

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 207

FINAL READING

Introduced by Krist, 10.

Read first time January 10, 2017

Committee: Executive Board

1 A BILL FOR AN ACT relating to the Office of Inspector General of Nebraska
2 Child Welfare Act; to amend sections 43-4301, 43-4318, 43-4323,
3 43-4325, 43-4327, and 43-4328, Reissue Revised Statutes of Nebraska;
4 to change provisions relating to investigative duties, counsel fees,
5 and distribution of and responses to reports; to prohibit certain
6 personnel actions as prescribed; to harmonize provisions; and to
7 repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-4301, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 43-4301 Sections 43-4301 to 43-4331 and section 7 of this act shall
4 be known and may be cited as the Office of Inspector General of Nebraska
5 Child Welfare Act.

6 Sec. 2. Section 43-4318, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 43-4318 (1) The office shall investigate:

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

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

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

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

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

27 (b) Death or serious injury in foster homes, private agencies, child
28 care facilities, juvenile detention facilities, staff secure juvenile
29 facilities, and other programs and facilities licensed by or under
30 contract with the department or the juvenile services division when the
31 office, upon review, determines the death or serious injury did not occur

1 by chance; and

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

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

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

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

29 (4) Notwithstanding the fact that a criminal investigation, a
30 criminal prosecution, or both are in progress, all law enforcement
31 agencies and prosecuting attorneys shall cooperate with any investigation

1 conducted by the Inspector General and shall, immediately upon request by
2 the Inspector General, provide the Inspector General with copies of all
3 law enforcement reports which are relevant to the Inspector General's
4 investigation. All law enforcement reports which have been provided to
5 the Inspector General pursuant to this section are not public records for
6 purposes of sections 84-712 to 84-712.09 and shall not be subject to
7 discovery by any other person or entity. Except to the extent that
8 disclosure of information is otherwise provided for in the Office of
9 Inspector General of Nebraska Child Welfare Act, the Inspector General
10 shall maintain the confidentiality of all law enforcement reports
11 received pursuant to its request under this section. Law enforcement
12 agencies and prosecuting attorneys shall, when requested by the Inspector
13 General, collaborate with the Inspector General regarding all other
14 information relevant to the Inspector General's investigation. If the
15 Inspector General in conjunction with the Public Counsel determines it
16 appropriate, the Inspector General may, when requested to do so by a law
17 enforcement agency or prosecuting attorney, suspend an investigation by
18 the office until a criminal investigation or prosecution is completed or
19 has proceeded to a point that, in the judgment of the Inspector General,
20 reinstatement of the Inspector General's investigation will not impede or
21 infringe upon the criminal investigation or prosecution. Under no
22 circumstance shall the Inspector General interview any minor who has
23 already been interviewed by a law enforcement agency, personnel of the
24 Division of Children and Family Services of the department, or staff of a
25 child advocacy center in connection with a relevant ongoing investigation
26 of a law enforcement agency.

27 Sec. 3. Section 43-4323, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 43-4323 The Inspector General may issue a subpoena, enforceable by
30 action in an appropriate court, to compel any person to appear, give
31 sworn testimony, or produce documentary or other evidence deemed relevant

1 to a matter under his or her inquiry. A person thus required to provide
2 information shall be paid the same fees and travel allowances and shall
3 be accorded the same privileges and immunities as are extended to
4 witnesses in the district courts of this state and shall also be entitled
5 to have counsel present while being questioned. Any fees associated with
6 counsel present under this section shall not be the responsibility of the
7 office of Inspector General of Nebraska Child Welfare.

8 Sec. 4. Section 43-4325, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 43-4325 (1) Reports of investigations conducted by the office shall
11 not be distributed beyond the entity that is the subject of the report
12 without the consent of the Inspector General.

13 (2) Except when a report is provided to a guardian ad litem or an
14 attorney in the juvenile court pursuant to subsection (2) of section
15 43-4327, the office shall redact confidential information before
16 distributing a report of an investigation. The office may disclose
17 confidential information to the chairperson of the Health and Human
18 Services Committee of the Legislature or the chairperson of the Judiciary
19 Committee of the Legislature when such disclosure is, in the judgment of
20 the Public Counsel, desirable to keep the chairperson informed of
21 important events, issues, and developments in the Nebraska child welfare
22 system.

23 (3)(a) A summarized final report based on an investigation may be
24 publicly released in order to bring awareness to systemic issues.

25 (b) Such report shall be released only:

26 (i) After a disclosure is made to the appropriate chairperson or
27 chairpersons pursuant to subsection (2) of this section; and

28 (ii) If a determination is made by the Inspector General with the
29 appropriate chairperson that doing so would be in the best interest of
30 the public.

