

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

**THE
OMBUDSMAN**

2015



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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-third Annual Report of the Nebraska Public Counsel's Office has been prepared as the annual report for the calendar year 2015, 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, and 2011.

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.

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.

A MESSAGE FROM THE OMBUDSMAN -- ON THE IG's

I have waited until after September 15 to prepare this report, because I wanted to use it as an opportunity to discuss the activities of the new Inspectors General operating in conjunction with the Office of the Public Counsel. September 15 matters in this context because it is the timeline set for both IG's to file their own Annual Reports pursuant to **Neb. Rev Stat.** §43-4331 (for the Child Welfare IG), and **Neb. Rev Stat.** §47-918 (for the Corrections IG). Having had an opportunity to see the two IG's in action, there are some observations that I would like to offer on the subject.

It was during its legislative session in 2012 that the Nebraska Legislature decided to create a new oversight entity intended to function as a part of the legislative branch of government; an entity that would be known as the "Office of Inspector General of Nebraska Child Welfare." In reality, the legislation in question was part of a much larger, and far more comprehensive, Child Welfare Act (LB 821); a major piece of legislation addressing problems and systemic deficits that had been exposed in a wide-ranging examination of the Nebraska child welfare system by the Legislature's Health and Human Services Committee that was carried out in 2011. The origins of the Committee's work related to a 2009 effort by the Nebraska Department of Health and Human Services to achieve reform of the state's child welfare system through a privatization scheme that was generally known as the "Families Matter" initiative. This initiative almost immediately encountered significant problems and, in light of mounting concerns about the direction of this privatization initiative, the Legislature in 2011 passed a Legislative Resolution, LR 37, which authorized the Legislature's Health and Human Services Committee to review and assess the overall impact and effectiveness of the Families Matter initiative. To assist in this study, the Public Counsel's Office conducted a survey of foster parents to learn what we could about their experiences with the Families Matter reform. The Public Counsel's Office also surveyed biological parents who had gone through experiences in the Nebraska child welfare system, to get their feedback as well. (For more information on this effort, please see the Public Counsel's Annual Report for 2011.) All of this led indirectly to the idea that perhaps the Public Counsel's Office could utilize its experience and expertise in dealing with complaints relating to the operation of the Nebraska child welfare system as a means to help implement a bold new idea for more direct and comprehensive oversight of the system. This new idea was the Inspector General of Child Welfare.

Of course, the Child Welfare Act implemented many strategies for improvement of Nebraska's child welfare system, but certainly the establishment of the Office of the

Inspector General of Nebraska Child Welfare (please see **Neb. Rev. Stat.** §§43-4301 thru 43-4331, which is reproduced in Appendix B) was one of the legislative bill's most significant features. In broad terms, the intent and expectation of the legislation was that an Inspector General of Child Welfare would help 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, in other words, which needed to be addressed so that the system performed optimally.

This newly created Inspector General position was particularly important to the ongoing operation of the Public Counsel's Office because the legislation that created the new position designated that the IG would be affiliated with the Public Counsel. The idea was that the two functions are complimentary, since both are a part of the legislative branch of government, both are significantly concerned with providing accountability and oversight of state administrative systems, and both are in a good position to learn about how Nebraska's child welfare system performs, in practical terms, by investigating actual cases and addressing specific complaints. In addition, the Inspector General was expected to help, not only in terms of providing for increased accountability and oversight of the Nebraska child welfare system, but also in terms of doing in depth analysis, and discovering new ideas for improving the operations of both the Department of Health and Human Services, and the private providers, as relates to the Nebraska system for the care and protection of children. This was expected to be accomplished by the work of the Inspector General through identifying and promoting policy and/or process changes within the Department's internal administration, and through advocating for legislative action to improve policies, and to otherwise restructure the state's child welfare system.

One of the more important characteristics of the Inspector General of Nebraska Child Welfare provisions of the Nebraska Child Welfare Act was that the Act called for the IG to be appointed by the Nebraska Public Counsel, subject to the approval of both the Chairperson of the Legislature's Health and Human Services Committee, and the Chairperson of the Legislature's Executive Board. In other words, this new Inspector General was going to be a part of the legislative branch of government, appointed by, and reporting to, the Legislature, and thereby functioning as an apparatus of legislative oversight. Having learned through the excellent work of the Health and Human Services Committee on LR 37 about the kind of high-value return that could be achieved from concerted legislative oversight, it was actually a very short step for the Legislature to decide to create the Child Welfare IG and affiliate it with the Legislature, as a means of helping to provide an ongoing and permanent form of

legislative oversight over this highly important system.

