank the committee for being very generous with the time so just a final question. If we were to put in statute that these reports had to be given over to the Legislature expressly containing every element that is being requested from the OIG right now, would that also be considered inappropriate? So instead of an OIG process, we just wrote-- we passed laws that said probation has to give us this information constantly just has to send it to every member of the Legislature and then every probation officer must come before a quarterly hearing and answer questions [INAUDIBLE] would that-- would that-- would that process be inappropriate?

COREY STEEL: Yes.

BOSTAR: But-- thank you very much.

COREY STEEL: It's still-- it still in my mind would be the Legislature overseeing the concept of probation, which is in the judicial branch.

BOSTAR: But we created it.

COREY STEEL: Just because you created it in the Constitution, we don't feel that you can still continue to monitor and-- and have the oversight that is needed. You've given the authority to the judicial branch.

BOSTAR: We also, at any point can take it away.

COREY STEEL: Correct.

BOSTAR: And so because of that, this isn't something we set into perpetual motion. We should as-- as a body, as a legislative body, be able to determine whether or not our creations are working.

COREY STEEL: I think there's-- there's multiple ways that that is done already. We-- the performance audit, we've gone through performance audits to make sure we're statutorily going-- going the intent of the Legislature, following the intent of the Legislature, both on the juvenile and adult side. We've gone through that process. So that's a mechanism. You have your hearings that you can hold where you can come

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in on a specific issue, which then has statutory requirements that you can ask questions regarding those. We provide multiple, multiple reports to the Legislature on every function that we do within-- within juvenile and adult probation. There's mechanisms out there. This specifically goes to investigating a specific case that was placed on probation by a judge.

BOSTAR: Thank you. I appreciate your-- your time in this back and forth. I would just add we're all in this together and hopefully we can all work together to find the best solutions.

AGUILAR: Thank you, Senator Bostar. Senator Vargas, you're next.

VARGAS: Thank you. Sounded like a song chord. I was trying to figure out where that came from. I appreciate you being here, Mr. Steel. And, you know, I think only a few of us were in the past when we had Senator Lathrop and we had some of these same discussions. So I'm not going to try to rehash that. I'm just trying to react to a little bit of things in the record. So I know that there are other states that have offices of Inspector General, and obviously they are very different. My question is, so what is different about our Constitution that you're saying violates sort of the separation of powers versus other states that have-- have longstanding Inspector General agencies or departments that are doing this sort of retroactive investigations?

COREY STEEL: So from what I have been able to gather over the years in talking with my court administrator colleagues that have oversight over probation, they do have either OIG or auditor responsibilities that have been given to them by the legislature within their branch of government that then reports to the head of that branch. They do not report to the head of another branch of government. And so the OIG concept, both in the federal system, which is within the branch of government that the OIG is related to, reports to the head of that branch of government. The same would take true in the states that have OIGs or auditors for probation or pretrial services or what have you. They're within their branch of government. They're not in an executive branch overseeing a judicial branch, legislative branch overseeing a judicial branch. They're within their branch of government. And that would be the-- would be the fundamental difference.

VARGAS: And the reason, I mean, that's helpful and I'll do some more research. And if you have more information on that, that'd be great. I mean, inherently, and this is getting a little bit to Senator Bostar's questions, my concern is an agent, sort of a branch of government investigating reports itself makes sense for-- so their due process

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getting better at the things they're doing. You know, but we've had this longstanding relationship of having this oversight retroactively. I mean, we really have, you know, at least not the purse strings, but the appropriations. You come to us to then request the needs for line items and you come to Appropriations. But in-- in a lot of these changes, you know, I'm still not seeing and I understand the premise. So you said this earlier, if we had a hearing like it's okay for the Legislature to have hearings and for you to come in. But if we had a hearing, would we be able to ask for the information on some of your own internal investigations? Would you share that with us if we had a legislative hearing and a bill? Would you share those independent cases if we asked for them?