31 (c) If there is disagreement about whether releasing the report

1 would be in the best interest of the public, the chairperson of the
2 Executive Board of the Legislative Council may be asked to make the final
3 decision.

4 (4) ~~(3)~~ Records and documents, regardless of physical form, that are
5 obtained or produced by the office in the course of an investigation are
6 not public records for purposes of sections 84-712 to 84-712.09. Reports
7 of investigations conducted by the office are not public records for
8 purposes of sections 84-712 to 84-712.09.

9 (5) ~~(4)~~ The office may withhold the identity of sources of
10 information to protect from retaliation any person who files a complaint
11 or provides information in good faith pursuant to the Office of Inspector
12 General of Nebraska Child Welfare Act.

13 Sec. 5. Section 43-4327, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 43-4327 (1) The Inspector General's report of an investigation shall
16 be in writing to the Public Counsel and shall contain recommendations.
17 The report may recommend systemic reform or case-specific action,
18 including a recommendation for discharge or discipline of employees or
19 for sanctions against a foster parent, private agency, licensed child
20 care facility, or other provider of child welfare services or juvenile
21 justice services. All recommendations to pursue discipline shall be in
22 writing and signed by the Inspector General. A report of an investigation
23 shall be presented to the director, the probation administrator, or the
24 executive director within fifteen days after the report is presented to
25 the Public Counsel.

26 (2) Any person receiving a report under this section shall not
27 further distribute the report or any confidential information contained
28 in the report beyond the entity that is the subject of the report. The
29 Inspector General, upon notifying the Public Counsel and the director,
30 the probation administrator, or the executive director, may distribute
31 the report, to the extent that it is relevant to a child's welfare, to

1 the guardian ad litem and attorneys in the juvenile court in which a case
2 is pending involving the child or family who is the subject of the
3 report. The report shall not be distributed beyond the parties except
4 through the appropriate court procedures to the judge.

5 (3) A report that identifies misconduct, misfeasance, malfeasance,
6 or violation of statute, rules, or regulations by an employee of the
7 department, the juvenile services division, the commission, a private
8 agency, a licensed child care facility, or another provider that is
9 relevant to providing appropriate supervision of an employee may be
10 shared with the employer of such employee. The employer may not further
11 distribute the report or any confidential information contained in the
12 report.

13 Sec. 6. Section 43-4328, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 43-4328 (1) Within fifteen days after a report is presented to the
16 director, the probation administrator, or the executive director under
17 section 43-4327, he or she shall determine whether to accept, reject, or
18 request in writing modification of the recommendations contained in the
19 report. The written response may include corrections of factual errors.
20 The Inspector General, with input from the Public Counsel, may consider
21 the director's, probation administrator's, or executive director's
22 request for modifications but is not obligated to accept such request.
23 Such report shall become final upon the decision of the director, the
24 probation administrator, or the executive director to accept or reject
25 the recommendations in the report or, if the director, the probation
26 administrator, or the executive director requests modifications, within
27 fifteen days after such request or after the Inspector General
28 incorporates such modifications, whichever occurs earlier.

29 (2) After the recommendations have been accepted, rejected, or
30 modified ~~Within fifteen days after the report is presented to the~~
31 ~~director, the probation administrator, or the executive director, the~~

1 report shall be presented to the foster parent, private agency, licensed
2 child care facility, or other provider of child welfare services or
3 juvenile justice services that is the subject of the report and to
4 persons involved in the implementation of the recommendations in the
5 report. Within ~~thirty~~ ~~forty-five~~ days after receipt of the report, the
6 foster parent, private agency, licensed child care facility, or other
7 provider may submit a written response to the office to correct any
8 factual errors in the report and shall determine whether to accept,
9 reject, or request in writing modification of the recommendations
10 contained in the report. The Inspector General, with input from the
11 Public Counsel, shall consider all materials submitted under this
12 subsection to determine whether a corrected report shall be issued. If
13 the Inspector General determines that a corrected report is necessary,
14 the corrected report shall be issued within fifteen days after receipt of
15 the written response.

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

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

25 Sec. 7. Any person who has authority to recommend, approve, direct,
26 or otherwise take or affect personnel action shall not, with respect to
27 such authority:

28 (1) Take personnel action against an employee because of the
29 disclosure of information by the employee to the office which the
30 employee reasonably believes evidences wrongdoing under the Office of
31 Inspector General of Nebraska Child Welfare Act;

1 (2) Take personnel action against an employee as a reprisal for the
2 submission of an allegation of wrongdoing under the act to the office by
3 such employee; or

4 (3) Take personnel action against an employee as a reprisal for
5 providing information or testimony pursuant to an investigation by the
6 office.

7 Sec. 8. Original sections 43-4301, 43-4318, 43-4323, 43-4325,
8 43-4327, and 43-4328, Reissue Revised Statutes of Nebraska, are repealed.