Under the Child Welfare Act, the Child Welfare Inspector General was directed to investigate allegations and/or incidents of misconduct, misfeasance, malfeasance, statutory violations, and/or regulatory violations related to child welfare or juvenile justice. When the Act was passed in 2012, the Nebraska Department of Health and Human Services not only controlled the Nebraska child welfare system, but also the State's juvenile justice system through the Office of Juvenile Services. However, in 2013 the administrative responsibility for supervising the State's juvenile justice system was transferred to Juvenile Probation Administration. This meant that the Child Welfare IG lost the jurisdiction to review and investigate situations related to some of the State's most troubled and high risk youth, simply because they were now under the Juvenile Probation Administration, as opposed to under the authority of the Department of Health and Human Services. A narrow exception allowed the IG to investigate cases of youth on probation who died or were seriously injured while placed out of their homes, but a wide range of probation cases remained beyond the IG's reach. Many legislators were uncomfortable with this situation, and so in 2015 the Legislature passed LB 347, which added all administrative decision making within the state's juvenile justice system as administered by the Probation Administration to the oversight jurisdiction of the IG. By virtue of this Act (effective August 30, 2015), the IG regained oversight authority relative to the operation of the juvenile justice, and juvenile detention funded through the Nebraska Commission on Law Enforcement and Criminal Justice. There were, however, some unresolved issues concerning how the IG would secure access to probation records relating to juvenile justice cases that were being investigated by the IG. These issues were resolved by the enactment of LB 954, which took effect when it was signed into law by Governor Pete Ricketts on March 7, 2016.

Ms. Julie L. Rogers was appointed to serve as Nebraska's first Inspector General of Child Welfare, commencing at the end of July of 2012. Ms. Rogers, who has a law degree, was the Community Planning Coordinator with the Juvenile Justice Institute at the University of Nebraska at Omaha, and had formerly served as a Policy Analyst with the Nebraska Community Corrections Council. In addition, Ms. Rogers had also formerly been a Legal Counsel for the Legislature's Judiciary Committee, and was a former Deputy Public Defender for Madison County, Nebraska. After having been approved by the Chairs of the Executive Board and Health and Human Services Committee, as required by the Child Welfare Act, Ms. Rogers' service as Nebraska's first Inspector General of Child Welfare commenced at the end of July of 2012.

From my observations, Ms. Rogers has performed remarkably well in her role as

Nebraska's Child Welfare IG, and has, with the able help of her Assistants Sarah Amsberry, Sarah Forrest, and Kevin O'Hanlon, produced a series of confidential reports (see **Neb. Rev. Stat.** §43-4325) analyzing cases that initially come to her attention in the form of "critical incident reports" that are submitted to the IG by the agencies under the Inspector General's jurisdiction. As the Public Counsel, I am required to review these reports pursuant to **Neb. Rev. Stat.** §43-4327, which also provides that the reports "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." The reports that Ms. Rogers' has completed under this statute have all been particularly thoughtful and thorough, and have been rich in terms of the high quality of the recommendations that have been offered to the Department of Health and Human Services, and to the Juvenile Probation Administration. In addition, of course, the Inspector General of Child Welfare is required by §43-4331 to prepare an annual report, which will consist of "a summary of reports and investigations made under the Office of Inspector General of Nebraska Child Welfare Act for the preceding year." According to the Act, these annual reports are to be addressed to the Governor, the Legislature, and the Nebraska Supreme Court. In addition, the IG's annual reports are also supposed to be made available to the public.

In her annual reports, one major issue that Ms. Rogers has stressed more than once has been the need for the State to hire more caseworkers in order to optimize the caseloads of those who the State relies upon to make sure that helpless children are protected from neglect and abuse. According to the latest (2016) IG's report, 158 of the 424 the Department's child welfare caseworkers had caseloads higher than the standard set out by state law. This caseload-standard concern is exactly the kind of issue that needs to be emphasized to policy-makers, and exactly the sort of issue that the Inspector General of Child Welfare needs to repeatedly bring to the forefront, as long as the caseloads do not comply with the standards set by law. I felt that it was particularly gratifying that the Ms. Roger's 2016 annual report inspired both of the state's two major newspapers to publish favorable editorials discussing issues raised in the report, including the concerns that the IG has raised on the high workload of many of the Department of Health and Human Services child welfare caseworkers. (Please see Appendix D, and Appendix E herein.)

