

*Forty-sixth
Annual Report
of the
Nebraska Public Counsel*

**THE
OMBUDSMAN**

2016



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“When complaints are freely heard, deeply considered, and speedily reformed, then is the utmost bound of civil liberty attained that wise men look for.” - John Milton, *Areopagitica*

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NEBRASKA PUBLIC COUNSEL'S OFFICE

MISSION STATEMENT

TO PROMOTE ACCOUNTABILITY IN PUBLIC ADMINISTRATION AND PROVIDE CITIZENS WITH AN INFORMAL MEANS FOR THE INVESTIGATION AND RESOLUTION OF THEIR COMPLAINTS AGAINST THE ADMINISTRATIVE AGENCIES OF NEBRASKA STATE GOVERNMENT.

EXPOSITION

- The Public Counsel's Office is a public accountability and problem-solving agency. Its fundamental purposes are to promote accountability by state agencies and to investigate, address and resolve, through informal means, citizens' complaints relating to the administrative acts of state agencies.
- The "administrative acts" that may be addressed by the Public Counsel's Office include any action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an agency of state government.
- In addressing citizen complaints, the emphasis is always on the need for informality in resolving the disputes between citizens and agencies. Because of this emphasis on informality, some of the work of the Public Counsel's Office takes on the appearance of being in the nature of mediation or conciliation. However, the Public Counsel's Office is interested in more than simply resolving disputes and must, particularly in its public accountability role, carry out serious fact-finding. In order to perform this fact-finding, the Public Counsel's Office has been given very real investigative powers, including the subpoena power.
- The approach to each citizen's complaint is tailored to its particular facts, but the Public Counsel's Office always addresses complaints impartially, and does not approach cases from an initial perspective of acting as an advocate for the complainant. In fact, many complaints are found to be

unjustified by the Public Counsel's Office precisely because the results of a neutral investigation show that the complaint is not sustained by the facts. On the other hand, once it has been determined from an investigation that a complaint is justified, then it is the duty of the Public Counsel's Office to approach the relevant administrative agency with recommendations for possible corrective action. In pursuing these recommendations, the Public Counsel's Office takes on the role of an advocate, not for the complainant, but for the corrective action and, in a very real sense, for the general improvement of public administration.

- Because of its interest in improving public administration, the Public Counsel's Office is not necessarily satisfied with the outcome of a case merely because the complainant may be satisfied. The Public Counsel's Office also has to consider the broader implications of a case for the administrative system and, where appropriate, make recommendations for changes that will strengthen agency policies and procedures. By performing this function, and by publishing occasional reports of its findings and recommendations, the Public Counsel's Office also helps to promote public accountability of the agencies of state government and performs a legislative oversight function.

TRANSMITTAL

Neb. Rev. Stat. Section 81-8,251 provides that the Public Counsel shall each year report to the Clerk of the Legislature and to the Governor concerning the exercise of the functions of the office during the preceding calendar year. Pursuant to Section 81-8,251, this Forty-sixth Annual Report of the Nebraska Public Counsel's Office has been prepared as the annual report for the calendar year 2016, and is hereby respectfully submitted.

THE OMBUDSMAN CONCEPT

Throughout much of the last century, countries around the world, in general, and Americans, in particular, have witnessed a dramatic growth in the scope of government. The modern bureaucratic state, with its extended supervisory functions and its increased provision of services, has become an unavoidable reality. As a natural concomitant of that reality, the organization and operation of government has become more sophisticated, and more complex, as government has endeavored to perform its expanded role in an efficient, evenhanded, and procedurally reasonable manner. A common result of this increased complexity in government is the utter bewilderment that many citizens experience when confronted by the intricate, and seemingly infinite, array of rules, regulations, policies, and procedures that they encounter in their dealings with the bureaucracy of modern government. Thus, as government's involvement in the lives of its citizens has become more frequent, direct, and thorough, citizen interaction with that government has simultaneously become more complicated and, for many, far more frustrating.

As might be expected, these combined characteristics of modern government tend to generate a wide assortment of grievances in cases where citizens feel, rightly or wrongly, that their government has treated them in a manner that is unreasonable, unfair, or improper. While some of those grievances are ultimately resolved through the sole efforts of the complaining party, many grievances are left unresolved, either because there is no avenue for a ready solution, or because the grievant simply lacks the resources and sophistication necessary to utilize those avenues that do exist. When such grievances are left unresolved, citizens become more alienated from their government, and the errors of governmental operatives are left unaddressed and are, perhaps, even reinforced.

In order to help a bewildered public deal with the backlog of unresolved citizen grievances against governmental bureaucracy, numerous governments around the world have turned to the Swedish innovation of the ombudsman. Although the specific characteristics of the institution may differ in certain respects from one government to another, the basic concept of an ombudsman's office envisions an independent office that is designed to receive, investigate, and pursue informal resolution of miscellaneous citizen complaints relating to agencies of government. In carrying out this function, the ombudsman is not only expected to resolve the specific substantive complaints that come to the office, but the ombudsman is also expected to promote improvements in the quality of government by advocating for changes in the ongoing management and operation of the agencies under the

ombudsman's jurisdiction. It is also anticipated that the ombudsman, in performing these functions, will help to hold powerful governmental agencies publicly accountable for their actions.

In its classic form, an ombudsman, although an independent officer, is viewed as being an adjunct of the legislative branch of government. Indeed, one of the reasons that the ombudsman's office in its classic form is made a part of the legislative branch is to help insulate the ombudsman from pressures that the office might experience if it were placed within the executive branch of government. Because of its association with the legislative branch of government, the classic ombudsman is also able to perform a role as part of the apparatus for legislative oversight of governmental agencies and programs. In fact, the work of the ombudsman in resolving the problems that are experienced by ordinary citizens at the hands of governmental agencies gives the ombudsman a unique insight into the real world activities and consequences of those agencies and programs. That insight may then be used as a resource by the legislature in carrying out its oversight responsibilities with respect to the agencies within the ombudsman's jurisdiction.

Typically, the investigatory powers given to an ombudsman's office under the law are very real, and very meaningful. In arguing for the resolution of citizens' complaints, and in advocating for fundamental changes in the policies and procedures of administrative agencies, the "truth," as revealed to the ombudsman by a thorough investigation, is the most potent weapon that an ombudsman can wield. Indeed, without the power to thoroughly investigate the facts surrounding citizens' complaints, an ombudsman's office would be crippled in its efforts to understand and resolve those grievances. In addition to its investigatory authority, an ombudsman's office also has very broad power to make recommendations to the agencies under its jurisdiction, and to publish its findings and conclusions relative to the grievances that it investigates. However, the typical ombudsman's office does not have the authority to compel an administrative agency to accept and implement its conclusions and recommendations. Thus, in its formal relationship with the agencies under its jurisdiction, an ombudsman's office performs solely an advisory role. Nevertheless, it is widely recognized that an ombudsman's office, by providing a direct and informal avenue for the mediation of citizen grievances, is a valuable tool for enhancing the relationship between a government and its citizens and, ultimately, for improving the administration of government itself.

The ombudsman institution made its first appearance in North American government in the 1960's. In his ground breaking books *When Americans Complain* and *Ombudsmen and Others*, Professor Walter Gellhorn of Columbia University

promoted the ombudsman concept as a means of providing an “external critic of administration” for American government. In 1967, Professor Gellhorn followed up by preparing a “Model Ombudsman Statute.” Then, in 1969, the American Bar Association adopted a resolution that articulated the twelve essential characteristics of an ombudsman for government. The ABA followed this effort with the development of its own Model Ombudsman Act, which the ABA adopted in 1971. From these beginnings, the ombudsman institution gradually spread to state and local governments across the United States.

INFORMATION AND REFERRAL

In addition to performing its specific statutory mandate regarding the resolution of citizen complaints, the Office of the Public Counsel has assumed the additional function of responding to citizen requests for general information relative to government. In this day of complex bureaucratic structures and imponderable regulatory provisions, it is not unusual for citizens to be confused or simply "lost" in their dealings with government. The Office of the Public Counsel is frequently contacted by citizens with questions regarding the provision of governmental services, the content of specific laws and regulations and a variety of miscellaneous issues relating to government in general.

Historically, the Office of the Public Counsel has responded to such inquiries either by providing the information sought directly or by referring the citizens involved to the organizations or governmental entities that would be best equipped to provide the information sought. The Office of the Public Counsel, with its broad expertise in the organization and operation of government, particularly on the state level, has proven to be ideally suited to serve as a clearinghouse for citizen inquiries pertaining to government. Over the years, thousands of citizens have contacted the Office of the Public Counsel and have received the information necessary to enable them to better understand and interact with their government.

HISTORY OF THE OFFICE

On July 22, 1969, the Nebraska Legislature passed LB 521, providing for the establishment of the Office of the Public Counsel. LB 521 was approved by Governor Norbert T. Tiemann, on July 29, 1969. (See Appendix.) The Office commenced actual operation on June 1, 1971, with the appointment of Mr. Murrell B. McNeil to the position of Public Counsel.

In creating the Office of the Public Counsel, the Nebraska Legislature established an office that was, in all significant respects, consistent with the classic model of an ombudsman's office as articulated in the American Bar Association's Resolution setting forth the twelve essential characteristics of an ombudsman for government. The new law contemplated that the Public Counsel would be an independent officer, appointed by the Legislature for a term of six years and subject to removal, for good cause, only by a vote of 2/3 of the members of the Legislature. In order to facilitate its efforts to resolve citizen complaints, the Office of the Public Counsel was endowed with very thorough investigatory powers, including the authority to address questions to officers and employees of state agencies, free access to agency records and facilities, and the subpoena power. The Office of the Public Counsel was further empowered to publish its findings and conclusions relative to citizen complaints and to make recommendations to the agencies under its jurisdiction. The Office was also authorized to participate, on its own motion, in general studies and inquiries not relating to specific citizen complaints. The jurisdiction of the Office of the Public Counsel was limited to scrutiny of the administrative agencies of the state government. The Office was not given jurisdiction over complaints relating to the courts, to the Legislature or to the Governor and her personal staff. Most significantly, the Office of the Public Counsel was not given jurisdiction over political subdivisions of the State.

After serving for over nine years as Nebraska's Public Counsel, Murrell McNeil retired from office, effective July 31, 1980. Upon Mr. McNeil's retirement, Mr. Marshall Lux, then the Deputy Public Counsel, became the Acting Public Counsel, by operation of law. On February 19, 1981, the Executive Board of the Legislative Council nominated Mr. Lux for appointment to the position of Public Counsel, pursuant to Section 81-8,241, R.R.S. 1943. That nomination was approved by the Nebraska Legislature on February 20, 1981. The Legislature reappointed Mr. Lux to successive terms in 1987, 1993, 1999, 2005, 2011, and 2017.

Throughout its history, the Public Counsel's Office has been the subject of legislative

initiatives that have refined and extended the scope of the office's role in Nebraska government. The first of these developments was seen in 1976, as policy-makers around the country were searching for new ways to reform the corrections system in the wake of the Attica riots. The Nebraska Legislature responded to that situation in part by amending the Public Counsel Act to create the new position of the Deputy Public Counsel (Ombudsman) for Corrections. In creating this new position, the Legislature was, in effect, saying that it wanted to give special emphasis to resolving prison complaints and to have someone on the Legislature's staff who could act as an expert in that area. It was anticipated that this new position would not only offer inmates an effective avenue for obtaining administrative justice and the redress of grievances, but that it would also serve the interests of the state by helping to reduce sources of anger and frustration that led to inmate violence, and by decreasing the number of inmate lawsuits relating to prison conditions and operation. The Deputy Public Counsel for Corrections is Mr. James Davis III.

A significant issue before the Nebraska Legislature in 1989 was concerned with demands by Native Americans, particularly the Pawnee Tribe, that the Nebraska State Historical Society repatriate to the tribes those human remains and artifacts that archaeologists had recovered over the decades from Native American burial sites. The Legislature met these demands by adopting the Nebraska Unmarked Human Burial Sites and Skeletal Remains Protection Act, which established procedures that allowed the tribes to seek the repatriation of human remains and burial goods that were being held in the collections of the Historical Society and other museums across the state. The Ombudsman's Office was given an important role in this procedure by being designated by the Legislature as the body responsible to arbitrate any dispute that arose between the tribes and the museums in the repatriation process. The Ombudsman's Office was actually called upon to perform this arbitration role on two occasions in disputes between the Pawnee Tribe and the Historical Society.

In 1993, in an effort to find new ways to encourage efficiency and discourage misconduct in state government, the Nebraska Legislature passed the State Government Effectiveness Act. Among other things, the Act contemplated that the Ombudsman's Office would become a focal point for the investigation of allegations of significant wrongdoing in state agencies. The Act also provided for a new procedure designed to protect state employees who acted as whistleblowers to disclose wrongdoing in state government from being retaliated against by their supervisors. The Ombudsman's Office was given the key role in investigating and responding to these retaliation complaints and has, over the years, addressed many such cases. Early in 1997, the Nebraska Supreme Court found one important

provision of the Act to be unconstitutional under the theory that it was a violation of the principle of separation of powers. *State ex rel. Shepherd v. Nebraska Equal Opportunity Commission*, 251 Neb. 517, 557 N.W.2d 684 (1997). However, those constitutional objections, as well as several other perceived difficulties with the functioning of the Act, were addressed by the Nebraska Legislature in LB 15 of 1997, which was signed by the Governor on March 10, 1997.

One of the most important issues before the Nebraska Legislature in 1994 was an initiative to restructure the state's system for the delivery of welfare services. In the process of changing this system, it was recognized that the recipients of welfare services would need to have a special problem-solver to help in dealing with the redesigned welfare system. It was also recognized that the Legislature itself would benefit from having the input and expertise of a staff person who was directly involved in addressing the day-to-day problems that arose in the implementation of the new welfare system. Responding to these needs in much the same way that it had in 1976, the Legislature created the new position of Deputy Public Counsel for Welfare Services as a part of the legislation that ultimately enacted the changes to the state's welfare system. The Deputy Public Counsel for Welfare Services is Ms. Julie Pham.

