

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 347

Introduced by Krist, 10.

Read first time January 15, 2015

Committee: Executive Board

1 A BILL FOR AN ACT relating to the office of Inspector General of Nebraska
2 Child Welfare; to amend sections 43-4301, 43-4302, 43-4303, 43-4304,
3 43-4316, 43-4318, 43-4320, 43-4321, 43-4324, 43-4325, 43-4326,
4 43-4327, 43-4328, 43-4330, and 43-4331, Revised Statutes Cumulative
5 Supplement, 2014; to authorize investigations and reviews of the
6 juvenile justice system; to define terms; to provide powers and
7 duties; to harmonize provisions; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-4301, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 43-4301 Sections 43-4301 to 43-4331 and sections 5 to 8 of this act
4 shall be known and may be cited as the Office of Inspector General of
5 Nebraska Child Welfare Act.

6 Sec. 2. Section 43-4302, Revised Statutes Cumulative Supplement,
7 2014, is amended to read:

8 43-4302 (1) It is the intent of the Legislature to:

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

12 (b) Assist in improving operations of the ~~department and the~~
13 Nebraska child welfare system;

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

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

26 (2) It is not the intent of the Legislature in enacting the Office
27 of Inspector General of Nebraska Child Welfare Act to interfere with the
28 duties of the Legislative Auditor or the Legislative Fiscal Analyst or to
29 interfere with the statutorily defined investigative responsibilities or
30 prerogatives of any officer, agency, board, bureau, commission,
31 association, society, or institution of the executive branch of state

1 government, except that the act does not preclude an inquiry on the sole
2 basis that another agency has the same responsibility. The act shall not
3 be construed to interfere with or supplant the responsibilities or
4 prerogatives of the Governor to investigate, monitor, and report on the
5 activities of the agencies, boards, bureaus, commissions, associations,
6 societies, and institutions of the executive branch under his or her
7 administrative direction.

8 Sec. 3. Section 43-4303, Revised Statutes Cumulative Supplement,
9 2014, is amended to read:

10 43-4303 For purposes of the Office of Inspector General of Nebraska
11 Child Welfare Act, the definitions found in sections 43-4304 to 43-4316
12 and sections 5 to 8 of this act apply.

13 Sec. 4. Section 43-4304, Revised Statutes Cumulative Supplement,
14 2014, is amended to read:

15 43-4304 Administrator means a person charged with administration of
16 a program, an office, or a division of the department or administration
17 of a private agency or licensed child care facility, the probation
18 administrator, or the executive director.

19 Sec. 5. Child welfare system means public and private agencies and
20 parties that provide or effect services or supervision to system-involved
21 children and their families.

22 Sec. 6. Commission means the Nebraska Commission on Law Enforcement
23 and Criminal Justice.

24 Sec. 7. Executive director means the executive director of the
25 commission.

26 Sec. 8. Juvenile services division means the Juvenile Services
27 Division of the Office of Probation Administration.

28 Sec. 9. Section 43-4316, Revised Statutes Cumulative Supplement,
29 2014, is amended to read:

30 43-4316 Responsible individual means a foster parent, a relative
31 provider of foster care, or an employee of the department, the juvenile

1 services division, the commission, a foster home, a private agency, a
2 licensed child care facility, or another provider of child welfare
3 programs and services responsible for the care or custody of records,
4 documents, and files.

5 Sec. 10. Section 43-4318, Revised Statutes Cumulative Supplement,
6 2014, is amended to read:

7 43-4318 (1) The office shall investigate:

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

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

15 (ii) The juvenile services division by an employee of or person
16 under contract with the juvenile services division, a private agency, a
17 licensed facility, a foster parent, or any other provider of juvenile
18 justice services;

19 (iii) The commission by an employee of or person under contract with
20 the commission related to programs and services supported by the Nebraska
21 County Juvenile Services Plan Act, the Community-based Juvenile Services
22 Aid Program, juvenile pretrial diversion programs, or inspections of
23 juvenile facilities; and

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

26 (b) Death or serious injury in foster homes, private agencies, child
27 care facilities, juvenile detention facilities, staff secure juvenile
28 facilities, and other programs and facilities licensed by or under
29 contract with the department or the juvenile services division; and
30 ~~Office of Probation Administration and death~~

