

AMENDMENTS TO LB 561

(Amendments to AM1394)

Introduced by Ashford

1 1. Insert the following new sections:

2 Sec. 57. Section 43-4314, Revised Statutes Cumulative
3 Supplement, 2012, is amended to read:

4 43-4314 Private agency means a child welfare agency
5 that contracts with the department or the Office of Probation
6 Administration or contracts to provide services to another child
7 welfare agency that contracts with the department or the Office of
8 Probation Administration.

9 Sec. 58. Section 43-4318, Revised Statutes Cumulative
10 Supplement, 2012, is amended to read:

11 43-4318 (1) The office shall investigate:

12 (a) Allegations or incidents of possible misconduct,
13 misfeasance, malfeasance, or violations of statutes or of rules
14 or regulations of the department by an employee of or person
15 under contract with the department, a private agency, a licensed
16 child care facility, a foster parent, or any other provider of
17 child welfare services or which may provide a basis for discipline
18 pursuant to the Uniform Credentialing Act; and

19 (b) Death or serious injury in foster homes, private
20 agencies, child care facilities, juvenile detention facilities,
21 staff secure juvenile facilities, and other programs and facilities
22 licensed by or under contract with the department or Office of

1 Probation Administration and death or serious injury in any case in
2 which services are provided by the department to a child or his or
3 her parents or any case involving an investigation under the Child
4 Protection Act, which case has been open for one year or less.
5 The department and Office of Probation Administration shall report
6 all cases of death or serious injury of a child in a foster home,
7 private agency, child care facility or program, or other program
8 or facility licensed by the department to the Inspector General
9 as soon as reasonably possible after the department or Office of
10 Probation Administration learns of such death or serious injury.
11 For purposes of this subdivision, serious injury means an injury or
12 illness caused by suspected abuse, neglect, or maltreatment which
13 leaves a child in critical or serious condition.

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

19 (3) Notwithstanding the fact that a criminal
20 investigation, a criminal prosecution, or both are in progress, all
21 law enforcement agencies and prosecuting attorneys shall cooperate
22 with any investigation conducted by the Inspector General and
23 shall, immediately upon request by the Inspector General, provide
24 the Inspector General with copies of all law enforcement reports
25 which are relevant to the Inspector General's investigation. All
26 law enforcement reports which have been provided to the Inspector
27 General pursuant to this section are not public records for

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

24 Sec. 59. Section 43-4320, Revised Statutes Cumulative
25 Supplement, 2012, is amended to read:

26 43-4320 (1) Complaints to the office may be made in
27 writing. The office shall also maintain a toll-free telephone line

1 for complaints. A complaint shall be evaluated to determine if it
2 alleges possible misconduct, misfeasance, malfeasance, or violation
3 of a statute or of rules and regulations of the department by
4 an employee of or a person under contract with the department,
5 a private agency, or a licensed child care facility, a foster
6 parent, or any other provider of child welfare services or alleges
7 a basis for discipline pursuant to the Uniform Credentialing Act.
8 All complaints shall be evaluated to determine whether a full
9 investigation is warranted.

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

12 (a) The complaint alleges misconduct, misfeasance,
13 malfeasance, violation of a statute or of rules and regulations of
14 the department, or a basis for discipline pursuant to the Uniform
15 Credentialing Act;

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

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

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

26 (4) When a full investigation is opened on a private
27 agency that contracts with the Office of Probation Administration,

1 the Inspector General shall give notice of such investigation to
2 the Office of Probation Administration.

3 Sec. 60. Section 43-4321, Revised Statutes Cumulative
4 Supplement, 2012, is amended to read:

5 43-4321 All employees of the department, all foster
6 parents, and all owners, operators, managers, supervisors, and
7 employees of private agencies, licensed child care facilities,
8 juvenile detention facilities, staff secure juvenile facilities,
9 and other providers of child welfare services shall cooperate
10 with the office. Cooperation includes, but is not limited to, the
11 following:

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

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

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

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

27 (5) Not requiring employees to gain supervisory approval

1 prior to filing a complaint with or providing records or
2 information to the office;