In 2008, the Nebraska Legislature passed LB 467, which had been introduced by Senator Ernie Chambers. LB 467 made two significant changes to the Public Counsel's authority and focus. One part of LB 467 extended the Public Counsel's jurisdiction to include complaints that come from Nebraska's county and city jails. Since its inception, the authority of the Public Counsel's Office has been limited to addressing complaints that involve administrative agencies of State government. However, LB 467 changed that for the first time, and carved out a small segment of local governmental authority to place under the Public Counsel's jurisdiction. The State of Nebraska currently has over seventy active jail facilities that now fall under the Public Counsel's jurisdiction. The second element of LB 467 created a new position in the office for a Deputy Public Counsel for Institutions. This new position was created to provide for a person in the Public Counsel's Office who will have primary responsibility to examine complaints received from the state's non-correctional institutions, which includes the regional centers (mental health facilities), the state's veteran's homes, and the Beatrice Developmental Center, the State's only residential facility designed to treat, rehabilitate, and train the developmentally disabled. LB 467 also contemplated that the Public Counsel's jurisdiction and services would "follow" individuals involved in the State's system for behavioral health and developmental disability services who were transitioned out of State-run facilities to receive care in the community. Mr. Jerall Moreland, has

been designated to serve as the Deputy Public Counsel for Institutions.

During its legislative session in 2012, the Nebraska Legislature created a new oversight entity designed to function as a part of the legislative branch of government, the Office of Inspector General of Nebraska Child Welfare. The legislation in question was part of a much larger and more comprehensive Child Welfare Act (LB 821), a major piece of legislation addressing problems and systemic deficits exposed in a previous legislative examination of Nebraska's child welfare system by the Legislature's Health and Human Services Committee. The Act established the position of Inspector General of Nebraska Child Welfare (see **Neb. Rev. Stat.** §§43-4301 to 43-4331, reproduced in Appendix B) with the intent and expectation that an Inspector General of Child Welfare would be able to provide for increased accountability and legislative oversight of the Nebraska child welfare system. The Inspector General was also expected to investigate and review specific child welfare system matters and cases to determine whether those situations might disclose the existence of latent systematic problems in the state's child welfare system, issues that, in other words, needed to be addressed. Effective July 23, 2012, Ms. Julie L. Rogers was appointed to the position of Inspector General of Nebraska Child Welfare. Ms. Rogers is assisted by IG Assistants Sarah Forrest, and Kevin O'Hanlon.

In 2015 the Nebraska Legislature passed LB 598, which related to the operation of the Nebraska corrections system. The bill was the result of interim study work done by the LR 424 Special Committee in the summer and fall of 2014. Among its many provisions directed at the reform of the Nebraska corrections system, LB 598 provided for the creation of an inspector general's position for corrections that would be comparable to the Inspector General of Nebraska Child Welfare. These provisions, the Office of Inspector General of the Nebraska Correctional System Act, took effect as Nebraska law on August 30, 2015. (See **Neb. Rev. Stat.** §§47-901 to 47-919, reproduced in Appendix C herein.) On September 16, 2015, Mr. Doug Koebernick was appointed to serve as the first Inspector General for the Nebraska Correctional System. Both IG's are assisted by Division Executive Assistant Sarah Amsberry.

STATISTICAL ANALYSIS

The following tables and graphs illustrate the size, and nature, of the caseload of the Nebraska Public Counsel's Office for calendar year 2016. The caseload total for 2016 was 3,058 cases, the fourth consecutive year that the Public Counsel's has had an annual caseload of over 3,000 cases. The rundown of the total annual caseload of the Public Counsel's Office by year since 2000 is as follows:

2000	-	2,206 cases
2001	-	2,202 cases
2002	-	2,482 cases
2003	-	2,291 cases
2004	-	2,290 cases
2005	-	2,174 cases
2006	-	2,290 cases
2007	-	2,250 cases
2008	-	2,114 cases
2009	-	2,328 cases
2010	-	2,346 cases
2011	-	2,302 cases
2012	-	2,462 cases
2013	-	3,042 cases
2014	-	3,174 cases
2015	-	3,283 cases
2016	-	3,058 cases

Notably, the caseload total for 2016 was 225 cases fewer than the total for 2015, or a reduction of roughly 7% in the caseload in 2016, as compared to the previous year. It is also notable, however, that the Public Counsel's Office has actually experienced a dramatic increase in its annual caseload ever since the year 2000, and particularly since 2012. In addition, it is significant that the caseload total for the previous year (3,283 cases in 2015) represents the all-time record for the Public Counsel's annual caseload total since it began operations in 1971. Finally, I would note that the annual caseload in 2015, while it was the all-time record for the office, was actually a fairly modest 3.43% increase in relation to the 2014 caseload, which is why I suggested in last year's Annual Report that the sharp rise in the Public Counsel's caseload that commenced in 2012 seems to be slowing down.

For the purposes of comparing the annual caseloads for 2015 and 2016, it is useful

to consider the numbers reflected in the Chart entitled “Total New Cases – Monthly Comparisons.” One rather interesting point indicated on that Chart is the fact that the caseload numbers for 2016 were “depressed” early on by a particularly light total caseload in the month of January; a monthly total of less than 200 cases. A total of less than 200 cases in a month is a very unusual event for the Public Counsel’s Office in its current era of higher caseloads (after 2012) and, in fact, the last time that the Office had recorded a monthly caseload of less than 200 cases was in November of 2013. (In 2012 and before, a monthly caseload of less than 200 was a fairly frequent occurrence.) On the other end of the spectrum, it should be noted that 2015 was remarkable for having twice set the record for the highest monthly caseload total that the office has ever had - 330 cases. One of these months was June of 2015, and we might speculate that this particular monthly high-water mark was partly influenced by the May 10, 2015, riot at the Tecumseh State Correctional Institution. However, this would not explain the fact that 2015 also saw a 330 monthly caseload in the month of March. In its history, the Public Counsel’s Office has had only four months when it recorded a caseload of over 300 cases for the month – in March of 2014, March of 2015, June of 2015, and June of 2016. Therefore, although 2016 finished with a caseload total that was less than the total for 2015, 2016 did have its month with over 300 cases, which suggests that we should expect to continue to see these 300-plus months in the future.

With all of this having been said, the fact remains the caseload numbers listed above demonstrate that the Public Counsel’s annual caseload has increased dramatically since the year 2000, when the annual caseload was barely 2,200 cases. In particular, the increase in the Public Counsel’s annual caseload since 2012 has been remarkable in the experience of the office over time. The caseload total for 2013 reflected a surprising increase of 23.6% over the total caseload in 2012, an increase which represented a “tectonic shift” in terms of our caseload expectations. We must remain mindful, however, that our experience over the years is that the whenever there are significant increases in the Public Counsel’s annual caseload what is likely to follow is that the caseload numbers will plateau at the new level, and will remain stable for a number of years thereafter, before we eventually experience yet another significant increase. The annual caseload total for 2016 seems to suggest that we are now in that “plateau phase,” and that the Public Counsel’s annual caseload in 2017 is very likely to be somewhere in the 2015/2016 range.

I believe that it also may be useful to make a few points about the Public Counsel’s corrections caseload as reflected on the following Table, which shows the percentage of our annual caseload that is corrections cases vs. our non-corrections cases since we started tracking these numbers in 1994.

**Percentage of Corrections Cases and Non-Corrections Cases by Year
(1994 thru 2016)**

<u>Year</u>	<u>Corrections</u>	<u>Not Corrections</u>
2016	46%	54%
2015	52%	48%
2014	47%	53%
2013	45%	55%
2012	43%	57%
2011	42%	58%
2010	44%	56%
2009	45%	55%
2008	37%	63%
2007	53%	47%
2006	49%	51%
2005	53%	47%
2004	47%	53%
2003	51%	49%
2002	47%	53%
2001	44%	56%
2000	39%	61%
1999	44%	56%
1998	34%	66%
1997	34%	66%
1996	30%	70%
1995	27%	73%
1994	21%	79%

One point that is obvious from this Table is that the segment of the Public Counsel's annual caseload made up corrections cases has grown over the last 20-plus years. (Please note that the Table commences in 1994 because that was the year when we started to break-down our case statistics to show the agency involved.) The big leap in the number of corrections cases came over a five year period from the end of 1994 through 1999, when the percentage of corrections cases that comprised our caseload went up by more than 20% (in 1999 corrections cases were 44% of our total cases, while in 1994 corrections cases were only 21% of the total). Since 1999, however, while the size of our corrections caseload has fluctuated relative to the 44% level established in 1999, we have not experienced a single year when the percentage of our corrections cases went up like anything near to 20 points, as it did in the years between 1994 and 1999. There have been four years when corrections cases made up more than half of the Public Counsel's caseload (in 2003, 2005, 2007, and 2015), but there have also been years when the corrections segment of our caseload slumped back to the 1999 range (i.e., 44%) or less, as in 2001, and over the five year span from 2008 through 2012.

When we look at the size of the Public Counsel's corrections caseload from the long perspective, what we basically see is a segment of our annual caseload that makes up somewhere in the mid-40% range of our total caseload. If we consider all of the 23 years covered by the Table, we come up with an annual corrections case total that is on average 42.3% of our annual total. If we look at the last five years, however, then the corrections cases have made up, on average, 46.6% of the Public Counsel's annual caseload. When we consider the overall implications of these statistics, our sense is that there are two major points that are reflected in the Table's numbers: (1) that there was a significant increase in the corrections segment of the Public Counsel's caseload in the second half of the 1990's; and (2) that in approximately the year 2002 we basically reached the "saturation point" in our corrections cases, that is, we established a "new normal" with respect to the relative quantity of our corrections cases, as compared to non-corrections cases.

My next point on the subject of the Public Counsel's corrections caseload is not to try to explain its growth over time, but instead to try to put it into perspective, and to discuss its implications. First of all, clearly the corrections caseload has increased more rapidly than the non-corrections cases, which means that much of the increase in the Public Counsel's annual caseload over the years has been in the area of corrections cases. In fact, if we look closely at the numbers we see that the Public Counsel's total annual caseload increased by 852 cases from 2000 to 2016 (2,206 cases in 2000 vs. 3,058 cases in 2016). During the same period (2000 to 2016), the Public Counsel's annual total of corrections cases increased by a total of 541 cases

(from 869 cases in 2000 to 1410 cases in 2016). What this means is that 63.5% of the growth of our annual caseload over that period was accounted for by the increase in our corrections cases. There is, however, another way of looking at this.

I have already mentioned the year 2013 as being one of the most remarkable in the history of the Public Counsel's Office because of the sudden, and unexpectedly large, increase in the total annual caseload of the Office – from 2,462 cases in 2012 to 3,042 cases in 2013, an increase of 580 cases. The Public Counsel's annual caseload increased in 2014 and 2015 as well, but when we look at our statistics for those years more closely what we discover is that the increases in those years were all in the corrections area...all corrections cases (134 more corrections cases in 2014 than in 2013, and 221 more corrections cases in 2015 than in 2014). When we consider the caseload increase for 2013, on the other hand, we find that the total annual caseload increased by 580 cases over 2012, but the corrections caseload increased that year by only 300 cases. This still means that the elevating corrections caseload is a very important part of the dynamics of our total annual caseload (corrections represented 51.7% of the caseload increase in 2013), but less significantly so than might have been expected when looking at the longer time period from 2000 to 2016.

Finally, we need to consider/identify what “factors” might be reasonably cited as having contributed to the growth in the Public Counsel's corrections caseload over the last four years. First of all, it is important to understand that, when it comes to the corrections “arena,” the Public Counsel's Office has long ago reached the point of saturation of the inmate population's awareness of the existence of the Office, and knowledge of its services for individuals with complaints. In fact, it is reasonable to believe that as much as 90% of the inmate population in Nebraska's corrections system is familiar with the Public Counsel's Office (although they know us better by our other title – the “Ombudsman's Office”). Secondly, we must also conclude that the many of those inmates who have brought their complaints to the Public Counsel's Office have been largely satisfied with our response to their complaints. If this was not true, then it is unlikely that the Public Counsel's corrections caseload would have grown at such a high rate from 1994, when it was 21% of the Public Counsel's total caseload, to 2016, when it was 46% of the caseload. It need only be added that the reason why the Public Counsel's Office is credible and effective in addressing inmate complaints is the fact that the independence of the office is protected by having the Office situated in the legislative branch of Nebraska government. Yet another factor that must be mentioned as having contributed to the growth in the Public Counsel's corrections caseload is the obvious point that the Nebraska corrections population has increased dramatically in the years since 2000;

in other words, more inmates will equal more inmate complaints. And, while it may seem speculative to say so, the fact that the Nebraska correctional system is so overcrowded means that the system therefore will become more difficult to manage, in terms of providing services to inmates, delivering needed programming, etc., which will be likely to then translate into more inmate complaints than there might be, if the inmate population was at a significantly lower level. (At the beginning of 2016, the population in all DCS facilities was at 156% of design capacity, while in early 2017, the population of all DCS facilities was 159% of the system's design capacity.) The other factor which may have contributed to the increase in the Public Counsel's caseload is the largely unflattering attention that the system has received in the news media over the last several years. In other words, the fact that the system has received criticism from legislators, experts, editorialists, etc., may well have inspired inmates to express their own frustrations with the system through complaints to the Public Counsel's Office.

One other "statistical issue" that needs to be visited here has to do with our Case Duration Report (Table 6 herein), which measures the number of days that a case is open, that is, the time between when a case is opened, and when it is closed as having been completed. It is important to understand that this measure of the length of time that cases were open is skewed somewhat by the fact that our professional problem-resolution staff will occasionally keep some of their cases on "open status" because they anticipate further contact from the complainant, and do not want to close the case prematurely, if the complainant returns with related issues or questions. Sometimes this does happen, sometimes it does not; but the point here is that the practice of erring on the caution side by holding the case on open status will definitely change the outcome, in terms of what is reflected on the Case Duration Report.