The success of the Inspector General of Child Welfare program gave rise to another idea for an IG to be responsible for another area of Nebraska government that has been troubled in recent years. In 2015 the Nebraska Legislature passed LB 598, a bill which addressed a number of issues that were concerned with the Nebraska

corrections system. LB 598 was the product of the work of the Legislature's LR 424 Special Committee on Corrections, which had gathered documentation, summoned witnesses, and held a number of public hearings in the summer and fall of 2014. The LR 424 Committee would ultimately produce a lengthy report on the issues that the Committee had identified as continuing problems in the corrections system, and made recommendations for the reform of the corrections system in Nebraska. One of those recommendations was for the creation of an inspector general's position for corrections that would be comparable to the Inspector General of Nebraska Child Welfare. All of this led to the adoption of the Office of Inspector General of the Nebraska Correctional System Act, which was passed by the Legislature on May 21, 2015, and was signed by the Governor on May 27, 2015. The Act became effective 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. As with the Child Welfare IG, the Nebraska Corrections Inspector General position was envisioned as being a function/component of the Nebraska Legislature. Mr. Koebernick has a long history of service as a legislative staff member, working as a Legislative Aide for a number of Senators, beginning with former Senator Nancy Thompson in 1997. Over time, he has also worked for Senators Ray Janssen, Steve Lathrop, and Burke Harr. Over the years, Mr. Koebernick had demonstrated a particular interest in corrections issues. In addition, in 2014 Mr. Koebernick helped to staff the LR 424 Special Committee on Corrections, led by Senator Lathrop as Chairperson, and by Senator Les Seiler (who was the Chairperson of the Legislature's Judiciary Committee) as Vice-Chair. Mr. Koebernick's work for the LR 424 Committee gave him a unique opportunity for exposure to all of the critical and salient issues confronting Nebraska corrections at this juncture. His work for the LR 424 Committee also gave him an opportunity to hone his investigative and analytic skills, as he assisted in the difficult job of assembling and reviewing the thousands of documents that the LR 424 Special Committee received in response to its subpoenas in 2014.

After his appointment to the IG position, Mr. Koebernick spent countless hours of his first year in his new position learning everything that he could about Nebraska's corrections system. The Department of Correctional Services was generous with its own resources, and cooperated with Mr. Koebernick's efforts to learn as much as he could about the minutia of the correctional system in Nebraska. By the time that he was ready to prepare his first annual report as the correctional IG, Mr. Koebernick had acquired an intimate knowledge of the system, its front-line employees, its administrators, its policies and procedures, its facilities, its inmate population, and

its many salient issues. In order to “take the pulse” of the system’s rank-and-file employees, Mr. Koebernick also carried out a computer-based survey of correctional staff to learn as much as he could in a short time about their interests, needs, and concerns.

Although 2015 is the purview of this report, it is necessary to briefly discuss Mr. Koebernick’s first annual report, which was released on September 15, 2016. The report covered all of the critical issues in the corrections firmament, including: (1) staffing shortages and mandatory overtime; (2) the overpopulation of the Nebraska prison system; (3) the frequency of assaults on staff by inmates in the system; (4) the temporary program to relieve overcrowding somewhat through placing selected corrections inmates in county jails; (5) programming needs in the system; (6) the use of restrictive housing (administrative segregation) in the Nebraska prison system; (7) community corrections; and (8) the Department’s medical services component, in addition to many other issues. The report was rich in terms of presenting facts and ideas, and provided exactly what the correctional IG Act was looking for, in terms of the IG operating as a source of information for the legislative branch of government in Nebraska. As has been the case with the Inspector General of Child Welfare and her five annual reports, so the Corrections IG in his first annual report has established that the IG can serve as a valuable resource for the members of the Nebraska Legislature. The annual report was also gave the news media, and the public an opportunity to look behind the scenes, and to learn useful facts about the operation of the system, the system’s weaknesses, and the system’s areas in need of improvement. And, very much like Ms. Rogers in her annual reports as the Child Welfare IG, so Mr. Koebernick will hopefully continue to be a source of new ideas for means by which the corrections system can be improved going forward. When I consider Mr. Koebernick’s steep learning curve, as well as the sheer volume of the information that he needed to absorb in his first year as the corrections Inspector General, I must say that I was delighted with the quality of his splendid first annual report, and that I was particularly pleased with the fact that his report was also cited in an insightful editorial that was published by the *Lincoln Journal Star* in reference to the State’s previously “neglected prison system.” (Please see Appendix F herein.)