COREY STEEL: I don't know if I can answer that directly at this point in time. I would have to check with our-- with our legal on that to see if there's--

VARGAS: So and my understanding is the answer would be no. And that part of the reason why this exists, the sort of case-by-case, individual nature, especially if it does include some level of personnel within probation, that it doesn't live within the hearing process. And we would try to avoid that at all costs. And that's why this exists because it's not a mandate. It's a recommendation. It's not a consequence and on its own. And it's going to come back to us in a report. That's just a couple of things I wanted to get on the record. I know that this is something that you brought in the past and you've made your concerns. I-- I still think the oversight mechanism are needed. They're not even the oversight mechanism. We're still the oversight mechanism, but the information that's coming to us on these cases to inform what we do and do not do is valuable. And-- but I'll look forward to look into what other states are doing and how they're reforming this if they are.

AGUILAR: Thank you, Senator Vargas. Senator Slama.

SLAMA: Thank you, Vice Chairman Aguilar. I just have a couple of questions. I don't want to belabor this for too long over our lunch hour. But procedurally, help me understand these investigations by the OIG's office, because you mentioned the interrogations that probation officers could face. How would one of these investigations get started? Is this something that the Legislature specifically authorizes or is the OIG authorized to just on whatever case they see fit to investigate?

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COREY STEEL: Right. So it would be the OIG on what cases they see fit. There's a reporting mechanism that's outlined in statute. We've complied with that reporting mechanism. If there's serious death or injury to a juvenile that's on probation, we make that report to the OIG and they determine whether or not they're going to do a thorough investigation of that.

SLAMA: Absolutely. And I appreciate your point about last year's proposal, which I was very concerned about, about the lack of potential representation in one of these interrogations. So if the OIG's office makes contact with the probation officer and the probation officer is advised during questioning by the OIG's office, advised by their attorney not to answer a question, what could a consequence be from the OIG for the probation officer's failure to cooperate?

COREY STEEL: Well, I think--

SLAMA: Because my concern with the way this is written is that if they're advised not to answer a question because of potential self-incrimination, incrimination of others, following the legal advice of their attorney that they could be designated as noncooperative--

COREY STEEL: Correct. That's-- that's what I think would be outlined as far as according to the act.

SLAMA: And that could be used against them.

COREY STEEL: Correct.

SLAMA: I appreciate that. And due process and the protection of our probation officers and their rights under the law are something I care about very much. So LB215 is really concerning to me, just based on that alone. Thank you.

AGUILAR: Thank you, Senator Slama. Senator Arch, do you have a question? Senator Lowe.

LOWE: Thank you. Thank you, Mr. Steel. Do we not-- does the Legislature not already have the power to subpoena?

COREY STEEL: Yes.

LOWE: So this would almost be redundant then?

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COREY STEEL: True.

LOWE: Thank you.

AGUILAR: Further questions? Seeing none--

CLEMENTS: Excuse me,

AGUILAR: Senator Clements.

CLEMENTS: Thank you, Vice Chair Aguilar. Thank you, Mr. Steel. I was on a committee a couple of years ago investigating St. Francis Ministries with child welfare. And we did call people in to testify from the executive branch. Do you feel that that is a proper way to have the Legislature get information?

COREY STEEL: I think that that's a mechanism in which the Legislature can access information, yes.

CLEMENTS: But that wouldn't vio-- that doesn't violate the Constitution that you're talking about.

COREY STEEL: I do not believe so.

CLEMENTS: Thank you.

AGUILAR: Seeing no more questions, thank you for your patience.

COREY STEEL: Thank you.

AGUILAR: Any other opponents? Welcome.

BO BOTELHO: Thank you. Good afternoon, Vice Chair Aguilar and members of the Executive Board. My name is Bo Botelho, B-o B-o-t-e-l-h-o. I am general counsel for the Department of Health and Human Services. I am here to testify in opposition of-- to LB215 as well as to how this bill and existing statutes are inconsistent with the important constitutional principles. Our Nebraska Constitution contains a separation of powers clause which divides our government to three distinct branches: the legislative branch, the executive branch, and the judicial branch. This clause expressly prohibits any person or collection of persons in one branch of government from exercising any power properly belonging to either of the other branches. The Constitution also prohibits individuals from serving two branches of government concurrently. The power of the Legislature also cannot be improperly delegated. LB215 and existing laws relating to Inspectors