31 (c) Death or serious injury in any case in which services are

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

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

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

22 (3) Notwithstanding the fact that a criminal investigation, a
23 criminal prosecution, or both are in progress, all law enforcement
24 agencies and prosecuting attorneys shall cooperate with any investigation
25 conducted by the Inspector General and shall, immediately upon request by
26 the Inspector General, provide the Inspector General with copies of all
27 law enforcement reports which are relevant to the Inspector General's
28 investigation. All law enforcement reports which have been provided to
29 the Inspector General pursuant to this section are not public records for
30 purposes of sections 84-712 to 84-712.09 and shall not be subject to
31 discovery by any other person or entity. Except to the extent that

1 disclosure of information is otherwise provided for in the Office of
2 Inspector General of Nebraska Child Welfare Act, the Inspector General
3 shall maintain the confidentiality of all law enforcement reports
4 received pursuant to its request under this section. Law enforcement
5 agencies and prosecuting attorneys shall, when requested by the Inspector
6 General, collaborate with the Inspector General regarding all other
7 information relevant to the Inspector General's investigation. If the
8 Inspector General in conjunction with the Public Counsel determines it
9 appropriate, the Inspector General may, when requested to do so by a law
10 enforcement agency or prosecuting attorney, suspend an investigation by
11 the office until a criminal investigation or prosecution is completed or
12 has proceeded to a point that, in the judgment of the Inspector General,
13 reinstatement of the Inspector General's investigation will not impede or
14 infringe upon the criminal investigation or prosecution. Under no
15 circumstance shall the Inspector General interview any minor who has
16 already been interviewed by a law enforcement agency, personnel of the
17 Division of Children and Family Services of the department, or staff of a
18 child advocacy center in connection with a relevant ongoing investigation
19 of a law enforcement agency.

20 Sec. 11. Section 43-4320, Revised Statutes Cumulative Supplement,
21 2014, is amended to read:

22 43-4320 (1) Complaints to the office may be made in writing. The
23 office shall also maintain a toll-free telephone line for complaints. A
24 complaint shall be evaluated to determine if it alleges possible
25 misconduct, misfeasance, malfeasance, or violation of a statute or of
26 rules and regulations pursuant to section 43-4318 ~~of the department by an~~
27 ~~employee of or a person under contract with the department, a private~~
28 ~~agency, or a licensed child care facility, a foster parent, or any other~~
29 ~~provider of child welfare services or alleges a basis for discipline~~
30 ~~pursuant to the Uniform Credentialing Act.~~ All complaints shall be
31 evaluated to determine whether a full investigation is warranted.

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

3 (a) The complaint alleges misconduct, misfeasance, malfeasance,
4 violation of a statute or of rules and regulations pursuant to section
5 43-4318 of the department, or a basis for discipline pursuant to the
6 Uniform Credentialing Act;

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

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

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

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

20 Sec. 12. Section 43-4321, Revised Statutes Cumulative Supplement,
21 2014, is amended to read:

22 43-4321 All employees of the department, the juvenile services
23 division, or the commission, all foster parents, and all owners,
24 operators, managers, supervisors, and employees of private agencies,
25 licensed child care facilities, juvenile detention facilities, staff
26 secure juvenile facilities, and other providers of child welfare services
27 or juvenile justice services shall cooperate with the office. Cooperation
28 includes, but is not limited to, the following:

29 (1) Provision of full access to and production of records and
30 information. Providing access to and producing records and information
31 for the office is not a violation of confidentiality provisions under any

1 law, statute, rule, or regulation if done in good faith for purposes of
2 an investigation under the Office of Inspector General of Nebraska Child
3 Welfare Act;

4 (2) Fair and honest disclosure of records and information reasonably
5 requested by the office in the course of an investigation under the act;

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

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

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

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

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

17 Sec. 13. Section 43-4324, Revised Statutes Cumulative Supplement,
18 2014, is amended to read:

19 43-4324 (1) In conducting investigations, the office shall access
20 all relevant records through subpoena, compliance with a request of the
21 office, and voluntary production. The office may request or subpoena any
22 record necessary for the investigation from the department, the juvenile
23 services division, the commission, a foster parent, a licensed child care
24 facility, a juvenile detention facility, a staff secure juvenile
25 facility, or a private agency that is pertinent to an investigation. All
26 case files, licensing files, medical records, financial and
27 administrative records, and records required to be maintained pursuant to
28 applicable licensing rules shall be produced for review by the office in
29 the course of an investigation.

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

31 (a) Production of all records requested;

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

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

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

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

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

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

30 (b) That the responsible individual or the administrator agrees to
31 immediately forward to the office any relevant records received, located,

1 or generated after the visit;

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

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

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

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

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

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

26 Sec. 14. Section 43-4325, Revised Statutes Cumulative Supplement,
27 2014, is amended to read:

28 43-4325 (1) Reports of investigations conducted by the office shall
29 not be distributed beyond the entity that is the subject of the report
30 without the consent of the Inspector General.