One interesting point that we have noted is that the two IG positions will differ in terms of how they will gather information and discover systemic weaknesses in their respective areas. Both IG’s are directed by their statutes to investigate what might be referred to as “critical incidents” that come to their attention through reports of incidents submitted to them by the agencies under their jurisdiction. (See **Neb. Rev. Stat.** §§43-4318, and 47-905, reproduced in Appendix B and Appendix C herein.) In practice, however, what we have seen that these reports from the agencies are

much more valuable to the child welfare IG than to the corrections IG. Inspector General Rogers has been able to use these incident reports as a starting point for detailed investigations of cases that have led to the discovery of many weaknesses in the state's child welfare system; in fact, the kind of discoveries that inspire new and important ideas about what has needed to be done to improve the system. On the other hand, in the context of corrections the critical incident reports have not, in my opinion, proven to be nearly as useful to Mr. Koebernick as a starting point for systems-analysis. Instead, Mr. Koebernick has made his progress in gaining insights and making an impression on the corrections system by having a high profile within the correctional facilities themselves, which he visited numerous times during his first year as corrections IG. There he has learned valuable lessons by communicating personally and directly with line-staff and inmates, the very people who are, after all, those with the most intimate knowledge of how the system works, and where its greatest needs are to be found. In addition, of course, both of the IG's maintain a close contact with the Public Counsel's Office and its staff, since we are also a good resource in terms of discovering issues of importance in the operation of state's child welfare and corrections systems through our complaint-casework.

Although the two IG positions are affiliated with the Public Counsel's Office, my practice has been to give the IG a great deal of autonomy to do their jobs as they see fit. I have taken this approach not only because I believe that minimal intrusion by the Public Counsel is what is contemplated by the IG legislation, but also because I feel that the IG's will generally do a better job without someone peering over their shoulders, and second-guessing the details of their work. I believe that I can safely say that this approach has worked well for all involved. As Public Counsel, I can be here to advise them and listen to their ideas when that is needed, but when that is not needed I have confidence that they will perform their jobs well in their capacity as representatives of the Nebraska Legislature. Both Ms. Rogers and Mr. Koebernick have greatly exceeded my expectations in their performance as Inspectors General thus far, and I am comfortable in saying that the high quality of their work product has gone very far in terms of vindicating the whole idea of the Inspector General institution as a means of promoting greater oversight and accountability in these two complex and important administrative systems. I have very high hopes that the two Inspectors General will also be able to promote meaningful policy and process reforms in the administration of these two systems through advocating for administrative and/or legislative action to improve agency policies and practices. The IG idea is working, and I believe that we can expect even better things from the IG's in the future.

Marshall Lux, Ombudsman

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 2015. The caseload total for 2015 was 3,283 cases, which is a new record high for the annual caseload of the office. This represents the fourth consecutive year that the Public Counsel's has set a new annual caseload record. The rundown of the total caseload of the Public Counsel 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

The caseload total for 2015 reflects an increase of 3.4% over the caseload total of the previous year. However, the Public Counsel's Office had an 4.33% increase in its caseload in 2014 relative to 2013, and thus it is notable that the sharp rise in the caseload seems to be slowing down.

As the figures shown above indicate, the Public Counsel's annual caseload has increased dramatically ever since the year 2000. In fact, the Public Counsel's annual caseloads has increased by nearly 50% in the fifteen years after 2000 (actual increase 48.8%). In particular, the annual caseload recorded by the Public Counsel's Office has experienced a significant increase over the last three years. The caseload total for 2015 (3,283 cases) was fully 33% higher than the caseload recorded by the office in 2012 (2,462 cases).

Strictly speaking, the 4.33% increase in the Public Counsel’s caseload from 2013 to 2014 did not reflect a remarkable upward turn in the caseload, particularly when compared with what happened in calendar year 2013, when there was an increase of 23.5% over the total caseload in 2012. Nevertheless, this new caseload level is still a record high for the Public Counsel, and the fact that the caseload was elevated in 2014 by multiple percentage points above the unexpectedly high caseload of 2013 was not a surprise. As we suggested in last year’s Annual Report, whenever we see the Public Counsel’s caseload go up by a figure nearing 25% we “are in a situation where something fundamental has changed.”

One very significant source for additional cases for the Public Counsel have been complaints received from jails. In 2008, the Nebraska Legislature passed LB 467, which extended the Public Counsel’s jurisdiction to include complaints having to do with the operation of Nebraska’s county and municipal jails. We have now reached a point where this new jurisdiction has increased the Public Counsel’s caseload by several hundred cases annually. Our jail-case totals for the years since the enactment of LB 467 are:

2008	-	61 cases
2009	-	199 cases
2010	-	204 cases
2011	-	219 cases
2012	-	287 cases
2013	-	336 cases
2014	-	403 cases
2015	-	421 cases

In effect, the total of our jail-related cases has gone up more than fivefold since 2008 (although 2008 was only for a partial year, since we maintain our statistics on a calendar-year basis, and LB 467 did not go into effect until after the year had started). Even so, as the Table indicates, the total number of jail-related cases in 2015 was more than double the total of jail cases in 2009. However, it is notable that the total number of jail-related cases in 2015 was only slightly more than the total in 2014. This suggests that we may have arrived at a plateau in terms of the number of jails complaints.