The Case Duration Report presents a day-to-day account of the percentage of the year's cases that were closed on each successive day after it was opened. Thus, for example, the Case Duration Report of 2016 reflects that 6% of the year's cases were completed on the first day, two additional percent of cases were closed on the second day, and two more additional percent of cases were closed on the third day, and so forth. It should also be noted that the "days" in question, in terms of what the Case Duration Report measures, are workdays, not calendar days. So, when the Report is talking about cases closed by the fifteenth day, what it is actually referring to is "by the end of the third work-week." And, in fact, the "fifteenth day," meaning the end of the third week of a case being opened, is a good juncture by which to test what the Case Duration Report is saying, in terms of our efficiency in closing cases. Thus, consider the following table of statistics taken from our Case Duration Reports over the years since 2000:

<u>Year</u>	<u>Total Cases</u>	<u>% Closed by the Fifteenth Day</u>
2000	2,206 cases	41%
2001	2,202 cases	44%
2002	2,482 cases	48%
2003	2,291 cases	52%
2004	2,290 cases	50%
2005	2,174 cases	54%
2006	2,290 cases	53%
2007	2,250 cases	59%
2008	2,114 cases	61%
2009	2,328 cases	44%
2010	2,346 cases	40%
2011	2,302 cases	41%
2012	2,462 cases	45%
2013	3,042 cases	34%
2014	3,174 cases	28%
2015	3,283 cases	26%
2016	3,058 cases	34%

If we compare these statistics from year to year, then what we generally see is that the Public Counsel’s Office was closing cases more efficiently from 2000 through 2012 (by far the best years were 2007 and 2008) than was the case over the last four years. And it is probably not a coincidence that the last four years also reflect the years when our total caseload numbers increased dramatically. The conclusion to be drawn then is apparent – more cases means more work, and the added workload will cause a decline in efficiency, if by “efficiency” we mean the rate at which the Office is able to close cases.

TABLE 1
SUMMARY OF CONTACTS 2016

Month	Total Inquiries	Complaint	Information
January	194	187	7
February	280	272	8
March	291	279	12
April	226	220	6
May	253	238	15
June	307	295	12
July	227	219	8
August	290	278	12
September	278	255	23
October	254	248	6
November	214	206	8
December	244	237	7
TOTAL	3058	2934	124

% of Total	100%	96%	4%
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**TABLE 2
OMBUDSMAN CONTACTS 2016**

	Total Logged Inquiries	Total Logged Complaint	Pending Complaint	Justified	Unjustified	Partially Justified	Discontinued	No Jurisdiction	No Jurisdiction But Assisted	Total Logged Information	Info Cases Pending
January	194	187	0	43	46	50	31	9	8	7	0
February	280	272	3	59	50	78	54	21	7	8	0
March	291	279	8	61	51	75	49	21	14	12	1
April	226	220	2	56	53	58	37	7	7	6	0
May	253	238	7	45	56	76	39	10	5	15	0
June	307	295	13	64	53	79	60	12	14	12	0
July	227	219	16	45	47	67	31	7	6	8	2
August	290	278	22	67	42	84	41	12	10	12	2
September	278	255	28	44	49	68	48	7	11	23	2
October	254	248	28	59	37	50	50	12	12	6	0
November	214	206	23	47	30	52	29	12	13	8	0
December	244	237	24	46	50	53	40	11	13	7	0
TOTAL	3058	2934	174	636	564	790	509	141	120	124	7

% of TOTAL	100%	96%	6%	21%	18%	26%	17%	5%	4%	4%	0%
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**TABLE 3
ANALYSIS OF NO-JURISDICTION CASES - 2016**

	Total No Jurisdiction Cases	Federal Jurisdiction	County Jurisdiction	Municipal Jurisdiction	Other Subdivisions of Government	Legislative or Policy Issues	Issues Before Courts	Private Matters Between Individuals	Issues Involving Governor or Staff
January	17	2	0	1	1	0	9	4	0
February	28	0	3	1	1	1	19	2	1
March	35	2	4	0	1	4	15	9	4
April	14	1	2	2	0	1	5	3	1
May	15	2	0	1	1	0	10	1	0
June	26	0	4	1	1	0	12	8	0
July	13	1	1	1	1	0	8	1	0
August	22	0	1	3	1	0	13	2	0
September	18	4	3	1	0	1	8	1	1
October	24	1	1	2	0	0	14	6	0
November	25	4	0	3	2	0	10	5	0
December	24	2	2	1	1	1	12	5	1
TOTAL	261	19	21	17	10	8	135	47	8

PERCENT	100%	7%	8%	7%	4%	3%	52%	18%	3%
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**TABLE 4
MEANS OF RECEIPT AND LOCATION 2016**

MONTH	Location					Means of Receipt				
	Metropolitan Lincoln	Metropolitan Omaha	Non Metropolitan	Out Of State	State Instiution	Letter	Visit	Telephone	Email	Fax
January	37 2	14 2	41 0	4 2	91 1	109 1	7 0	42 1	29 5	0 0
February	46 1	31 3	65 3	5 0	125 1	165 1	3 0	60 3	42 4	2 0
March	47 6	26 2	66 3	7 1	133 0	194 4	8 1	55 5	22 2	0 0
April	33 2	21 1	52 1	2 0	112 2	127 2	5 0	63 2	25 2	0 0
May	40 7	20 1	45 4	3 1	130 2	139 2	8 1	69 4	21 8	1 0
June	55 6	27 0	73 2	6 1	134 3	162 6	4 0	94 5	33 1	2 0
July	37 3	20 0	47 3	5 0	110 2	139 1	3 0	56 4	19 3	2 0
August	44 2	32 0	56 6	1 0	145 4	181 5	5 1	47 2	44 4	1 0
September	38 7	20 1	60 11	3 0	134 4	159 6	6 1	63 8	26 8	1 0
October	28 1	22 1	45 2	3 0	150 2	162 2	6 0	56 2	22 2	2 0
November	35 1	14 2	38 2	2 0	117 3	136 2	5 0	42 2	23 4	0 0
December	34 3	19 1	59 2	0 1	125 0	151 1	7 1	56 2	21 3	2 0
TOTAL	474 41	266 14	647 39	41 6	1506 24	1824 33	67 5	703 40	327 46	13 0

* C = Complaints, I = Information

TABLE 5
OFFICE OF THE OMBUDSMAN - 2016 AGENCY CONTACTS

AGENCY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
Accountability & Disclosure	0	0	0	0	0	0	0	0	0	0	0	0	0
Administrative Services	2	3	1	1	3	2	0	1	0	0	0	0	13
Aging	0	0	0	0	0	0	0	0	0	0	0	0	0
Agriculture	0	1	0	0	0	1	0	0	0	0	0	0	2
Arts Council	0	0	0	0	0	0	0	0	0	0	0	0	0
Attorney General	1	0	0	0	0	0	0	1	0	1	0	0	3
Auditor	0	0	0	0	0	0	0	0	0	0	0	0	0
Banking	0	0	0	0	0	0	0	1	0	0	0	0	1
Brand Committee	0	0	0	0	0	0	0	0	0	1	0	0	1
Claims Board	0	0	0	0	0	0	0	0	0	0	0	0	0
Corrections	100	142	133	96	114	133	102	131	121	133	101	104	1410
County	0	3	6	1	0	2	1	0	2	1	0	6	22
Courts	11	23	14	9	13	15	9	14	11	18	11	16	164
Crime Commission	0	0	0	0	0	0	0	0	0	0	0	1	1
Economic Development	0	0	0	1	1	0	0	1	0	0	0	0	3
Ed. Lands & Funds	0	0	0	0	0	0	0	0	0	0	0	0	0
Education	0	2	0	0	2	4	1	1	2	1	0	0	13
Environmental Quality	0	0	0	0	0	2	0	0	0	0	1	0	3
Equal Opportunity	1	0	0	0	2	0	0	0	0	0	0	0	3
Ethanol Authority	0	0	0	0	0	0	0	0	0	0	0	0	0
Educational Television	0	0	0	0	0	0	0	0	0	0	0	0	0
Fair Board	0	0	0	0	0	0	0	0	0	0	0	0	0
Federal	3	1	1	2	2	0	1	0	3	2	2	3	20
Fire Marshal	0	0	0	0	0	0	0	0	0	0	0	0	0
Foster Care Rev Bd	0	0	0	0	0	0	0	0	0	0	0	0	0
Game and Parks	0	0	2	0	0	0	0	0	0	1	0	0	3

Governmental Subdivision	0	1	0	1	0	1	0	0	0	0	1	1	5
Governor	0	2	0	0	0	0	0	0	0	0	1	1	4
Nebraska Commission for the Deaf and Hard of Hearing	0	0	0	0	0	0	0	0	0	0	0	0	0
Hearing Impaired	0	0	0	0	0	0	0	0	0	0	0	1	1
HHS Benefits	18	9	9	20	14	12	8	12	9	8	4	4	127
HHS BSDC	0	0	0	1	0	0	0	0	1	1	2	0	5
HHS Child Welfare	14	21	21	16	17	27	14	21	17	12	8	14	202
HHS Misc	5	8	8	2	8	12	7	2	7	7	8	13	87
HHS Regional Centers	7	6	4	3	10	10	16	9	13	7	9	11	105
HHS Regulation	0	2	3	0	1	2	2	1	0	2	0	0	13
HHS Vets Homes	0	0	0	0	0	1	0	0	1	0	0	0	2
HHS Visually Impaired	0	0	0	0	0	0	0	0	0	0	0	0	0
Historical Society	0	0	0	0	0	0	0	0	0	0	0	0	0
Indian Comm	1	0	0	0	0	0	0	0	0	0	0	0	1
Institutions	0	0	0	0	0	0	0	0	0	0	0	0	0
Insurance	0	1	0	0	0	0	0	1	0	0	0	0	2
Investment Council	0	0	0	0	0	0	0	0	0	0	0	0	0
Labor	0	2	0	2	0	0	2	3	1	1	1	1	13
Legislative	2	3	8	0	0	0	0	2	1	2	1	2	21
Library Comm	0	1	0	1	0	0	0	0	0	0	0	0	2
Liquor Control	0	0	0	0	0	0	0	0	0	0	0	0	0
Mexican Amer Comm	0	0	0	0	0	0	0	0	0	0	0	0	0
Motor Vehicles	0	2	2	1	2	1	0	0	2	1	3	1	15
Mtr Veh Dealers Lic Bd	0	0	0	0	0	0	0	0	0	0	0	0	0
Municipal	0	1	3	2	3	2	2	4	1	1	2	2	23
National Guard	0	0	0	0	0	0	0	0	0	1	0	0	1
Natural Resources	0	0	0	0	0	0	0	0	0	0	0	0	0
Pardons Board	0	0	0	1	0	0	0	0	1	0	0	0	2

Parole Board	2	3	1	5	0	3	1	0	4	1	6	1	27
Patrol	0	0	0	0	1	1	0	0	0	0	2	0	4
Personnel	1	0	0	0	0	0	0	0	0	0	0	0	1
Private Matter	6	1	5	3	8	5	3	2	4	9	7	2	55
Probation Adm	0	0	0	1	1	0	0	0	1	1	0	0	4
Public Service Comm	0	0	1	0	0	0	0	0	0	0	0	0	1
Real Estate Comm	0	0	0	0	0	0	0	1	0	0	0	0	1
Retirement Systems	0	1	0	1	1	0	0	0	0	0	0	0	3
Revenue	1	1	0	1	0	1	1	0	3	0	0	3	11
Risk Management	0	0	0	0	0	0	0	0	0	0	0	0	0
Roads	0	0	3	0	1	1	2	2	0	0	1	0	10
Secretary of State	0	0	0	0	0	0	0	0	1	0	1	0	2
St. Board of Equalization	0	0	0	0	0	0	0	0	0	0	0	0	0
St. Surveyor	0	0	0	0	0	0	0	0	0	0	0	0	0
State Colleges	0	1	0	0	0	0	0	0	0	0	0	0	1
Status of Women	0	0	0	0	0	0	0	0	0	0	0	0	0
Electrical Division	0	0	0	0	0	1	0	0	0	0	0	0	1
Treasurer	0	0	0	0	0	1	1	2	0	2	0	0	6
University	0	0	2	0	1	0	2	0	1	0	0	0	6
Veterans Affairs	0	1	0	0	0	0	0	0	0	1	1	0	3
Commission for the Blind	0	1	1	0	0	0	0	0	0	0	0	0	2
Racing Commission	0	0	0	0	0	0	0	0	0	0	0	0	0
Capitol Commission	0	1	0	0	0	0	0	0	0	0	0	0	1
HHS-Juv Justice	0	0	0	0	0	0	1	1	1	0	0	0	3
HHS-Juv Justice - Geneva	1	1	0	0	0	2	0	0	2	1	1	0	8
HHS Juv Justice-Kearney	0	0	1	1	0	1	0	0	1	0	0	0	4
County Jail	19	28	38	24	32	45	34	47	43	22	25	34	391
Athletic Commission	0	0	0	0	0	0	0	0	0	0	0	0	0
Board of Public Accountancy	0	0	0	0	0	0	0	0	0	0	0	0	0

Energy Office, Nebraska - Agency 71	0	0	0	0	0	0	0	0	0	0	0	0	0
Inspector General	7	16	13	23	12	15	8	17	22	5	6	21	165
HHS Developmental Disabilities	2	3	5	2	3	9	3	5	7	1	3	1	44
HHS Behavioral Health	0	0	1	0	1	4	0	0	1	0	0	0	7
Parole Adm	0	1	1	0	0	1	0	0	0	0	0	2	5
Inspector General for Corrections	2	3	4	5	1	2	3	5	5	2	3	3	38

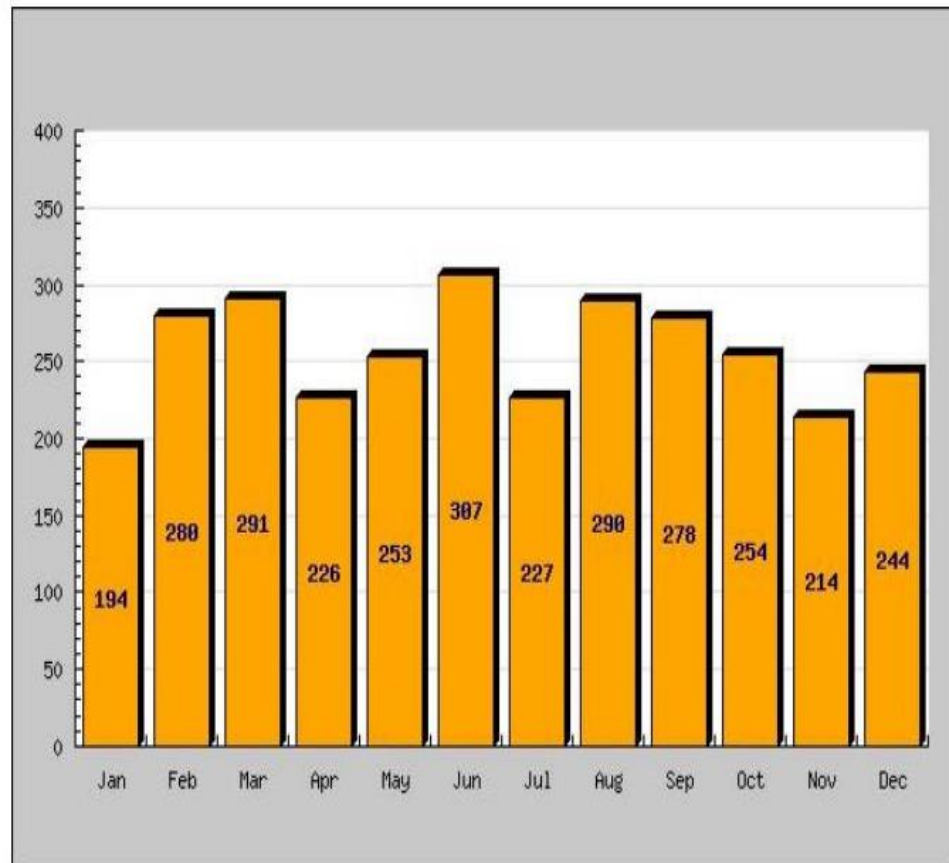
TOTALS CASES	0	0	0	0	0	0	0	0	0	0	258	224	261	743
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(NOTE: Case totals in this table are greater than the sum of all cases because a single case may involve in multiple agencies.)