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Generals are problematic. I'm going to touch upon a number of the areas of concern. Unlike the federal model, Inspector General in Nebraska are housed in the legislative branch and not an executive branch agency. Notwithstanding that, Inspectors General are not conducting investigations in aid of legislative functions of the Unicameral, but they're expressly conducting investigations of law violations and malfeasance of private individuals and executive branch employees. Under the current law, they are empowered to investigate deaths, injuries, and abuse of general-- of certain individuals. The Inspector General may intercede in an ongoing criminal investigation, and all law enforcement officers and prosecutors are required to cooperate with the Inspector General and provide any reports the Inspector General deems relevant. While law enforcement may ask the Inspector General to suspend an investigation so that it will not impede law enforcement or other criminal investigation, the Inspector General does not have to honor that request. LB215 expands this power further and allows an Inspector General to demand documents or interviews from state employees or private individuals that contract with the state at any time, even when there is no investigation pending. Under Section 8 paragraph (9) of the bill, there is no limit to the kind of inspections or investigations the IG may conduct. The duty to comply with the Office of Inspector General includes employees of the executive branch, the judicial branch, and private members of the public who provide child welfare services or who serve as foster parents or work in childcare. Under Section 10 of the bill, the executive branch employees and private individuals alike are required to fully cooperate with the Inspector General. They may be interviewed, subjected to inspections, and required to produce documents and records upon request of the IG. Section 12 of the bill requires truthful answers to any questions posed by the IG without any requirement that the IG advise individuals of their constitutional rights or their rights as employees. Section 10 in existing statutes prohibit executive branch agencies and private employers from acquiring supervisory approval prior to providing records or information to the IG. Section 14 further expands the IG's direct access to executive branch computer systems. The IG has subpoena powers. Investigations of the Inspector General are conducted in a manner designed to collect and preserve evidence for use in criminal prosecutions. Existing law provides that failure to cooperate with the IG exposes an individual to discipline or sanction. While Section 13 of the bill would eliminate the express language about sanctions, the bill contains such-- the bill contains provisions such as Sections 15 and 22, allowing the IG to ask the appropriate authorities to initiate criminal prosecution and recommend disciplinary proceedings--

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AGUILAR: Wrap it up, Mr. Botelho.

BO BOTELHO: --against someone. Thank you. I'll take questions.

AGUILAR: Thank you. Questions for Mr. Botelho? Seeing none--Senator Lowe.

LOWE: Too close.

AGUILAR: Too close.

LOWE: Thank you, Mr. Botelho, for being here. You mentioned the Inspector General may intercede in ongoing criminal investigations. Can you go into a little deeper on that.

BO BOTELHO: Per statute, the existing language, the IG can request documents, reports from any law enforcement agency in the state of Nebraska or a prosecutor. They're required under the color of law to provide those reports. They can ask the IG to wait until their investigation is concluded, but it's sole discretion of the IG and the Ombudsman as to whether or not they'll wait or require the reports.

LOWE: Okay.

AGUILAR: Further questions? Mr.-- Senator Arch.

ARCH: Thank you. Thank you. I was reflecting back on my experience in-- in hospital administration and in corporate compliance issues and how-- how companies set up systems so to make sure that they know whether there is compliance going on within the company and they are in compliance with the statute. And who that-- who that compliance officer reports to is-- is-- is a large debate within corporations. Here, and I was just reflecting on-- on Mr. Steel's testimony as well. There are systems within administration, within divisions, departments where-- where investigations do occur. And they-- and they report to the head of that division department. How robust is that within DHHS, state departments in general? You know, the issue that we have obviously is oversight, you know, that-- to make sure that, you know, two years later we don't find out that there have been children that have been injured under the care of the state. And in your case, unlike Mr. Steel, who pointed out that-- that-- that it's under the care of the courts. In your case, it's-- it's under the care of the state. How-- how robust are our systems now to know and to deal with those-- with those situations if injuries or deaths occur?

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BO BOTELHO: I can't speak for every other state agency, Senator, but I can speak for my department. Over the past couple of years, we've been creating an office of compliance within the Department of Health and Human Services, which also includes internal auditors. We're bringing up an officer, civil rights officer, which would be a fledgling Office of Civil Rights to handle civil rights complaints as well. I have about a half dozen staff in that division right now. We intend to grow that and add resources. Those individuals are housed in legal because legal is separate from any of the other divisions. I don't report to the director. I report to the CEO who reports to the Governor. So we are building that capacity within the department. There is no statutory requirements for that. There's no statutory framework that we're working and we're using best practice models from other states and actually from other corporations to-- to build our own. So it can be done and it should be done. But I would-- I would also-- I want to make clear that I am not here contesting the intent of an Inspector General or the intent to find things that are wrong and fix them. That's-- that's not the purpose of my-- my opposition to this bill. We have a Constitution in the state of Nebraska. That Constitution creates three separate but equal branches. We are bound by that Constitution. And when we talk about oversight, it's-- it's not no one branch manages another branch. It's the Legislature has powers of inquiry. The Legislature has powers to legislate. Senator Bostar brought that up. You have the power to create law, which is an awesome power. You can remove statutes, you can put statutes in. But what you cannot do is manage another branch because then they're not separate and they're not equal as the Constitution requires.