TABLE 1
SUMMARY OF CONTACTS 2015

Month	Total Inquiries	Complaint	Information
January	235	228	7
February	247	236	11
March	330	315	15
April	280	270	10
May	262	247	15
June	330	317	13
July	256	246	13
August	290	283	7
September	299	289	10
October	245	235	10
November	238	231	7
December	271	259	12
TOTAL	3283	3156	138

% of Total	100%	96%	4%
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**TABLE 2
OMBUDSMAN CONTACTS 2015**

	Total Logged Inquiries	Total Logged Complaints	Pending Complaints	Justified	Unjustified	Partially Justified	Discontinued	No Jurisdiction	No Jurisdiction But Assisted	Total Logged Information	Info Cases Pending
January	235	228	3	48	42	64	47	12	12	7	0
February	247	236	11	40	49	73	42	11	11	11	0
March	330	315	23	47	46	88	70	27	14	15	0
April	280	270	18	36	52	72	66	10	16	10	1
May	262	247	25	36	48	62	46	19	11	15	0
June	330	317	17	47	67	107	54	18	7	13	0
July	256	246	9	36	50	82	48	14	7	10	1
August	290	283	15	41	55	75	67	16	14	7	0
September	299	289	15	50	63	86	51	13	11	10	0
October	245	235	13	35	45	72	51	12	7	10	0
November	238	231	19	28	58	68	32	18	8	7	0
December	271	259	30	42	58	64	36	18	11	12	0
TOTAL	3283	3156	198	486	633	913	610	187	129	127	2
% of TOTAL	100%	96%	6%	15%	19%	28%	19%	6%	4%	4%	0%

**TABLE 3
ANALYSIS OF NO-JURISDICTION CASES – 2015**

	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	24	2	1	2	0	0	10	6	0
February	21	4	1	4	1	1	6	5	0
March	41	7	2	2	2	0	8	5	1
April	26	3	0	3	1	1	11	8	0
May	30	1	1	4	1	1	12	8	0
June	25	1	2	1	0	2	12	5	1
July	21	0	2	2	1	0	13	3	0
August	30	0	3	3	1	0	12	7	0
September	24	1	2	2	1	1	11	6	0
October	19	2	0	0	0	0	13	4	0
November	26	4	0	1	1	1	9	10	0
December	29	2	0	3	1	0	8	14	0
TOTAL	316	27	14	27	10	7	125	81	2
PERCENT	100%	9%	4%	9%	2%	3%	40%	26%	1%

**TABLE 4
MEANS OF RECEIPT AND LOCATION 2015**

	Location					Means of Receipt				
	Metropolitan Lincoln	Metropolitan Omaha	Non Metropolitan	Out of State	State Institution	Letter	Visit	Telephone	E-Mail	Fax
MONTH	C I	C I	C I	C I	C I	C I	C I	C I	C I	C I
January	36 2	19 3	58 2	5 0	110 0	129 1	2 2	72 3	24 1	1 0
February	32 3	17 3	48 2	0 0	139 3	161 4	4 0	51 2	20 5	0 0
March	52 2	24 2	52 4	7 2	180 5	194 5	7 0	84 4	30 6	0 0
April	34 4	28 0	61 2	4 0	143 4	163 4	6 0	80 4	21 2	0 0
May	43 3	28 4	43 5	3 0	130 3	139 4	11 1	71 7	25 3	1 0
June	38 3	19 2	57 3	2 0	201 5	225 4	4 0	72 3	14 6	2 0
July	27 3	23 2	55 1	4 1	137 3	165 3	6 1	51 4	24 2	0 0
August	60 2	20 0	59 2	1 0	143 3	190 4	5 0	64 1	24 2	0 0
September	59 2	32 5	62 1	2 1	134 1	181 1	3 0	79 4	26 4	0 1
October	36 3	23 3	55 2	4 1	117 1	170 1	5 0	40 1	20 8	0 0
November	34 1	24 1	63 1	4 0	105 4	147 3	6 0	53 1	23 2	2 1
December	43 2	21 3	67 4	7 0	121 3	163 3	6 3	57 1	29 5	4 0
TOTAL	494 30	278 28	680 29	43 5	1660 35	2027 37	65 7	774 35	280 46	10 2