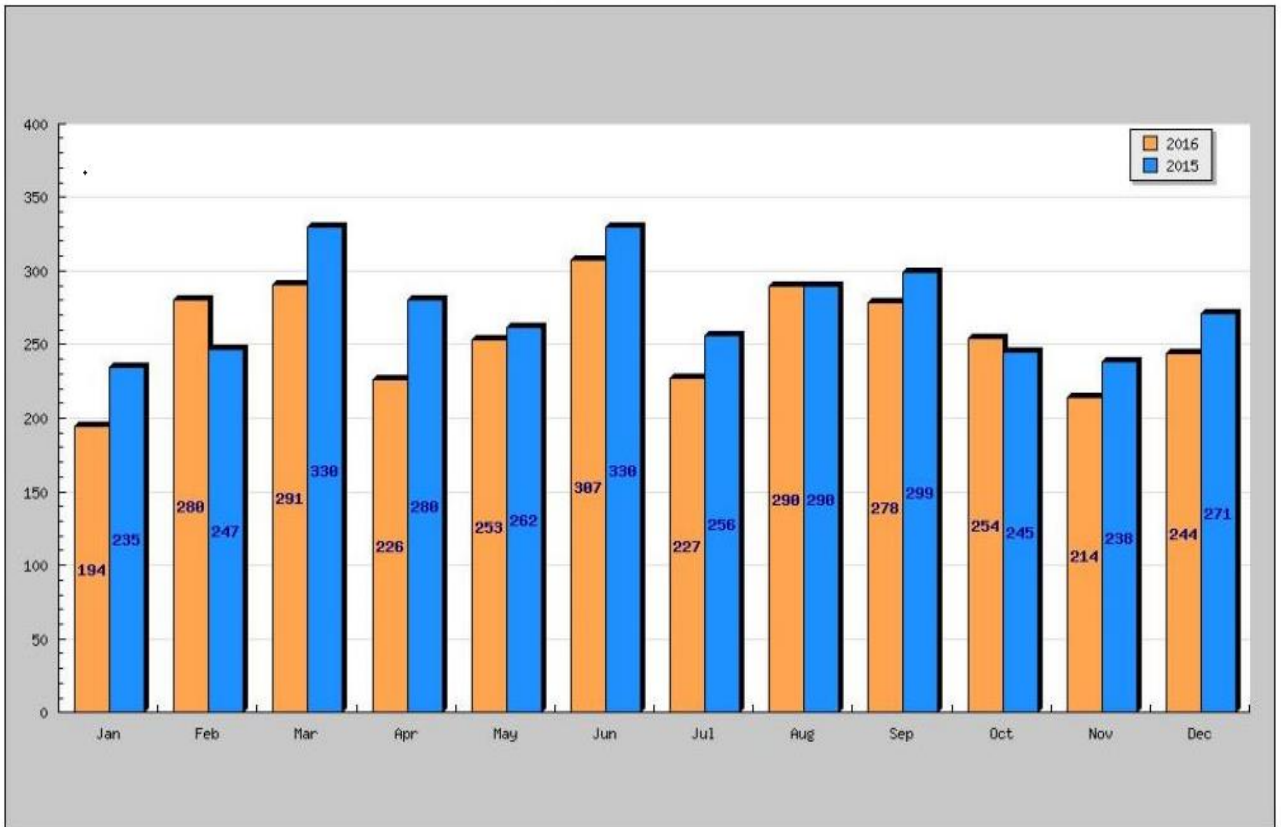
**TABLE 6
CASE DURATION REPORT 2016**

Days Open	Record Count	% of Total
1	150	5%
2	72	3%
3	52	2%
4	48	2%
5	52	2%
6	77	3%
7	100	3%
8	51	2%
9	47	2%
10	47	2%
11	39	1%
12	36	1%
13	41	1%
14	56	2%
15	43	1%
16	28	1%
17	24	1%
18	42	1%
19	25	1%
20	31	1%
21 to 30	255	9%
31 to 60	444	15%
Over 60	1116	39%
TOTAL COUNT	2877	100%

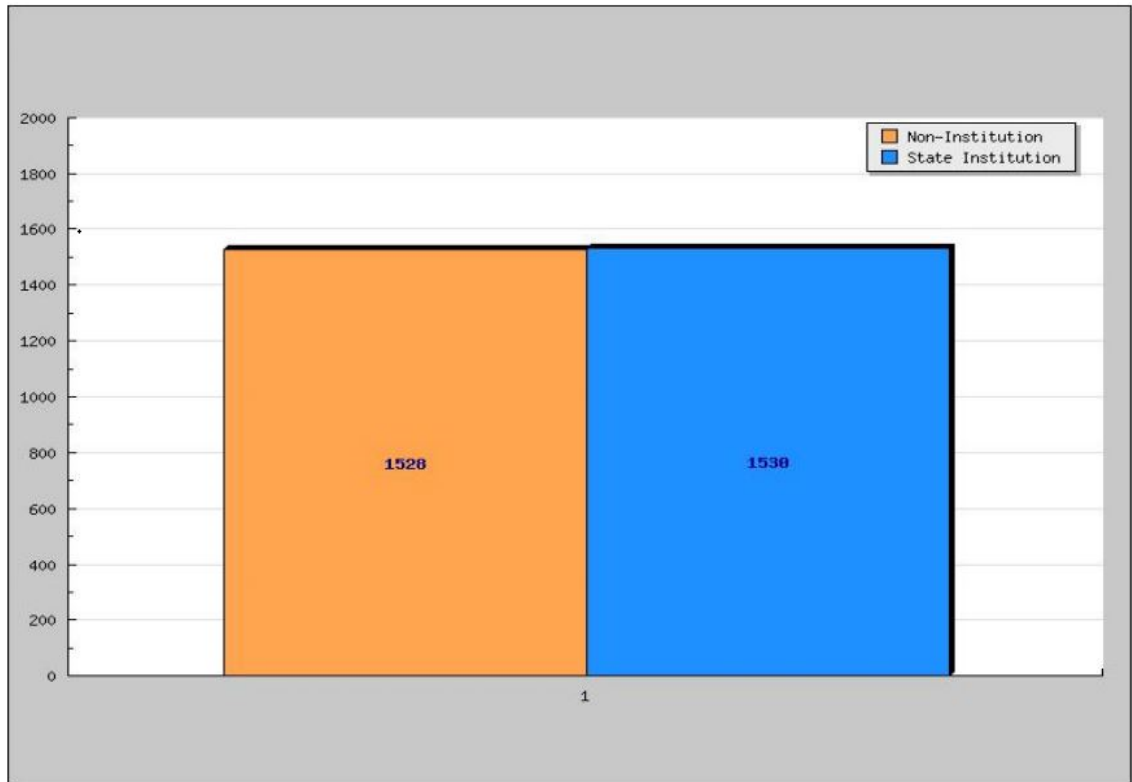
TOTAL NEW CASES BY MONTH - 2016



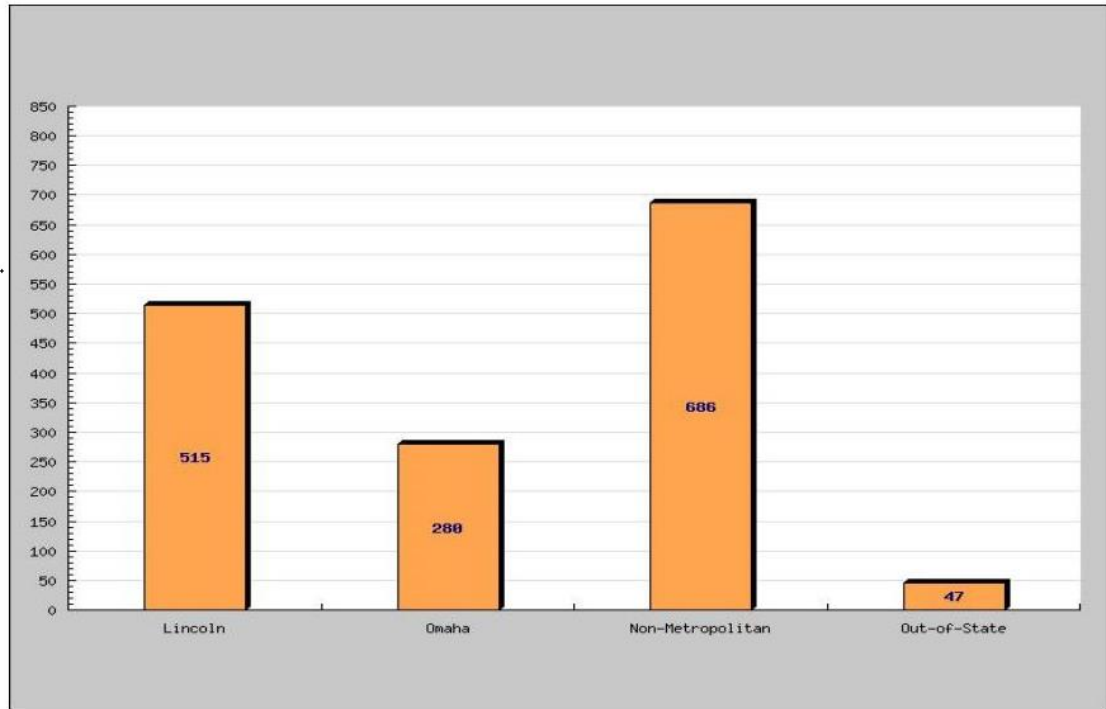
TOTAL NEW CASES
Monthly Comparisons for - 2015 and 2016



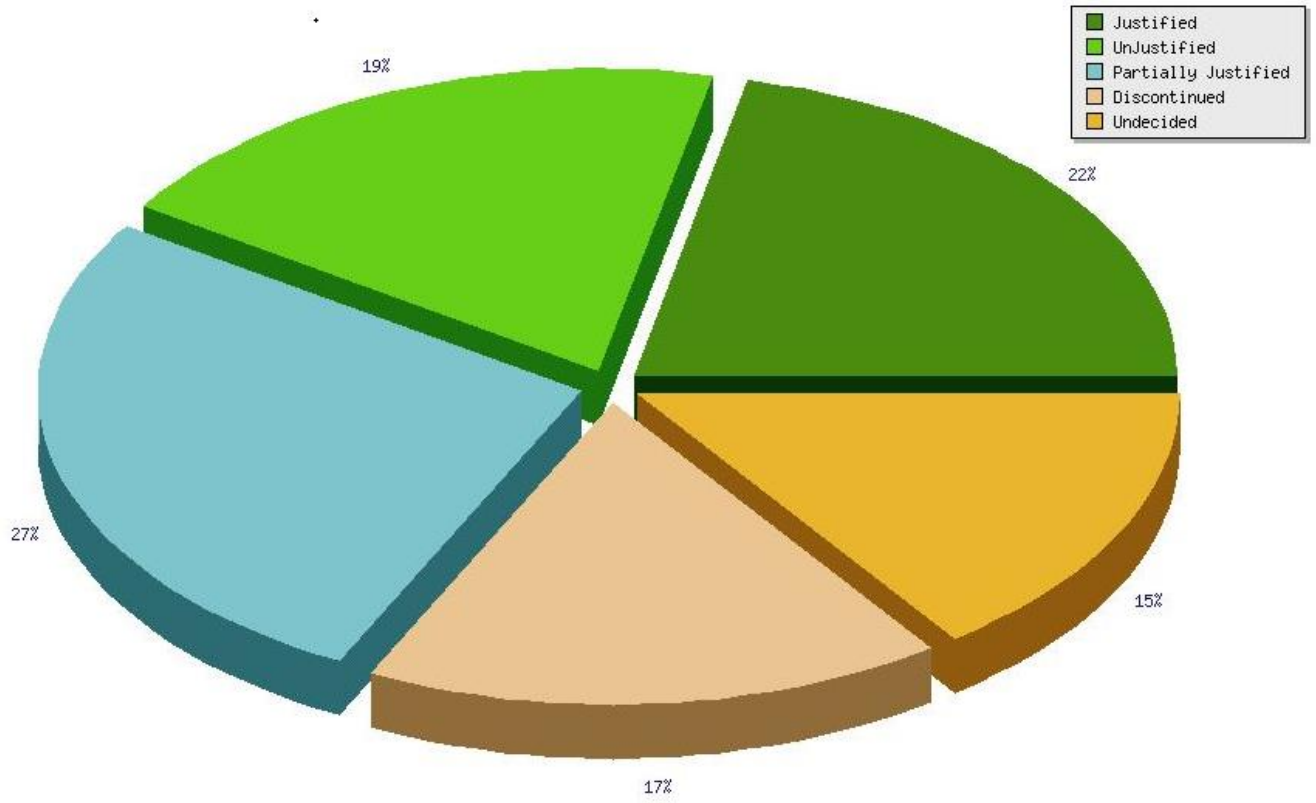
Non-Institution VS. State Institution Cases -2016