31 (2) Except when a report is provided to a guardian ad litem or an

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

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

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

19 Sec. 15. Section 43-4326, Revised Statutes Cumulative Supplement,
20 2014, is amended to read:

21 43-4326 (1) The department shall provide the Public Counsel and the
22 Inspector General with direct computer access to all computerized
23 records, reports, and documents maintained by the department in
24 connection with administration of the Nebraska child welfare system.

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

29 Sec. 16. Section 43-4327, Revised Statutes Cumulative Supplement,
30 2014, is amended to read:

31 43-4327 (1) The Inspector General's report of an investigation shall

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

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

20 (3) A report that identifies misconduct, misfeasance, malfeasance,
21 or violation of statute, rules, or regulations by an employee of the
22 department, the juvenile services division, or the commission, a private
23 agency, a licensed child care facility, or another provider that is
24 relevant to providing appropriate supervision of an employee may be
25 shared with the employer of such employee. The employer may not further
26 distribute the report or any confidential information contained in the
27 report.

28 Sec. 17. Section 43-4328, Revised Statutes Cumulative Supplement,
29 2014, is amended to read:

30 43-4328 (1) Within fifteen days after a report is presented to the
31 director, the probation administrator, or the executive director under

1 section 43-4327, he or she shall determine whether to accept, reject, or
2 request in writing modification of the recommendations contained in the
3 report. The Inspector General, with input from the Public Counsel, may
4 consider the director's, probation administrator's, or executive
5 director's request for modifications but is not obligated to accept such
6 request. Such report shall become final upon the decision of the
7 director, the probation administrator, or the executive director to
8 accept or reject the recommendations in the report or, if the director,
9 the probation administrator, or the executive director requests
10 modifications, within fifteen days after such request or after the
11 Inspector General incorporates such modifications, whichever occurs
12 earlier.

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

28 (3) If the Inspector General does not issue a corrected report
29 pursuant to subsection (2) of this section, or if the corrected report
30 does not address all issues raised in the written response, the foster
31 parent, private agency, licensed child care facility, or other provider

1 may request that its written response, or portions of the response, be
2 appended to the report or corrected report.

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

6 Sec. 18. Section 43-4330, Revised Statutes Cumulative Supplement,
7 2014, is amended to read:

8 43-4330 The Office of Inspector General of Nebraska Child Welfare
9 Act does not require the Inspector General to investigate all complaints.
10 The Inspector General, with input from the Public Counsel, shall
11 prioritize and select investigations and inquiries that further the
12 intent of the act and assist in legislative oversight of the Nebraska
13 child welfare system and juvenile justice system. If the Inspector
14 General determines that he or she will not investigate a complaint, the
15 Inspector General may recommend to the parties alternative means of
16 resolution of the issues in the complaint.

17 Sec. 19. Section 43-4331, Revised Statutes Cumulative Supplement,
18 2014, is amended to read:

19 43-4331 On or before September 15 of each year, the Inspector
20 General shall provide to the Health and Human Services Committee of the
21 Legislature, the Judiciary Committee of the Legislature, the Supreme
22 Court, and the Governor a summary of reports and investigations made
23 under the Office of Inspector General of Nebraska Child Welfare Act for
24 the preceding year. The summary provided to the committee shall be
25 provided electronically. The summaries shall detail recommendations and
26 the status of implementation of recommendations and may also include
27 recommendations to the committee regarding issues discovered through
28 investigation, audits, inspections, and reviews by the office that will
29 increase accountability and legislative oversight of the Nebraska child
30 welfare system, improve operations of the department, the juvenile
31 services division, the commission, and the Nebraska child welfare system,

1 or deter and identify fraud, abuse, and illegal acts. Such summary shall
2 include summaries of alternative response cases under alternative
3 response demonstration projects implemented in accordance with sections
4 28-710.01, 28-712, and 28-712.01 reviewed by the Inspector General. The
5 summaries shall not contain any confidential or identifying information
6 concerning the subjects of the reports and investigations.

7 Sec. 20. Original sections 43-4301, 43-4302, 43-4303, 43-4304,
8 43-4316, 43-4318, 43-4320, 43-4321, 43-4324, 43-4325, 43-4326, 43-4327,
9 43-4328, 43-4330, and 43-4331, Revised Statutes Cumulative Supplement,
10 2014, are repealed.