C = Complaints, I = Information

**TABLE 5
OFFICE OF THE OMBUDSMAN - 2015 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	1	0	1	2	0	2	2	0	0	1	1	1	11
Aging	0	0	0	0	0	0	0	0	0	0	1	0	1
Agriculture	0	0	0	0	0	0	0	0	0	0	0	1	1
Arts Council	0	0	0	0	0	0	0	0	0	0	0	0	0
Attorney General	0	0	1	0	1	2	2	0	0	0	0	0	6
Auditor	0	0	0	0	0	0	0	0	0	0	0	0	0
Banking	0	1	0	0	0	1	0	0	0	1	0	1	4
Brand Committee	0	0	0	0	0	0	0	0	0	0	0	0	0
Claims Board	0	0	0	0	0	0	0	0	0	0	0	0	0
Corrections	112	145	164	129	122	197	138	149	146	139	128	154	1723
County	2	3	2	1	3	6	2	4	3	1	1	1	29
Courts	9	8	16	12	19	16	14	11	7	4	9	8	133
Crime Commission	0	0	0	0	0	0	0	0	0	0	0	0	0
Economic Development	0	0	1	0	0	0	0	1	0	0	0	0	2
Ed. Lands & Funds	0	0	0	0	0	0	0	0	0	0	0	0	0
Education	1	1	0	3	1	0	0	2	0	0	0	0	8
Environmental Quality	0	0	0	1	0	2	0	0	0	0	0	0	3
Equal Opportunity	1	0	1	1	0	0	0	1	1	0	1	0	6
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	3	2	2	1	4	0	1	1	0	5	3	25
Fire Marshal	0	0	0	0	0	0	0	0	1	0	0	0	1
Foster Care Rev Bd	0	0	0	0	0	0	0	0	0	0	1	0	1
Game and Parks	0	0	0	0	0	0	1	0	1	1	0	0	3

Governmental Subdivision	0	0	1	1	1	0	1	0	1	0	0	0	5
Governor	0	0	0	0	0	1	0	0	0	1	0	0	2
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	1	0	0	0	0	0	1
HHS Benefits	13	5	19	11	15	10	15	8	7	6	12	14	135
HHS BSDC	1	1	1	0	1	1	0	0	1	0	0	0	6
HHS Child Welfare	18	9	17	15	12	19	15	19	19	19	21	18	201
HHS Misc	4	5	11	16	15	3	4	10	8	5	7	5	93
HHS Regional Centers	5	7	9	15	7	7	8	9	9	12	6	3	91
HHS Regulation	3	5	0	3	2	3	0	1	2	0	1	1	21
HHS Vets Homes	0	1	1	2	1	0	2	0	0	0	1	0	8
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	0	0	0	0	0	0	0	0	0	0	0	0	0
Institutions	0	0	0	0	0	0	0	0	0	0	0	0	0
Insurance	1	0	0	0	1	0	1	0	1	0	0	2	6
Investment Council	0	0	0	0	0	0	0	0	0	0	0	0	0
Labor	3	0	2	5	4	1	0	3	1	0	2	4	25
Legislative	1	3	16	1	5	7	1	5	0	2	1	0	42
Library Comm	0	0	0	0	0	0	0	0	0	0	0	1	1
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	2	1	3	2	1	0	0	0	1	1	1	1	13
Mtr Veh Dealers Lic Bd	0	0	0	1	0	0	0	0	1	0	0	1	3
Municipal	5	2	6	2	3	1	2	3	1	1	2	2	30
National Guard	0	0	0	0	0	0	0	0	0	0	0	0	0
Natural Resources	0	0	0	0	0	0	0	0	0	0	0	0	0
Pardons Board	1	0	1	0	1	1	0	1	0	0	0	0	5