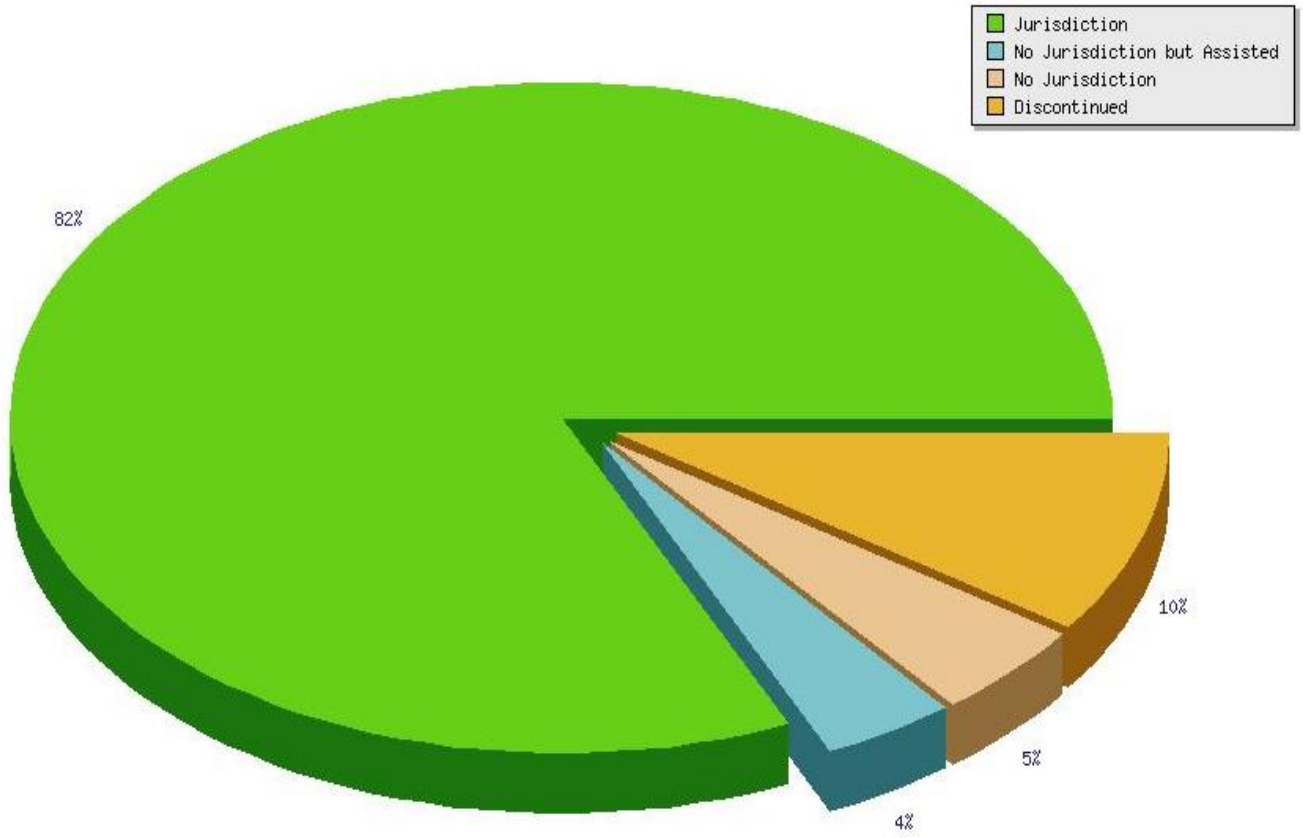
Non-Institution Cases By Location -2016



COMPLAINTS - ANALYSIS OF JURISDICTION 2016



COMPLAINTS - ANALYSIS OF JURISDICTION 2016



APPENDIX A - PUBLIC COUNSEL ACT

81-8,240. As used in sections 81-8,240 to 81-8,254, unless the context otherwise requires:

- (1) Administrative agency shall mean any department, board, commission, or other governmental unit, any official, or any employee of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska, or any corporation, partnership, business, firm, governmental entity, or person who is providing health and human services to individuals under contract with the State of Nebraska and who is subject to the jurisdiction of the office of the Public Counsel as required by section 73-401, any regional behavioral health authority, any community-based behavioral health services provider that contracts with a regional behavioral health authority, and any county or municipal correctional or jail facility and employee thereof acting or purporting to act by reason of connection with the county or municipal correctional or jail facility; but shall not include (a) any court, (b) any member or employee of the Legislature or the Legislative Council, (c) the Governor or his personal staff, (d) any political subdivision or entity thereof, (e) any instrumentality formed pursuant to an interstate compact and answerable to more than one state, or (f) any entity of the federal government; and
- (2) Administrative act shall include every action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an administrative agency.

81-8,241. The office of Public Counsel is hereby established to exercise the authority and perform the duties provided by sections 81-8,240 to 81-8,254. The Public Counsel shall be appointed by the Legislature, with the vote of two-thirds of the members required for approval of such appointment from nominations submitted by the Executive Board of the Legislative Council.

81-8,242. The Public Counsel shall be a person well equipped to analyze problems of law, administration, and public policy, and during his term of office shall not be actively involved in partisan affairs. No person may serve as Public Counsel within two years of the last day on which he served as a member of the Legislature, or while he is a candidate for or holds any other state office, or while he is engaged in any other occupation for reward or profit.

81-8,243. The Public Counsel shall serve for a term of six years, unless removed by vote of two-thirds of the members of the Legislature upon their determining that he has become incapacitated or has been guilty of neglect of duty or misconduct. If the office of Public Counsel becomes vacant for any cause, the deputy public counsel shall serve as acting public counsel until a Public Counsel has been appointed for a full term. The Public Counsel shall receive such salary as is set by the Executive Board of the Legislative Council.

81-8,244. The Public Counsel may select, appoint, and compensate as he or she sees fit, within the amount available by appropriation, such assistants and employees as he or she deems necessary to discharge the responsibilities under sections 81-8,240 to 81-8,254. He or she shall appoint and designate one assistant to be a deputy public counsel, one assistant to be a deputy public counsel for corrections, one assistant to be a deputy public counsel for institutions, and one assistant to be a deputy public counsel for welfare services. Such deputy public counsels shall be subject to the control and supervision of the Public Counsel. The authority of the deputy public counsel for corrections shall extend to all facilities and parts of facilities, offices, houses of confinement, and institutions which are operated by the Department of Correctional Services and all county or municipal correctional or jail facilities. The authority of the deputy public counsel for institutions shall extend to all mental health and veterans institutions and facilities operated by the Department of Health and Human Services and to all regional behavioral health authorities that provide services and all community-based behavioral health services providers that contract with a regional behavioral health authority to provide services, for any individual who was a patient within the prior twelve months of a state-owned and state-operated regional center, and to all complaints pertaining to administrative acts of the department, authority, or provider when those acts are concerned with the rights and interests of individuals placed within those institutions and facilities or receiving community-based behavioral health services. The authority of the deputy public counsel for welfare services shall extend to all complaints pertaining to administrative acts of administrative agencies when those acts are concerned with the rights and interests of individuals involved in the welfare services system of the State of Nebraska. The Public Counsel may delegate to members of the staff any authority or duty under sections 81-8,240 to 81-8,254 except the power of delegation and the duty of formally making recommendations to administrative agencies or reports to the Governor or the Legislature.

81-8,245. The Public Counsel shall have power to:

- (1) Investigate, on complaint or on his or her own motion, any administrative act of any administrative agency;
- (2) Prescribe the methods by which complaints are to be made, received, and

acted upon; determine the scope and manner of investigations to be made; and, subject to the requirements of sections 81-8,240 to 81-8,254, determine the form, frequency, and distribution of his or her conclusions, recommendations, and proposals.

- (3) Conduct inspections of the premises, or any parts thereof, of any administrative agency or any property owned, leased, or operated by any administrative agency as frequently as is necessary, in his or her opinion, to carry out duties prescribed under sections 81-8,240 to 81-8,254;
- (4) Request and receive from each administrative agency, and such agency shall provide, the assistance and information the public counsel deems necessary for the discharge of his or her responsibilities; inspect and examine the records and documents of all administrative agencies notwithstanding any other provision of law; and enter and inspect premises within any administrative agency's control;
- (5) Issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state, and shall also be entitled to have counsel present while being questioned;
- (6) Undertake, participate in, or cooperate with general studies or inquiries, whether or not related to any particular administrative agency or any particular administrative act, if he or she believes that they may enhance knowledge about or lead to improvements in the functioning of administrative agencies; and
- (7) Make investigations, reports, and recommendations necessary to carry out his or her duties under the State Government Effectiveness Act.

81-8,246. In selecting matters for his attention, the Public Counsel shall address himself particularly to an administrative act that might be:

- (1) Contrary to law or regulation;
- (2) Unreasonable, unfair, oppressive, or inconsistent with the general course of an administrative agency's judgments;
- (3) Mistaken in law or arbitrary in ascertainment of fact;
- (4) Improper in motivation or based on irrelevant considerations;

- (5) Unclear or inadequately explained when reasons should have been revealed; or
- (6) Inefficiently performed.

The Public Counsel may concern himself also with strengthening procedures and practices which lessen the risk that objectionable administrative acts will occur.

81-8,247. The Public Counsel may receive a complaint from any person concerning an administrative act. He shall conduct a suitable investigation into the things complained of unless he believes that:

- (1) The complainant has available to him another remedy which he could reasonably be expected to use;
- (2) The grievance pertains to a matter outside his power;
- (3) The complainant's interest is insufficiently related to the subject matter;
- (4) The complaint is trivial, frivolous, vexatious, or not made in good faith;
- (5) Other complaints are more worthy of attention;
- (6) His resources are insufficient for adequate investigation; or
- (7) The complaint has been too long delayed to justify present examination of its merit.

The Public Counsel's declining to investigate a complaint shall not bar him from proceeding on his own motion to inquire into related problems. After completing his consideration of a complaint, whether or not it has been investigated, the Public Counsel shall suitably inform the complainant and the administrative agency involved.

81-8,248. Before announcing a conclusion or recommendation that expressly or impliedly criticizes an administrative agency or any person, the Public Counsel shall consult with that agency or person.

81-8,249.

- (1) If, having considered a complaint and whatever material he deems pertinent, the Public Counsel is of the opinion that an administrative agency should (a) consider the matter further (b) modify or cancel an administrative act, (c) alter a regulation or ruling, (d) explain more fully the administrative

act in question, or (e) take any other step, he shall state his recommendations to the administrative agency. If the Public Counsel so requests, the agency shall, within the time he has specified, inform him about the action taken on his recommendations or the reasons for not complying with them.

- (2) If the Public Counsel believes that an administrative action has been dictated by a statute whose results are unfair or otherwise objectionable, he shall bring to the Legislature's notice his views concerning desirable statutory change.

81-8,250. The Public Counsel may publish his conclusions and suggestions by transmitting them to the Governor, the Legislature or any of its committees, the press, and others who may be concerned. When publishing an opinion adverse to an administrative agency he shall include any statement the administrative agency may have made to him by way of explaining its past difficulties or its present rejection of the Public Counsel's proposals.

81-8,251. In addition to whatever reports he may make from time to time, the Public Counsel shall on or about February 15 of each year report to the Clerk of the Legislature and to the Governor concerning the exercise of his functions during the preceding calendar year. In discussing matters with which he or she has dealt, the Public Counsel need not identify those immediately concerned if to do so would cause needless hardship. So far as the annual report may criticize named agencies or officials, it must include also their replies to the criticism. Each member of the Legislature shall receive a copy of such report by making a request for it to the Public Counsel.

81-8,252. If the Public Counsel has reason to believe that any public officer or employee has acted in a manner warranting criminal or disciplinary proceedings, he shall refer the matter to the appropriate authorities.

81-8,253. No proceeding, opinion, or expression of the Public Counsel shall be reviewable in any court. Neither the Public Counsel nor any member of his staff shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters within his official cognizance, except in a proceeding brought to enforce sections 81-8,240 to 81-8,254.

81-8,254. A person who willfully obstructs or hinders the proper exercise of the Public Counsel's functions, or who willfully misleads or attempts to mislead the Public Counsel in his inquiries, shall be guilty of a Class II misdemeanor. No employee of the State of Nebraska, who files a complaint pursuant to sections 81-82,40 to 81-8,254, shall be subject to any penalties, sanctions, or restrictions in connection with his employment

because of such complaint.

APPENDIX B - Inspector General of Nebraska Child Welfare Act

43-4301. Act, how cited.

Sections 43-4301 to 43-4331 shall be known and may be cited as the Office of Inspector General of Nebraska Child Welfare Act.

Source: Laws 2012, LB821, § 8; Laws 2015, LB347, § 4.

43-4302. Legislative intent.

(1) It is the intent of the Legislature to:

(a) Establish a full-time program of investigation and performance review to provide increased accountability and oversight of the Nebraska child welfare system;

(b) Assist in improving operations of the Nebraska child welfare system;

(c) Provide an independent form of inquiry for concerns regarding the actions of individuals and agencies responsible for the care and protection of children and youth in the Nebraska child welfare system. Confusion of the roles, responsibilities, and accountability structures between individuals, private contractors, branches of government, and agencies in the current system make it difficult to monitor and oversee the Nebraska child welfare system; and

(d) Provide a process for investigation and review to determine if individual complaints and issues of investigation and inquiry reveal a problem in the child welfare system, not just individual cases, that necessitates legislative action for improved policies and restructuring of the child welfare system.