ARCH: Yeah, I understand that. That tension within corporate America for the compliance officer, where does that compliance officer report? And-- and in a lot of cases, it goes to the-- it goes to the general counsel. But then what? And so the CEO often says, well, that-- that compliance officer needs to report to me. And okay, unless, of course, the CEO is involved in the compliance issue.

BO BOTELHO: Right.

ARCH: Right. And so independent oversight is essential-- corporate America, state functions, independent oversight. I think that's what we're struggling with. I appreciate that you're not debating that issue, but rather the mechanism for providing for independence of-- independent oversight. And so I'm sure we'll have more discussions about that.

BO BOTELHO: Thank you, Senator.

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LOWE: Thank you, Senator Arch and Mr. Botelho. Are there any other questions? As you can see, we're losing our members quite quickly here. Lunch must be about over with. Thank you.

BO BOTELHO: Thank you.

RYAN GILBRIDE: Good afternoon, members of the Executive Board. My name is Ryan Gilbride, R-y-a-n G-i-l-b-r-i-d-e. I am legal counsel for the Nebraska Department of Correctional Services. I'm here today to testify in opposition to LB215. The changes proposed in this legislation would broaden the scope of authority under the Inspector General statutes. It proposes adding, quote, other investigations, audits, inspections, and reviews as necessary. At the same time, it eliminates references to investigations in other sections. This seems to both eliminate the need to tie actions of the Inspector General to an investigation as originally conceived in law, and then expand duties relative to a variety of other actions. The concern is that this could lead the Inspector General to collect data and information on any number of things without needing to define a clear basis for doing so. Furthermore, Section 20 states, quote, The office shall have access to all information and personnel necessary to perform the duties of the office. This, combined with the previously discussed point, further reinforces the desire for the Inspector General to have access to all information held by the agency without restraint. The Inspector General has made requests to have access to all of the agency's computer drives. This language could be perceived as an avenue to garner that access, which would hinder the agency's ability to operate effectively and safely. Page 36, line 11 seems to indicate that the Inspector General would have the ability to self-determine if someone was being less than cooperative and would initiate some type of an outing in a public way. This-- since cooperation is not specifically tied to an investigation, it is unclear what cooperation would entail in each circumstance. For example, would failure to provide information within a certain time frame be construed as failure to cooperate? And if so, what would be the consequence? The Inspector General has started requesting recorded interviews with NDCS staff members. Not all staff members will know their rights when being recorded. Since Nebraska is a one-party consent state, the Inspector General can record a conversation without letting the other person know the conversation is being recorded. This raises two issues. First, if someone refuses to be recorded, would this be perceived as failure to cooperate? Secondly, if someone says something that is self-incriminating, could the recording be used against them? As an attorney, I am concerned about the vulnerable position this could put staff members in and the potential they would need to retain their own

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counsel prior to any interviews. That situation ties into another proposed section of the Inspector General statutes, which seems to indicate that the Inspector General could refer someone to the authorities. This seems to convey policing powers to the Inspector General. When NDCS certified investigators look into potential criminal matters, including those impacting staff, they are required to follow procedures designed to protect the rights of the accused. For example, issuing a Miranda or Garrity warning. The Inspector General is under no such requirement. I see that my time is up. The rest of my comments have been submitted to the board. I'm happy to answer any questions you may have.

LOWE: Thank you, Mr. Gilbride. Are there any questions? Are staff members aware of the recordings that are done with them?

RYAN GILBRIDE: I do not have a good sense of that. I have had concerns brought to my attention as the agency's attorney, but I do not know that staff know the full extent of their rights. We-- the agency has sent out a memo of that, but I still would be concerned that staff members would not know the extent of their rights.

LOWE: Would they be able to say yes or no? Do you know?