Parole Board	3	2	4	1	3	2	0	2	3	1	0	3	24
Patrol	0	0	0	0	1	0	1	1	1	1	2	0	7
Personnel	1	0	0	0	0	0	0	0	0	0	0	1	2
Private Matter	8	5	6	6	5	3	4	8	3	4	8	10	70
Probation Adm	0	0	0	0	1	1	0	0	2	0	1	1	6
Public Service Comm	0	0	0	0	1	0	0	0	0	0	0	0	1
Real Estate Comm	0	0	0	0	0	0	0	0	0	0	0	0	0
Retirement Systems	0	0	2	1	0	0	0	1	1	0	1	0	6
Revenue	1	0	0	2	2	0	0	0	1	0	0	0	6
Risk Management	0	0	0	0	0	0	0	0	0	0	0	0	0
Roads	1	0	1	2	2	1	2	0	2	0	1	0	12
Secretary of State	0	0	0	0	0	0	0	0	0	0	0	0	0
St. Board of Equalization	0	1	0	0	0	0	0	0	0	0	0	0	1
St. Surveyor	0	0	0	0	0	0	0	0	0	0	0	0	0
State Colleges	0	0	0	0	0	0	0	0	0	0	0	0	0
Status of Women	0	0	0	0	0	0	0	0	0	0	0	0	0
Electrical Division	0	0	0	0	0	0	0	0	0	0	0	0	0
Treasurer	0	0	1	0	1	2	2	1	1	0	0	0	8
University	0	0	0	1	3	1	0	1	2	0	0	0	8
Veterans Affairs	1	0	0	0	0	1	0	0	0	0	0	1	3
Commission for the Blind	0	0	0	0	0	0	0	1	1	0	0	0	2
Racing Commission	0	0	0	0	0	0	0	0	0	0	0	0	0
Capitol Commission	0	0	0	0	0	0	0	0	0	0	0	0	0
HHS Juv Justice	0	0	0	1	0	0	0	2	0	0	0	0	3
HHS Juv Justice-Geneva 0	2	1	0	4	1	1	1	0	1	0	0	0	11
HHS Juv Justice-Kearney	0	1	0	1	1	0	0	0	0	0	0	0	3
County Jail	30	27	36	35	21	47	41	39	43	35	38	29	421
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	14	13	13	9	12	8	8	12	26	15	8	17	155
HHS Developmental Disabilities	9	8	8	4	2	3	4	6	3	2	1	2	52
HHS Behavioral Health	0	0	0	0	0	1	1	1	0	1	0	1	5
Parole Adm	1	0	1	1	1	0	0	1	0	0	1	0	6
Inspector General for Corrections	0	0	0	0	0	0	0	0	0	1	1	0	2

TOTAL CASES	256	259	348	293	273	354	273	304	307	253	260	286	3466
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**TABLE 6
CASE DURATION REPORT 2015**

Days Open	Record Count	% of Total
1	179	6%
2	59	2%
3	52	2%
4	61	2%
5	49	2%
6	69	2%
7	59	2%
8	56	2%
9	41	1%
10	29	1%
11	29	1%
12	44	1%
13	49	2%
14	47	2%
15	51	2%
16	31	1%
17	22	1%
18	23	1%
19	26	1%
20	33	1%
21 to 30	231	7%
31 to 60	436	14%
Over 60	1422	46%
TOTAL COUNT	3099	100%

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

APPENDIX D - Lincoln Journal Star Editorial

September 21, 2016

Job one: Hire more caseworkers

By the Journal Star Editorial Board

There's a lot in the latest report from the state inspector general for child welfare, but the biggest takeaway is this: The system needs more caseworkers.

When staff has too much work to do, corners get cut, things get missed and errors are made, as Inspector General Julie Rogers wrote in her 137-page annual report.

And this is a system in which missing something, or making the wrong call, can have life-and-death consequences.

Last year there were 22 deaths or serious injuries of children involved with the child welfare or juvenile justice system.

In one case, a 4-year-old was hospitalized with a skull fracture and bruises. Before then, 11 reports of child abuse by the boy's father had been made to the state's child abuse hotline. Roger said multiple mistakes were made, including failure to follow required steps and to check with medical experts.

The report contains numerous recommendations that are valuable to staffers on the front lines and to mid-level supervisors. It calls for better coordination among agencies and more.

But to adequately deal with the root problems in the system, top executives in the Department of Health and Human Services need to focus on the chronic shortage of caseworkers.

The Legislature four years ago set minimum caseloads standards, and the executive branch has never been able to meet them.

“This is the fourth annual report issued by this office,” Rogers wrote. “And for the fourth year running, the OIG has pointed out high caseloads for child welfare caseworkers as a primary obstacle to keeping maltreated children safe and delivering quality services.”

The office of inspector general for child welfare was created to provide an outside, independent look at the system with the goal of identifying systemic issues and recommendations for improvement.

In her cover letter to Gov. Pete Ricketts, state Supreme Court judges and state senators, Rogers wrote, “Until Nebraska’s leaders commit additional resources to lower caseloads, the child welfare system – and the children and families it is designed to serve – will continue to suffer.”

It’s true, as Russ Reno of HHS pointed out, that the report focuses on the worst cases and that hundreds of children in the system were kept safe. And it’s also true that there is evidence the system is improving. Last year for the first time the department met all six federal child welfare standards. The state has boosted financial support in recent years.

But to really improve the system and do a better job of helping kids who find themselves in the child welfare system through no fault of their own, the system simply needs more caseworkers.

APPENDIX E - Omaha World-Herald Editorial

September 16, 2016

Child welfare workers face big duties, big consequences

World-Herald Editorial

How difficult but important is the job of Nebraska case workers helping children in crisis? A new report from Julie Rogers, the state inspector general for child welfare, provides a sobering example.

Nebraska child welfare workers, the report says, need to be better trained to study the bodies of babies for signs of abuse.