(2) It is not the intent of the Legislature in enacting the Office of Inspector General of Nebraska Child Welfare Act to interfere with the duties of the Legislative Auditor or the Legislative Fiscal Analyst or to interfere with the statutorily defined investigative responsibilities or prerogatives of any officer, agency, board, bureau, commission, association, society, or institution of the executive branch of state government, except that the act does not preclude an inquiry on the sole basis that another agency has the same responsibility. The act shall not be construed to interfere with or supplant the responsibilities or prerogatives of the Governor to investigate, monitor, and report on the activities of the agencies, boards, bureaus, commissions, associations, societies, and institutions of the executive branch under his or her administrative direction.

Source: Laws 2012, LB821, § 9; Laws 2013, LB39, § 1; Laws 2015, LB347, § 5.

43-4303. Definitions; where found.

For purposes of the Office of Inspector General of Nebraska Child Welfare Act, the definitions found in sections 43-4304 to 43-4316 apply.

Source: Laws 2012, LB821, § 10; Laws 2015, LB347, § 6.

43-4304. Administrator, defined.

Administrator means a person charged with administration of a program, an office, or a division of the department or administration of a private agency or licensed child care facility, the probation administrator, or the executive director.

Source: Laws 2012, LB821, § 11; Laws 2015, LB347, § 7.

43-4304.01. Child welfare system, defined.

Child welfare system means public and private agencies and parties that provide or effect services or supervision to system-involved children and their families.

Source: Laws 2015, LB347, § 8.

43-4304.02. Commission, defined.

Commission means the Nebraska Commission on Law Enforcement and Criminal Justice.

Source: Laws 2015, LB347, § 9.

43-4305. Department, defined.

Department means the Department of Health and Human Services.

Source: Laws 2012, LB821, § 12.

43-4306. Director, defined.

Director means the chief executive officer of the department.

Source: Laws 2012, LB821, § 13.

43-4307. Inspector General, defined.

Inspector General means the Inspector General of Nebraska Child Welfare appointed under section 43-4317.

Source: Laws 2012, LB821, § 14.

43-4307.01. Juvenile services division, defined.

Juvenile services division means the Juvenile Services Division of the Office of Probation Administration.

Source: Laws 2015, LB347, § 11.

43-4308. Licensed child care facility, defined.

Licensed child care facility means a facility or program licensed under the Child Care Licensing Act, the Children's Residential Facilities and Placing Licensure Act, or sections 71-1901 to 71-1906.01.

Source: Laws 2012, LB821, § 15; Laws 2013, LB265, § 36.

Cross References

Child Care Licensing Act, see section 71-1908.

Children's Residential Facilities and Placing Licensure Act, see section 71-1924.

43-4309. Malfeasance, defined.

Malfeasance means a wrongful act that the actor has no legal right to do or any wrongful conduct that affects, interrupts, or interferes with performance of an official duty.

Source: Laws 2012, LB821, § 16.

43-4310. Management, defined.

Management means supervision of subordinate employees.

Source: Laws 2012, LB821, § 17.

43-4311. Misfeasance, defined.

Misfeasance means the improper performance of some act that a person may lawfully do.

Source: Laws 2012, LB821, § 18.

43-4312. Obstruction, defined.

Obstruction means hindering an investigation, preventing an investigation from progressing, stopping or delaying the progress of an investigation, or making the

progress of an investigation difficult or slow.

Source: Laws 2012, LB821, § 19.

43-4313. Office, defined.

Office means the office of Inspector General of Nebraska Child Welfare and includes the Inspector General and other employees of the office.

Source: Laws 2012, LB821, § 20.

43-4314. Private agency, defined.

Private agency means a child welfare agency that contracts with the department or the Office of Probation Administration or contracts to provide services to another child welfare agency that contracts with the department or the Office of Probation Administration.

Source: Laws 2012, LB821, § 21; Laws 2013, LB561, § 57.

43-4315. Record, defined.

Record means any recording, in written, audio, electronic transmission, or computer storage form, including, but not limited to, a draft, memorandum, note, report, computer printout, notation, or message, and includes, but is not limited to, medical records, mental health records, case files, clinical records, financial records, and administrative records.

Source: Laws 2012, LB821, § 22.

43-4316. Responsible individual, defined.

Responsible individual means a foster parent, a relative provider of foster care, or an employee of the department, the juvenile services division, the commission, a foster home, a private agency, a licensed child care facility, or another provider of child welfare programs and services responsible for the care or custody of records, documents, and files.

Source: Laws 2012, LB821, § 23; Laws 2015, LB347, § 12.

43-4317. Office of Inspector General of Nebraska Child Welfare; created; purpose; Inspector General; appointment; term; certification; employees; removal.

(1) The office of Inspector General of Nebraska Child Welfare is created within the office of Public Counsel for the purpose of conducting investigations, audits, inspections, and other reviews of the Nebraska child welfare system. The Inspector General shall be appointed by the Public Counsel with approval from the chairperson of the Executive Board of the Legislative Council and the chairperson of the Health and Human Services

Committee of the Legislature.

(2) The Inspector General shall be appointed for a term of five years and may be reappointed. The Inspector General shall be selected without regard to political affiliation and on the basis of integrity, capability for strong leadership, and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigation, or criminal justice administration or other closely related fields. No former or current executive or manager of the department may be appointed Inspector General within five years after such former or current executive's or manager's period of service with the department. Not later than two years after the date of appointment, the Inspector General shall obtain certification as a Certified Inspector General by the Association of Inspectors General, its successor, or another nationally recognized organization that provides and sponsors educational programs and establishes professional qualifications, certifications, and licensing for inspectors general. During his or her employment, the Inspector General shall not be actively involved in partisan affairs.

(3) The Inspector General shall employ such investigators and support staff as he or she deems necessary to carry out the duties of the office within the amount available by appropriation through the office of Public Counsel for the office of Inspector General of Nebraska Child Welfare. The Inspector General shall be subject to the control and supervision of the Public Counsel, except that removal of the Inspector General shall require approval of the chairperson of the Executive Board of the Legislative Council and the chairperson of the Health and Human Services Committee of the Legislature.

Source: Laws 2012, LB821, § 24.

43-4318. Office; duties; law enforcement agencies and prosecuting attorneys; cooperation; confidentiality.

(1) The office shall investigate:

(a) Allegations or incidents of possible misconduct, misfeasance, malfeasance, or violations of statutes or of rules or regulations of:

(i) The department by an employee of or person under contract with the department, a private agency, a licensed child care facility, a foster parent, or any other provider of child welfare services or which may provide a basis for discipline pursuant to the Uniform Credentialing Act;

(ii) Subject to subsection (2) of this section, the juvenile services division by an employee of or person under contract with the juvenile services division, a private agency, a licensed facility, a foster parent, or any other provider of juvenile justice services;

(iii) The commission by an employee of or person under contract with the commission related to programs and services supported by the Nebraska County Juvenile Services Plan Act, the Community-based Juvenile Services Aid Program, juvenile pretrial

diversion programs, or inspections of juvenile facilities; and

(iv) A juvenile detention facility and staff secure juvenile facility by an employee of or person under contract with such facilities;

(b) Death or serious injury in foster homes, private agencies, child care facilities, juvenile detention facilities, staff secure juvenile facilities, and other programs and facilities licensed by or under contract with the department or the juvenile services division; and

(c) Death or serious injury in any case in which services are provided by the department or the juvenile services division to a child or his or her parents or any case involving an investigation under the Child Protection and Family Safety Act, which case has been open for one year or less and upon review determines the death or serious injury did not occur by chance.

The department, the juvenile services division, each juvenile detention facility, and each staff secure juvenile facility shall report all cases of death or serious injury of a child in a foster home, private agency, child care facility or program, or other program or facility licensed by the department or inspected through the commission to the Inspector General as soon as reasonably possible after the department or the Office of Probation Administration learns of such death or serious injury. For purposes of this subsection, serious injury means an injury or illness caused by suspected abuse, neglect, or maltreatment which leaves a child in critical or serious condition.

(2) With respect to any investigation conducted by the Inspector General pursuant to subdivision (1)(a) of this section that involves possible misconduct by an employee of the juvenile services division, the Inspector General shall immediately notify the probation administrator and provide the information pertaining to potential personnel matters to the Office of Probation Administration.

(3) Any investigation conducted by the Inspector General shall be independent of and separate from an investigation pursuant to the Child Protection and Family Safety Act. The Inspector General and his or her staff are subject to the reporting requirements of the Child Protection and Family Safety Act.

(4) Notwithstanding the fact that a criminal investigation, a criminal prosecution, or both are in progress, all law enforcement agencies and prosecuting attorneys shall cooperate with any investigation conducted by the Inspector General and shall, immediately upon request by the Inspector General, provide the Inspector General with copies of all law enforcement reports which are relevant to the Inspector General's investigation. All law enforcement reports which have been provided to the Inspector General pursuant to this section are not public records for purposes of sections 84-712 to 84-712.09 and shall not be subject to discovery by any other person or entity. Except to the extent that disclosure of information is otherwise provided for in the Office of Inspector General of Nebraska Child Welfare Act, the Inspector General shall maintain the confidentiality of

all law enforcement reports received pursuant to its request under this section. Law enforcement agencies and prosecuting attorneys shall, when requested by the Inspector General, collaborate with the Inspector General regarding all other information relevant to the Inspector General's investigation. If the Inspector General in conjunction with the Public Counsel determines it appropriate, the Inspector General may, when requested to do so by a law enforcement agency or prosecuting attorney, suspend an investigation by the office until a criminal investigation or prosecution is completed or has proceeded to a point that, in the judgment of the Inspector General, reinstatement of the Inspector General's investigation will not impede or infringe upon the criminal investigation or prosecution. Under no circumstance shall the Inspector General interview any minor who has already been interviewed by a law enforcement agency, personnel of the Division of Children and Family Services of the department, or staff of a child advocacy center in connection with a relevant ongoing investigation of a law enforcement agency.

Source: Laws 2012, LB821, § 25; Laws 2013, LB561, § 58; Laws 2014, LB853, § 28; Laws 2015, LB347, § 13; Laws 2016, LB954, § 3.

Effective Date: March 8, 2016

Cross References:

Nebraska County Juvenile Services Plan Act, see section 43-3501.

Child Protection and Family Safety Act, see section 28-710.

Uniform Credentialing Act, see section 38-101.

43-4319. Office; access to information and personnel; investigation.

1) The office shall have access to all information and personnel necessary to perform the duties of the office.

(2) A full investigation conducted by the office shall consist of retrieval of relevant records through subpoena, request, or voluntary production, review of all relevant records, and interviews of all relevant persons.

(3) For a request for confidential record information pursuant to subsection (5) of section 43-2,108 involving death or serious injury, the office may submit a written request to the probation administrator. The record information shall be provided to the office within five days.

Source: Laws 2012, LB821, § 26; Laws 2015, LB347, § 14; Laws 2016, LB954, § 4.

Effective Date: March 8, 2016

43-4320. Complaints to office; form; full investigation; when.

Complaints to office; form; full investigation; when; notice.

(1) Complaints to the office may be made in writing. The office shall also maintain a toll-free telephone line for complaints. A complaint shall be evaluated to determine if it alleges possible misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations pursuant to section 43-4318. All complaints shall be evaluated to determine whether a full investigation is warranted.

(2) The office shall not conduct a full investigation of a complaint unless:

(a) The complaint alleges misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations pursuant to section 43-4318;

(b) The complaint is against a person within the jurisdiction of the office; and

(c) The allegations can be independently verified through investigation.

(3) The Inspector General shall determine within fourteen days after receipt of a complaint whether it will conduct a full investigation. A complaint alleging facts which, if verified, would provide a basis for discipline under the Uniform Credentialing Act shall be referred to the appropriate credentialing board under the act.

(4) When a full investigation is opened on a private agency that contracts with the Office of Probation Administration, the Inspector General shall give notice of such investigation to the Office of Probation Administration.

Source: Laws 2012, LB821, § 27; Laws 2013, LB561, § 59; Laws 2015, LB347, § 15.

Cross References:

Uniform Credentialing Act, see section 38-101.

43-4321. Cooperation with office; when required.

All employees of the department, the juvenile services division as directed by the juvenile court or the Office of Probation Administration, or the commission, all foster parents, and all owners, operators, managers, supervisors, and employees of private agencies, licensed child care facilities, juvenile detention facilities, staff secure juvenile facilities, and other providers of child welfare services or juvenile justice services shall cooperate with the office. Cooperation includes, but is not limited to, the following:

(1) Provision of full access to and production of records and information. Providing access to and producing records and information for the office is not a violation of confidentiality provisions under any law, statute, rule, or regulation if done in good faith for purposes of an investigation under the Office of Inspector General of Nebraska Child Welfare Act;

(2) Fair and honest disclosure of records and information reasonably requested by the

office in the course of an investigation under the act;

(3) Encouraging employees to fully comply with reasonable requests of the office in the course of an investigation under the act;

(4) Prohibition of retaliation by owners, operators, or managers against employees for providing records or information or filing or otherwise making a complaint to the office;

(5) Not requiring employees to gain supervisory approval prior to filing a complaint with or providing records or information to the office;

(6) Provision of complete and truthful answers to questions posed by the office in the course of an investigation; and

(7) Not willfully interfering with or obstructing the investigation.

Source:

Laws 2012, LB821, § 28; Laws 2013, LB561, § 60; Laws 2015, LB347, § 16; Laws 2016, LB954, § 5.

Effective Date: March 8, 2016

43-4322. Failure to cooperate; effect.

Failure to cooperate with an investigation by the office may result in discipline or other sanctions.

Source: Laws 2012, LB821, § 29.

43-4323. Inspector General; powers; rights of person required to provide information.

The Inspector General may issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state and shall also be entitled to have counsel present while being questioned.

Source: Laws 2012, LB821, § 30.

43-4324. Office; access to records; subpoena; records; statement of record integrity and security; contents; treatment of records.

(1) In conducting investigations, the office shall access all relevant records through subpoena, compliance with a request of the office, and voluntary production. The office may request or subpoena any record necessary for the investigation from the department, the juvenile services division as permitted by law, the commission, a foster

parent, a licensed child care facility, a juvenile detention facility, a staff secure juvenile facility, or a private agency that is pertinent to an investigation. All case files, licensing files, medical records, financial and administrative records, and records required to be maintained pursuant to applicable licensing rules shall be produced for review by the office in the course of an investigation.