RYAN GILBRIDE: That would be my concern. Under the law, a staff member would be able to say no, but it conflicts with the, quote unquote, cooperation under the statute. So I would be concerned that a staff member would be afraid that if they didn't submit to a recording, they wouldn't be seen as cooperating with the Inspector General under the statutes.

LOWE: Okay. You had mentioned about the agency's computer drives and that they may have access to them. What are your concerns about that?

RYAN GILBRIDE: One of my main concerns as an attorney is that Nebraska Revised Statute 83-178, subsection (6) provides that an inmate's mental and medical health records are not to be released. They're subject to an inmate's consent. And only after the consent is obtained would they be released to the Public Counsel or the Inspector General. So if the Inspector General had unfettered access to shared drives, that would include potentially an incarcerated individual's medical and mental health records. And moreover, just having that kind of access with these proposals unfettered to any requirement to say what the investigation is, that would just be an opportunity to look at all the information that's contained in the agency's drive without any basis for-- having to say any basis for doing so.

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LOWE: All right. Thank you very much.

RYAN GILBRIDE: Thank you.

LOWE: Any other questions? Seeing none, thank you very much for your testimony.

RYAN GILBRIDE: Thank you.

LOWE: Is there anyone else in opposition? Seeing none, anybody in neutral? Good afternoon.

JULIE ROGERS: Good afternoon.

LOWE: We're almost done.

JULIE ROGERS: Yes. My name is Julie Rogers, J-u-l-i-e R-o-g-e-r-s. I serve as your Public Counsel for the Office of Public Counsel. And within our office are the Inspectors General. I just wanted to be on the record to state what happens in our office, what my understanding of what the Offices of Inspectors General bringing this legislation, what they intend to do and what my understanding of this as the Public Counsel. So the intent is not to expand what the Offices of Inspectors General do, but rather clarify and make sure that they can meet the statutory requirements that are outlined in each of their acts. And in terms of the history of the Office of Inspector General of Child Welfare, there have been lots of-- within the Department of Health and Human Services, there are lots of child welfare services that have to do with children that are not in the legal custody of DHHS. The 30 days, the change from 30 days to 15 days to respond to a report of the Inspector General is for private agencies only. And that is not to-- to make sure that report is finalized in a timely manner. The IG's offices are for system improvement, which is a little different than internal compliance. They are pointing out ways that they can improve things without having to go through big law changes or formal legislative changes, but seeing if we can't improve the system by working on problems or pointing out problems and then finding solutions to those. My expectation is there should not be any managing of any other branch that the IGs are looking at. Let's see. In terms of legal counsel, anybody who's going to be interviewed by any of our offices can bring personal legal counsel. And in terms of Inspector General standards for investigations, those recording the interview uses best practice. I know of no time when anyone from our offices have recorded interviews without someone's knowledge. And if they don't agree to it, we would not record it. I guess I would just wrap

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up my testimony and ask if there's any questions. And I'm happy to provide any other information or engage in any other conversations about this topic.

LOWE: Thank you. I'm glad we were able to get to you before our time ran out. Senator Briese, would you like to give a quick closing?

BRIESE: Very quickly. Thank you, Vice Chairman Lowe. I appreciate all the testifiers today. It's really a good hearing and informative hearing. And with some exceptions, this bill seems fairly innocuous to me, but that's always in the eye of the beholder. I think maybe there are a couple of concerns there. But obviously, we have an underlying concern with the system itself and how we do this. But as a Legislature, we should have oversight of these programs. We must have some oversight of these programs. And we do have the right to discredit. We do have the right to question other branches without implicating the separation of powers doctrine. Separation of powers implicated only if we can sit there and then tell them what to do, how to correct it. We can criticize, we can recommend, we can investigate, we can maintain oversight without implicating that constitutional provision. But with that said, perhaps there are a few areas of legitimate concern, and I'm always willing to listen to folks on some of these issues. And if there are some areas that, you know, we need to clean some things up, I'm willing to look at them. But at the same time, if we're going to fulfill our duty of oversight of these operations, we have to have the tools to do that. So-- but again, thank you for the-- everybody's persistence in staying here and appreciate it. And thanks again to the testifiers.

LOWE: Thank you, Chairman Briese. Any questions? Seeing none, this brings the end of LB215 and the start of another committee hearing.