The workers need to understand how to look not only for major bruises but also for more subtle visible signs that can indicate an infant is suffering from physical trauma.

That is an immense responsibility for these workers to carry, to put it mildly. And it's a task that child welfare workers across Nebraska routinely face.

The judgments these workers make have huge ramifications for children and families.

Most times, child protection workers in Nebraska get it right in handling the many requirements of their cases. Both the Nebraska Department of Health and Human Services and the Nebraska Families Collaborative (a private agency that manages the cases in Douglas and Sarpy Counties) have been meeting all six federal child welfare standards of late.

But sometimes the system falls short. Here and elsewhere in the country, children are sometimes seriously injured or even die when the state should have done more to provide protection.

Rogers reports annually on investigations she has conducted and complaints she has received. Her latest findings, based on 26 investigations, point to several areas in need of improvement:

- Inadequate training for initial assessment of cases, medical aspects of abuse and safe sleep for infants.
- Miscommunication and failure to work together properly among child welfare agencies and entities such as local law enforcement, medical professionals and county attorneys.

- Inadequate coordination with the State Administrative Office of Probation.
- Failures in handling cases by the state hotline.

These problems don't occur in most cases, nor are they found only in Nebraska. But these problems arise often enough, and with serious enough consequences, that coordinated efforts need to be made to address them.

Rogers' report has some positive news on this score. Both HHS and the Nebraska Families Collaborative agree with her recommendations, and in her report, describe steps they're taking on the issues she identified.

Training procedures are being adopted or refined, for example, so that child welfare workers receive the instruction needed to understand how to check a baby's body for all signs of potential abuse.

A more widespread problem involves high caseloads and workloads for many front-line workers. This issue remains a central challenge, as do staff recruitment and retention.

So there is the ongoing issue of how much the state should allocate to help increase staff to make caseloads more manageable. The state needs also to find funds to cover the recent increase in the number of child welfare cases the Nebraska Families Collaborative is handling.

Maybe today, maybe tomorrow, a family protection worker somewhere in Nebraska will visit a home and begin closely looking over a baby. She'll check for bruises. Hopefully she'll check for other, more subtle signs.

A lot will depend on the decisions she makes.

Nebraska needs to do everything it can to make sure that baby gets the protection it needs — and that the worker gets the support she needs so she can carry out her duties the right way.

APPENDIX F - Lincoln Journal Star Editorial

September 24, 2016

Bill is due for neglected prison system

By the Journal Star Editorial Board

State Corrections Director Scott Frakes described his proposed budget, which calls for a \$15.3 million increase in funding and adding 164.5 staff positions, as “ambitious.”

It is, and it should be.

Problems in the department festered unseen and ignored during the administration of former Gov. Dave Heineman, who disregarded a consultant report in 2006 calling for \$150 million in prison construction.

Heineman opted for a no-cost approach that has turned out to be more costly in the long term. Even before he left office the department released hundreds of prisoners too early in an inept administrative bugle. Since then there has been a prison riot in Tecumseh, another major disturbance in Lincoln, an escape by two dangerous felons, and scores of assaults on corrections officers.

“It appears to me that we’ve kept the prisons on the back burner, wishing it would go away, and it hasn’t,” Sen. Robert Hilkemann said. “We’re going to have find solutions.”

Nebraska’s new inspector general, Doug Koebernick last week reported that Nebraska’s prison system is the fourth most overcrowded in the country.

Of the positions that would be added, 96 are described in Frakes’ proposal as protective services staff. Just adding position on paper, of course, will not solve the problem. The

corrections department is also wrestling with the problem of staff retention, and currently is trying to fill 125 vacant positions.

Another key proposed expenditure calls for construction of a \$75 million reception and treatment center at the Lincoln Correctional Center, which would include 32 additional beds for the sickest and most dangerous mentally ill men. “To me this is so important,” Frakes said. “We’d have properly designed space for people who are actively psychotic, treatment resistant, violent.”

Square in the path of legislative approval for the sharp increase in the corrections budget is a budget shortfall estimated by the Legislative Fiscal Office at \$113.7 million in the current year fiscal year that ends June 30, 2017.

It’s important that Gov. Pete Ricketts has voiced support for the proposal. Other leaders have also voiced support in unambiguous terms.

“We’re going to have to look past the budget shortfall and prioritize it,” said Dan Watermeier of Syracuse, whose district includes the Tecumseh State Correctional Institution.

He’s right. Inspector General Koebernick put it succinctly: “(This) is an agency that clearly does not have the necessary resources needed to fulfill its mission.”

The bill for the long years of neglect has come due. It’s time to pay it. Public safety is at stake.

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