(2) Compliance with a request of the office includes:

(a) Production of all records requested;

(b) A diligent search to ensure that all appropriate records are included; and

(c) A continuing obligation to immediately forward to the office any relevant records received, located, or generated after the date of the request.

(3) The office shall seek access in a manner that respects the dignity and human rights of all persons involved, maintains the integrity of the investigation, and does not unnecessarily disrupt child welfare programs or services. When advance notice to a foster parent or to an administrator or his or her designee is not provided, the office investigator shall, upon arrival at the departmental office, bureau, or division, the private agency, the licensed child care facility, the juvenile detention facility, the staff secure juvenile facility, or the location of another provider of child welfare services, request that an onsite employee notify the administrator or his or her designee of the investigator's arrival.

(4) When circumstances of an investigation require, the office may make an unannounced visit to a foster home, a departmental office, bureau, or division, a licensed child care facility, a juvenile detention facility, a staff secure juvenile facility, a private agency, or another provider to request records relevant to an investigation.

(5) A responsible individual or an administrator may be asked to sign a statement of record integrity and security when a record is secured by request as the result of a visit by the office, stating:

(a) That the responsible individual or the administrator has made a diligent search of the office, bureau, division, private agency, licensed child care facility, juvenile detention facility, staff secure juvenile facility, or other provider's location to determine that all appropriate records in existence at the time of the request were produced;

(b) That the responsible individual or the administrator agrees to immediately forward to the office any relevant records received, located, or generated after the visit;

(c) The persons who have had access to the records since they were secured; and

(d) Whether, to the best of the knowledge of the responsible individual or the administrator, any records were removed from or added to the record since it was

secured.

(6) The office shall permit a responsible individual, an administrator, or an employee of a departmental office, bureau, or division, a private agency, a licensed child care facility, a juvenile detention facility, a staff secure juvenile facility, or another provider to make photocopies of the original records within a reasonable time in the presence of the office for purposes of creating a working record in a manner that assures confidentiality.

(7) The office shall present to the responsible individual or the administrator or other employee of the departmental office, bureau, or division, private agency, licensed child care facility, juvenile detention facility, staff secure juvenile facility, or other service provider a copy of the request, stating the date and the titles of the records received.

(8) If an original record is provided during an investigation, the office shall return the original record as soon as practical but no later than ten working days after the date of the compliance request.

(9) All investigations conducted by the office shall be conducted in a manner designed to ensure the preservation of evidence for possible use in a criminal prosecution.

Source: Laws 2012, LB821, § 31; Laws 2013, LB561, § 61; Laws 2015, LB347, § 17; Laws 2016, LB954, § 6.

Effective Date: March 8, 2016

43-4325. Reports of investigations; distribution; redact confidential information; powers of office.

(1) Reports of investigations conducted by the office shall not be distributed beyond the entity that is the subject of the report without the consent of the Inspector General.

(2) Except when a report is provided to a guardian ad litem or an attorney in the juvenile court pursuant to subsection (2) of section 43-4327, the office shall redact confidential information before distributing a report of an investigation. The office may disclose confidential information to the chairperson of the Health and Human Services Committee of the Legislature or the chairperson of the Judiciary Committee of the Legislature when such disclosure is, in the judgment of the Public Counsel, desirable to keep the chairperson informed of important events, issues, and developments in the Nebraska child welfare system.

(3) Records and documents, regardless of physical form, that are obtained or produced by the office in the course of an investigation are not public records for purposes of sections 84-712 to 84-712.09. Reports of investigations conducted by the office are not public records for purposes of sections 84-712 to 84-712.09.

(4) The office may withhold the identity of sources of information to protect from

retaliation any person who files a complaint or provides information in good faith pursuant to the Office of Inspector General of Nebraska Child Welfare Act.

Source: Laws 2012, LB821, § 32; Laws 2015, LB347, § 18.

43-4326. Department; provide direct computer access.

(1) The department shall provide the Public Counsel and the Inspector General with direct computer access to all computerized records, reports, and documents maintained by the department in connection with administration of the Nebraska child welfare system.

(2) The commission shall provide the Inspector General with direct computer access to all computerized records, reports, and documents maintained in connection with administration of juvenile justice services.

(3) The juvenile services division, as directed by the juvenile court or the Office of Probation Administration, shall provide the Inspector General with direct computer access to all computerized records, reports, and documents maintained by the juvenile services division in connection with a specific case under investigation.

Source: Laws 2012, LB821, § 33; Laws 2015, LB347, § 19; Laws 2016, LB954, § 7.

Effective Date: March 8, 2016

43-4327. Inspector General's report of investigation; contents; distribution.

(1) The Inspector General's report of an investigation shall be in writing to the Public Counsel and shall contain recommendations. The report may recommend systemic reform or case-specific action, including a recommendation for discharge or discipline of employees or for sanctions against a foster parent, private agency, licensed child care facility, or other provider of child welfare services or juvenile justice services. All recommendations to pursue discipline shall be in writing and signed by the Inspector General. A report of an investigation shall be presented to the director, the probation administrator, or the executive director within fifteen days after the report is presented to the Public Counsel.

(2) Any person receiving a report under this section shall not further distribute the report or any confidential information contained in the report. The Inspector General, upon notifying the Public Counsel and the director, the probation administrator, or the executive director, may distribute the report, to the extent that it is relevant to a child's welfare, to the guardian ad litem and attorneys in the juvenile court in which a case is pending involving the child or family who is the subject of the report. The report shall not be distributed beyond the parties except through the appropriate court procedures to the judge.

(3) A report that identifies misconduct, misfeasance, malfeasance, or violation of statute, rules, or regulations by an employee of the department, the juvenile services division,

the commission, a private agency, a licensed child care facility, or another provider that is relevant to providing appropriate supervision of an employee may be shared with the employer of such employee. The employer may not further distribute the report or any confidential information contained in the report.

Source: Laws 2012, LB821, § 34; Laws 2015, LB347, § 20.

43-4328. Report; director; accept, reject, or request modification; when final; written response; corrected report; credentialing issue; how treated.

(1) Within fifteen days after a report is presented to the director, the probation administrator, or the executive director under section 43-4327, he or she shall determine whether to accept, reject, or request in writing modification of the recommendations contained in the report. The Inspector General, with input from the Public Counsel, may consider the director's, probation administrator's, or executive director's request for modifications but is not obligated to accept such request. Such report shall become final upon the decision of the director, the probation administrator, or the executive director to accept or reject the recommendations in the report or, if the director, the probation administrator, or the executive director requests modifications, within fifteen days after such request or after the Inspector General incorporates such modifications, whichever occurs earlier.

(2) Within fifteen days after the report is presented to the director, the probation administrator, or the executive director, the report shall be presented to the foster parent, private agency, licensed child care facility, or other provider of child welfare services or juvenile justice services that is the subject of the report and to persons involved in the implementation of the recommendations in the report. Within forty-five days after receipt of the report, the foster parent, private agency, licensed child care facility, or other provider may submit a written response to the office to correct any factual errors in the report. The Inspector General, with input from the Public Counsel, shall consider all materials submitted under this subsection to determine whether a corrected report shall be issued. If the Inspector General determines that a corrected report is necessary, the corrected report shall be issued within fifteen days after receipt of the written response.

(3) If the Inspector General does not issue a corrected report pursuant to subsection (2) of this section, or if the corrected report does not address all issues raised in the written response, the foster parent, private agency, licensed child care facility, or other provider may request that its written response, or portions of the response, be appended to the report or corrected report.

(4) A report which raises issues related to credentialing under the Uniform Credentialing Act shall be submitted to the appropriate credentialing board under the act.

Source: Laws 2012, LB821, § 35; Laws 2015, LB347, § 21.

Cross References:

Uniform Credentialing Act, see section 38-101.

43-4329. Report or work product; no court review.

No report or other work product of an investigation by the Inspector General shall be reviewable in any court. Neither the Inspector General nor any member of his or her staff shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters within his or her official cognizance except in a proceeding brought to enforce the Office of Inspector General of Nebraska Child Welfare Act.

Source: Laws 2012, LB821, § 36.

43-4330. Inspector General; investigation of complaints; priority and selection.

The Office of Inspector General of Nebraska Child Welfare Act does not require the Inspector General to investigate all complaints. The Inspector General, with input from the Public Counsel, shall prioritize and select investigations and inquiries that further the intent of the act and assist in legislative oversight of the Nebraska child welfare system and juvenile justice system. If the Inspector General determines that he or she will not investigate a complaint, the Inspector General may recommend to the parties alternative means of resolution of the issues in the complaint.

Source: Laws 2012, LB821, § 37; Laws 2015, LB347, § 22.

43-4331. Summary of reports and investigations; contents.

On or before September 15 of each year, the Inspector General shall provide to the Health and Human Services Committee of the Legislature, the Judiciary Committee of the Legislature, the Supreme Court, and the Governor a summary of reports and investigations made under the Office of Inspector General of Nebraska Child Welfare Act for the preceding year. The summary provided to the committees shall be provided electronically. The summaries shall detail recommendations and the status of implementation of recommendations and may also include recommendations to the committees regarding issues discovered through investigation, audits, inspections, and reviews by the office that will increase accountability and legislative oversight of the Nebraska child welfare system, improve operations of the department, the juvenile services division, the commission, and the Nebraska child welfare system, or deter and identify fraud, abuse, and illegal acts. Such summary shall include summaries of alternative response cases under alternative response demonstration projects implemented in accordance with sections 28-710.01, 28-712, and 28-712.01 reviewed by the Inspector General. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.

Source: Laws 2012, LB821, § 38; Laws 2013, LB222, § 12; Laws 2014, LB853, § 29; Laws 2015, LB347, § 23.

APPENDIX C - Inspector General of the Nebraska Correctional System Act

47-901. Act, how cited.

Sections 47-901 to 47-919 shall be known and may be cited as the Office of Inspector General of the Nebraska Correctional System Act.

Source: Laws 2015, LB598, § 1; Laws 2016, LB1094, § 28.

47-902.

Legislative intent.

(1) It is the intent of the Legislature to:

(a) Establish a full-time program of investigation and performance review to provide increased accountability and oversight of the Nebraska correctional system;

(b) Assist in improving operations of the department and the Nebraska correctional system;

(c) Provide an independent form of inquiry for concerns regarding the actions of individuals and agencies responsible for the supervision and release of persons in the Nebraska correctional system. A lack of responsibility and accountability between individuals and private agencies in the current system make it difficult to monitor and oversee the Nebraska correctional system; and

(d) Provide a process for investigation and review in order to improve policies and procedures of the correctional system.

(2) It is not the intent of the Legislature in enacting the Office of Inspector General of the Nebraska Correctional System Act to interfere with the duties of the Legislative Auditor or the Legislative Fiscal Analyst or to interfere with the statutorily defined investigative responsibilities or prerogatives of any officer, agency, board, bureau, commission, association, society, or institution of the executive branch of state government, except that the act does not preclude an inquiry on the sole basis that another agency has the same responsibility. The act shall not be construed to interfere with or supplant the responsibilities or prerogatives of the Governor to investigate, monitor, and report on the activities of the agencies, boards, bureaus, commissions, associations, societies, and institutions of the executive branch under his or her administrative direction.

Source: Laws 2015, LB598, § 2.

47-903.

Terms, defined.

For purposes of the Office of Inspector General of the Nebraska Correctional System Act, the following definitions apply:

- (1) Administrator means a person charged with administration of a program, an office, or a division of the department or administration of a private agency;
- (2) Department means the Department of Correctional Services;
- (3) Director means the Director of Correctional Services;
- (4) Inspector General means the Inspector General of the Nebraska Correctional System appointed under section 47-904;
- (5) Malfeasance means a wrongful act that the actor has no legal right to do or any wrongful conduct that affects, interrupts, or interferes with performance of an official duty;
- (6) Management means supervision of subordinate employees;
- (7) Misfeasance means the improper performance of some act that a person may lawfully do;
- (8) Obstruction means hindering an investigation, preventing an investigation from progressing, stopping or delaying the progress of an investigation, or making the progress of an investigation difficult or slow;
- (9) Office means the office of Inspector General of the Nebraska Correctional System and includes the Inspector General and other employees of the office;
- (10) Office of Parole Administration means the office created pursuant to section 83-1,100;
- (11) Private agency means an entity that contracts with the department or contracts to provide services to another entity that contracts with the department; and
- (12) Record means any recording in written, audio, electronic transmission, or computer storage form, including, but not limited to, a draft, memorandum, note, report, computer printout, notation, or message, and includes, but is not limited to, medical records, mental health records, case files, clinical records, financial records, and administrative records.

Source: Laws 2015, LB598, § 3; Laws 2016, LB1094, § 29.

Effective Date: April 20, 2016

47-904.

Office of Inspector General of the Nebraska Correctional System; created; Inspector General; appointment; term; qualifications; employees; removal.

(1) The office of Inspector General of the Nebraska Correctional System is created within the office of Public Counsel for the purpose of conducting investigations, audits, inspections, and other reviews of the Nebraska correctional system. The Inspector General shall be appointed by the Public Counsel with approval from the chairperson of the Executive Board of the Legislative Council and the chairperson of the Judiciary Committee of the Legislature.

(2) The Inspector General shall be appointed for a term of five years and may be reappointed. The Inspector General shall be selected without regard to political affiliation and on the basis of integrity, capability for strong leadership, and demonstrated ability in accounting, auditing, financial analysis, law, management, public administration, investigation, or criminal justice administration or other closely related fields. No former or current executive or manager of the department shall be appointed Inspector General within five years after such former or current executive's or manager's period of service with the department. Not later than two years after the date of appointment, the Inspector General shall obtain certification as a Certified Inspector General by the Association of Inspectors General, its successor, or another nationally recognized organization that provides and sponsors educational programs and establishes professional qualifications, certifications, and licensing for inspectors general. During his or her employment, the Inspector General shall not be actively involved in partisan affairs.

(3) The Inspector General shall employ such investigators and support staff as he or she deems necessary to carry out the duties of the office within the amount available by appropriation through the office of Public Counsel for the office of Inspector General of the Nebraska Correctional System. The Inspector General shall be subject to the control and supervision of the Public Counsel, except that removal of the Inspector General shall require approval of the chairperson of the Executive Board of the Legislative Council and the chairperson of the Judiciary Committee of the Legislature.