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

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

8 Sec. 61. Section 43-4324, Revised Statutes Cumulative
9 Supplement, 2012, is amended to read:

10 43-4324 (1) In conducting investigations, the office
11 shall access all relevant records through subpoena, compliance
12 with a request of the office, and voluntary production. The
13 office may request or subpoena any record necessary for the
14 investigation from the department, a foster parent, a licensed
15 child care facility, juvenile detention facility, staff secure
16 juvenile facility, or a private agency that is pertinent to an
17 investigation. All case files, licensing files, medical records,
18 financial and administrative records, and records required to be
19 maintained pursuant to applicable licensing rules shall be produced
20 for review by the office in the course of an investigation.

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

22 (a) Production of all records requested;

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

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

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

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

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

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

1 the request were produced;

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

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

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

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

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

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

27 (9) All investigations conducted by the office shall

1 be conducted in a manner designed to ensure the preservation of
2 evidence for possible use in a criminal prosecution.

3 Sec. 62. Section 81-8,245, Revised Statutes Cumulative
4 Supplement, 2012, is amended to read:

5 81-8,245 The Public Counsel shall have the power to:

6 (1) Investigate, on complaint or on his or her own
7 motion, any administrative act of any administrative agency;

8 (2) Prescribe the methods by which complaints are to be
9 made, received, and acted upon; determine the scope and manner
10 of investigations to be made; and, subject to the requirements
11 of sections 81-8,240 to 81-8,254, determine the form, frequency,
12 and distribution of his or her conclusions, recommendations, and
13 proposals;

14 (3) Conduct inspections of the premises, or any parts
15 thereof, of any administrative agency or any property owned,
16 leased, or operated by any administrative agency as frequently as
17 is necessary, in his or her opinion, to carry out duties prescribed
18 under sections 81-8,240 to 81-8,254;

19 (4) Request and receive from each administrative agency,
20 and such agency shall provide, the assistance and information
21 the counsel deems necessary for the discharge of his or her
22 responsibilities; inspect and examine the records and documents
23 of all administrative agencies notwithstanding any other provision
24 of law; and enter and inspect premises within any administrative
25 agency's control;

26 (5) Issue a subpoena, enforceable by action in an
27 appropriate court, to compel any person to appear, give sworn

1 testimony, or produce documentary or other evidence deemed relevant
2 to a matter under his or her inquiry. A person thus required
3 to provide information shall be paid the same fees and travel
4 allowances and shall be accorded the same privileges and immunities
5 as are extended to witnesses in the district courts of this state
6 and shall also be entitled to have counsel present while being
7 questioned;

8 (6) Undertake, participate in, or cooperate with general
9 studies or inquiries, whether or not related to any particular
10 administrative agency or any particular administrative act, if he
11 or she believes that they may enhance knowledge about or lead to
12 improvements in the functioning of administrative agencies;

13 (7) Make investigations, reports, and recommendations
14 necessary to carry out his or her duties under the State Government
15 Effectiveness Act; and

16 (8) Carry out his or her duties under the Office of
17 Inspector General of Nebraska Child Welfare Act. If any of
18 the provisions of sections 81-8,240 to 81-8,254 conflict with
19 provisions of the Office of Inspector General of Nebraska Child
20 Welfare Act, the provisions of such act shall control; ~~and-~~

21 (9) Investigate and address the complaint and case of:

22 (a) Any juvenile committed to the custody of a youth
23 rehabilitation and treatment center; and

24 (b) Any juvenile released from a youth rehabilitation
25 and treatment center for reentry into the community, while
26 that juvenile is subject to the Community and Family Reentry
27 Process, or to any other service or treatment program in which

1 the juvenile may be involved after his or her release from a
2 youth rehabilitation and treatment center, whether that service
3 or program is administrated by the Office of Juvenile Services
4 or a private provider in the community. The Office of Juvenile
5 Services and private providers in the community shall cooperate
6 with any investigation conducted by the Public Counsel pursuant to
7 this subdivision, and provide all documentation and information
8 requested by the Public Counsel in connection with such an
9 investigation.

10 2. Renumber the remaining sections and correct the
11 repealer accordingly.