Source: Laws 2015, LB598, § 4.

47-905.

Office; duties; law enforcement agencies and prosecuting attorneys; cooperation; confidentiality.

(1) The office shall investigate:

(a) Allegations or incidents of possible misconduct, misfeasance, malfeasance, or violations of statutes or of rules or regulations of the department by an employee of or a person under contract with the department or a private agency; and

(b) Death or serious injury in private agencies, department correctional facilities, and other programs and facilities licensed by or under contract with the department. The department shall report all cases of death or serious injury of a person in a private agency, department correctional facility or program, or other program or facility licensed by the department to the Inspector General as soon as reasonably possible after the department learns of such death or serious injury. For purposes of this subdivision, serious injury means an injury or illness caused by malfeasance or misfeasance which leaves a person in critical or serious condition.

(2) Any investigation conducted by the Inspector General shall be independent of and separate from an investigation pursuant to sections 23-1821 to 23-1823.

(3) Notwithstanding the fact that a criminal investigation, a criminal prosecution, or both are in progress, all law enforcement agencies and prosecuting attorneys shall cooperate with any investigation conducted by the Inspector General and shall, immediately upon request by the Inspector General, provide the Inspector General with copies of all law enforcement reports which are relevant to the Inspector General's investigation. All law enforcement reports which have been provided to the Inspector General pursuant to this section are not public records for purposes of sections 84-712 to 84-712.09 and shall not be subject to discovery by any other person or entity. Except to the extent that disclosure of information is otherwise provided for in the Office of Inspector General of the Nebraska Correctional System Act, the Inspector General shall maintain the confidentiality of all law enforcement reports received pursuant to its request under this section. Law enforcement agencies and prosecuting attorneys shall, when requested by the Inspector General, collaborate with the Inspector General regarding all other information relevant to the Inspector General's investigation. If the Inspector General in conjunction with the Public Counsel determines it appropriate, the Inspector General may, when requested to do so by a law enforcement agency or prosecuting attorney, suspend an investigation by the office until a criminal investigation or prosecution is completed or has proceeded to a point that, in the judgment of the Inspector General, reinstatement of the Inspector General's investigation will not impede or infringe upon the criminal investigation or prosecution. Under no circumstance shall the Inspector General interview any person who has already been interviewed by a law enforcement agency in connection with a relevant ongoing investigation of a law enforcement agency.

Source: Laws 2015, LB598, § 5.

47-906.

Office; access to information and personnel; investigation.

(1) The office shall have access to all information and personnel necessary to perform the duties of the office.

(2) A full investigation conducted by the office shall consist of retrieval of relevant records through subpoena, request, or voluntary production, review of all relevant records, and interviews of all relevant persons.

Source: Laws 2015, LB598, § 6.

47-907.

Complaints to office; form; full investigation; when; notice.

(1) Complaints to the office may be made in writing. A complaint shall be evaluated to determine if it alleges possible misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations of the department by an employee of or a person under contract with the department or a private agency. All complaints shall be evaluated to determine whether a full investigation is warranted.

(2) The office shall not conduct a full investigation of a complaint unless:

(a) The complaint alleges misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations of the department;

(b) The complaint is against a person within the jurisdiction of the office; and

(c) The allegations can be independently verified through investigation.

(3) The Inspector General shall determine within fourteen days after receipt of a complaint whether the office will conduct a full investigation.

(4) When a full investigation is opened on a private agency that contracts with the department, the Inspector General shall give notice of such investigation to the department.

Source: Laws 2015, LB598, § 7.

47-908.

Cooperation with office; when required.

All employees of the department, all employees of the Office of Parole Administration, and all owners, operators, managers, supervisors, and employees of private agencies shall cooperate with the office. Cooperation includes, but is not limited to, the following:

- (1) Provision of full access to and production of records and information. Providing access to and producing records and information for the office is not a violation of confidentiality provisions under any statute, rule, or regulation if done in good faith for purposes of an investigation under the Office of Inspector General of the Nebraska Correctional System Act;
- (2) Fair and honest disclosure of records and information reasonably requested by the office in the course of an investigation under the act;
- (3) Encouraging employees to fully comply with reasonable requests of the office in the course of an investigation under the act;
- (4) Prohibition of retaliation by owners, operators, or managers against employees for providing records or information or filing or otherwise making a complaint to the office;
- (5) Not requiring employees to gain supervisory approval prior to filing a complaint with or providing records or information to the office;
- (6) Provision of complete and truthful answers to questions posed by the office in the course of an investigation; and
- (7) Not willfully interfering with or obstructing the investigation.

Source: Laws 2015, LB598, § 8; Laws 2016, LB1094, § 30.

Effective Date: April 20, 2016

47-909.

Failure to cooperate; effect.

Failure to cooperate with an investigation by the office may result in discipline or other sanctions.

Source: Laws 2015, LB598, § 9.

47-910.

Inspector General; powers; rights of person required to provide information.

The Inspector General may issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state and shall also be entitled to have counsel present while being questioned.

Source: Laws 2015, LB598, § 10.

47-911.

Office; access to records; subpoena; records; statement of record integrity and security; contents; treatment of records.

(1) In conducting investigations, the office shall access all relevant records through subpoena, compliance with a request by the office, and voluntary production. The office may request or subpoena any record necessary for the investigation from the department or a private agency that is pertinent to an investigation. All case files, licensing files, medical records, financial and administrative records, and records required to be maintained pursuant to applicable licensing rules shall be produced for review by the office in the course of an investigation.

(2) Compliance with a request of the office includes:

(a) Production of all records requested;

(b) A diligent search to ensure that all appropriate records are included; and

(c) A continuing obligation to immediately forward to the office any relevant records received, located, or generated after the date of the request.

(3) The office shall seek access in a manner that respects the dignity and human rights of all persons involved, maintains the integrity of the investigation, and does not unnecessarily disrupt department programs or services. When advance notice to an administrator or his or her designee is not provided, the office investigator shall, upon arrival at the departmental office, bureau, or division or private agency, request that an onsite employee notify the administrator or his or her designee of the investigator's arrival.

(4) When circumstances of an investigation require, the office may make an unannounced visit to a departmental office, bureau, or division, a department correctional facility, or a private agency to request records relevant to an investigation.

(5) A responsible individual or an administrator may be asked to sign a statement of record integrity and security when a record is secured by request as the result of a visit by the

office, stating:

(a) That the responsible individual or the administrator has made a diligent search of the office, bureau, division, private agency, or department correctional facility to determine that all appropriate records in existence at the time of the request were produced;

(b) That the responsible individual or the administrator agrees to immediately forward to the office any relevant records received, located, or generated after the visit;

(c) The persons who have had access to the records since they were secured; and

(d) Whether, to the best of the knowledge of the responsible individual or the administrator, any records were removed from or added to the record since it was secured.

(6) The office shall permit a responsible individual, an administrator, or an employee of a departmental office, bureau, or division, a private agency, or a department correctional facility to make photocopies of the original records within a reasonable time in the presence of the office for purposes of creating a working record in a manner that assures confidentiality.

(7) The office shall present to the responsible individual or the administrator or other employee of the departmental office, bureau, or division, private agency, or department correctional facility a copy of the request, stating the date and the titles of the records received.

(8) If an original record is provided during an investigation, the office shall return the original record as soon as practical but no later than ten working days after the date of the compliance request.

(9) All investigations conducted by the office shall be conducted in a manner designed to ensure the preservation of evidence for possible use in a criminal prosecution.

Source: Laws 2015, LB598, § 11.

47-912.

Reports of investigations; distribution; redact confidential information; powers of office.

(1) Reports of investigations conducted by the office shall not be distributed beyond the entity that is the subject of the report without the consent of the Inspector General.

(2) The office shall redact confidential information before distributing a report of an investigation. The office may disclose confidential information to the chairperson of the

Judiciary Committee of the Legislature when such disclosure is, in the judgment of the Public Counsel, desirable to keep the chairperson informed of important events, issues, and developments in the Nebraska correctional system.

(3) Records and documents, regardless of physical form, that are obtained or produced by the office in the course of an investigation are not public records for purposes of sections 84-712 to 84-712.09. Reports of investigations conducted by the office are not public records for purposes of sections 84-712 to 84-712.09.

(4) The office may withhold the identity of sources of information to protect from retaliation any person who files a complaint or provides information in good faith pursuant to the Office of Inspector General of the Nebraska Correctional System Act.

Source: Laws 2015, LB598, § 12.

47-913.

Department; provide direct computer access.

The department shall provide the Public Counsel and the Inspector General with direct computer access to all computerized records, reports, and documents maintained by the department in connection with administration of the Nebraska correctional system, except that the Public Counsel's and Inspector General's access to an inmate's medical or mental health records shall be subject to the inmate's consent.

Source: Laws 2015, LB598, § 13.

47-914.

Inspector General's report of investigation; contents; distribution.

(1) The Inspector General's report of an investigation shall be in writing to the Public Counsel and shall contain recommendations. The report may recommend systemic reform or case-specific action, including a recommendation for discharge or discipline of employees or for sanctions against a private agency. All recommendations to pursue discipline shall be in writing and signed by the Inspector General. A report of an investigation shall be presented to the director within fifteen days after the report is presented to the Public Counsel.

(2) Any person receiving a report under this section shall not further distribute the report or any confidential information contained in the report. The report shall not be distributed beyond the parties except through the appropriate court procedures to the judge.

(3) A report that identifies misconduct, misfeasance, malfeasance, violation of statute, or

violation of rules and regulations by an employee of the department or a private agency that is relevant to providing appropriate supervision of an employee may be shared with the employer of such employee. The employer may not further distribute the report or any confidential information contained in the report.

Source: Laws 2015, LB598, § 14.

47-915.

Report; director; accept, reject, or request modification; when final; written response; corrected report; appended material.

(1) Within fifteen days after a report is presented to the director under section 47-914, he or she shall determine whether to accept, reject, or request in writing modification of the recommendations contained in the report. The Inspector General, with input from the Public Counsel, may consider the director's request for modifications but is not obligated to accept such request. Such report shall become final upon the decision of the director to accept or reject the recommendations in the report or, if the director requests modifications, within fifteen days after such request or after the Inspector General incorporates such modifications, whichever occurs earlier.

(2) Within fifteen days after the report is presented to the director, the report shall be presented to the private agency or other provider of correctional services that is the subject of the report and to persons involved in the implementation of the recommendations in the report. Within forty-five days after receipt of the report, the private agency or other provider may submit a written response to the office to correct any factual errors in the report. The Inspector General, with input from the Public Counsel, shall consider all materials submitted under this subsection to determine whether a corrected report shall be issued. If the Inspector General determines that a corrected report is necessary, the corrected report shall be issued within fifteen days after receipt of the written response.

(3) If the Inspector General does not issue a corrected report pursuant to subsection (2) of this section or if the corrected report does not address all issues raised in the written response, the private agency or other provider may request that its written response, or portions of the response, be appended to the report or corrected report.

Source: Laws 2015, LB598, § 15.

47-916.

Report or work product; no court review.

No report or other work product of an investigation by the Inspector General shall be

reviewable in any court. Neither the Inspector General nor any member of his or her staff shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters within his or her official cognizance except in a proceeding brought to enforce the Office of Inspector General of the Nebraska Correctional System Act.

Source: Laws 2015, LB598, § 16.

47-917.

Inspector General; investigation of complaints; priority and selection.

The Office of Inspector General of the Nebraska Correctional System Act does not require the Inspector General to investigate all complaints. The Inspector General, with input from the Public Counsel, shall prioritize and select investigations and inquiries that further the intent of the act and assist in legislative oversight of the Nebraska correctional system. If the Inspector General determines that he or she will not investigate a complaint, the Inspector General may recommend to the parties alternative means of resolution of the issues in the complaint.

Source: Laws 2015, LB598, § 17.

47-918.

Summary of reports and investigations; contents.

On or before September 15 of each year, the Inspector General shall provide to each member of the Judiciary Committee of the Legislature, the Governor, and the Clerk of the Legislature a summary of reports and investigations made under the Office of Inspector General of the Nebraska Correctional System Act for the preceding year. The summary provided to the Clerk of the Legislature shall be provided electronically. The summaries shall include recommendations and an update on the status of recommendations made in prior summaries, if any. The recommendations may address issues discovered through investigations, audits, inspections, and reviews by the office that will (1) increase accountability and legislative oversight of the Nebraska correctional system, (2) improve operations of the department and the Nebraska correctional system, (3) deter and identify fraud, abuse, and illegal acts, and (4) identify inconsistencies between statutory requirements and requirements for accreditation. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.

Source: Laws 2015, LB598, § 18.

47-919.

Office of Parole Administration; provide access to records, reports, and documents.

The Office of Parole Administration shall provide the Public Counsel and the Inspector General with direct computer access to all computerized records, reports, and documents maintained by the office in connection with administration of the Nebraska parole system, except that access for the Public Counsel and the Inspector General to a parolee's medical or mental health records shall be subject to the parolee's consent.

Source: Laws 2016, LB1094, § 31.

Effective Date: April 20, 2016

Bibliography

Anyone interested in learning more about the ombudsman concept as that concept has been implemented through the Nebraska Office of the Public Counsel is invited to read the following materials:

Frank, *The Nebraska Public Counsel - The Ombudsman*, 5 Cumberland-Samford L. Rev. 30 (1974).

Lux, "State Ombudsman Office: Cost Effectiveness Estimates." *Journal of Health and Human Resources Administration* 15 (Winter 1993): 306-312.

Miewald and Comer, "Complaining As Participation: The Case of the Ombudsman." *Administration and Society* 17 (February 1986): 481-499.

Miewald and Comer, "The Nebraska Ombudsman: An American Pioneer." *International Handbook of the Ombudsman - Country Surveys*, edited by Gerald E. Caiden, Connecticut; Greenwood Press, 1983.

Wyner, *Complaint Resolution in Nebraska: Citizens, Bureaucrats and the Ombudsman*, 54 Neb. L. Rev. 1 (1975).

Wyner, *The Nebraska Ombudsman: Innovation in State Government*. Berkeley: Institute of Government Studies, University of California, 1974.

