

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 606**

Introduced by Mello, 5; Bolz, 29; Chambers, 11; Krist, 10; Schumacher,  
22; Seiler, 33.

Read first time January 21, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to state government; to amend sections  
2 81-8,241, 81-8,244, 81-8,245, 83-1,135, 83-962, and 84-901, Reissue  
3 Revised Statutes of Nebraska; to adopt the Office of Inspector  
4 General of the Nebraska Correctional System Act; to change  
5 provisions relating to the Public Counsel; to require access to  
6 records by the Public Counsel; to mandate a declaration by the  
7 Governor of a correctional system overcrowding emergency as  
8 prescribed; to redefine a term; to harmonize provisions; and to  
9 repeal the original sections.  
10 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 29 of this act shall be known and may be  
2 cited as the Office of Inspector General of the Nebraska Correctional  
3 System Act.

4           Sec. 2. (1) It is the intent of the Legislature to:

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

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

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

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

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

31           Sec. 3. For purposes of the Office of Inspector General of the

1 Nebraska Correctional System Act, the definitions found in sections 4 to  
2 14 of this act apply.

3       Sec. 4. Administrator means a person charged with administration of  
4 a program, an office, or a division of the department or administration  
5 of a private agency.

6       Sec. 5. Department means the Department of Correctional Services.

7       Sec. 6. Director means the Director of Correctional Services.

8       Sec. 7. Inspector General means the Inspector General of the  
9 Nebraska Correctional System appointed under section 15 of this act.

10       Sec. 8. Malfeasance means a wrongful act that the actor has no  
11 legal right to do or any wrongful conduct that affects, interrupts, or  
12 interferes with performance of an official duty.

13       Sec. 9. Management means supervision of subordinate employees.

14       Sec. 10. Misfeasance means the improper performance of some act  
15 that a person may lawfully do.

16       Sec. 11. Obstructing means hindering an investigation, preventing  
17 an investigation from progressing, stopping or delaying the progress of  
18 an investigation, or making the progress of an investigation difficult or  
19 slow.

20       Sec. 12. Office means the office of Inspector General of the  
21 Nebraska Correctional System and includes the Inspector General and other  
22 employees of the office.

23       Sec. 13. Private agency means an entity that contracts with the  
24 department or contracts to provide services to another entity that  
25 contracts with the department.

26       Sec. 14. Record means any recording, in written, audio, electronic  
27 transmission, or computer storage form, including, but not limited to, a  
28 draft, memorandum, note, report, computer printout, notation, or message,  
29 and includes, but is not limited to, medical records, mental health  
30 records, case files, clinical records, financial records, and  
31 administrative records.

1           Sec. 15. (1) The office of Inspector General of the Nebraska  
2 Correctional System is created within the office of Public Counsel for  
3 the purpose of conducting investigations, audits, inspections, and other  
4 reviews of the Nebraska correctional system. The Inspector General shall  
5 be appointed by the Public Counsel with approval from the chairperson of  
6 the Executive Board of the Legislative Council and the chairperson of the  
7 Judiciary Committee of the Legislature.

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

25           (3) The Inspector General shall employ such investigators and  
26 support staff as he or she deems necessary to carry out the duties of the  
27 office within the amount available by appropriation through the office of  
28 Public Counsel for the office of Inspector General of the Nebraska  
29 Correctional System. The Inspector General shall be subject to the  
30 control and supervision of the Public Counsel, except that removal of the  
31 Inspector General shall require approval of the chairperson of the

1 Executive Board of the Legislative Council and the chairperson of the  
2 Judiciary Committee of the Legislature.

3       Sec. 16. (1) The office shall investigate:

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

8       (b) Death or serious injury in private agencies, department  
9 correctional facilities, and other programs and facilities licensed by or  
10 under contract with the department. The department shall report all cases  
11 of death or serious injury of a person in a private agency, department  
12 correctional facility or program, or other program or facility licensed  
13 by the department to the Inspector General as soon as reasonably possible  
14 after the department learns of such death or serious injury. For purposes  
15 of this subdivision, serious injury means an injury or illness caused by  
16 suspected abuse, neglect, or maltreatment which leaves a person in  
17 critical or serious condition.

18       (2) Any investigation conducted by the Inspector General shall be  
19 independent of and separate from an investigation pursuant to sections  
20 23-1821 to 23-1823.

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

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

17 Sec. 17. (1) The office shall have access to all information and  
18 personnel necessary to perform the duties of the office.

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

23 Sec. 18. (1) Complaints to the office may be made in writing. The  
24 office shall also maintain a toll-free telephone line for complaints. A  
25 complaint shall be evaluated to determine if it alleges possible  
26 misconduct, misfeasance, malfeasance, or violation of a statute or of  
27 rules and regulations of the department by an employee of or a person  
28 under contract with the department or a private agency. All complaints  
29 shall be evaluated to determine whether a full investigation is  
30 warranted.

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

1 unless:

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

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

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

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

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

14 Sec. 19. All employees of the department and all owners, operators,  
15 managers, supervisors, and employees of private agencies shall cooperate  
16 with the office. Cooperation includes, but is not limited to, the  
17 following:

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

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

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

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

31 (5) Not requiring employees to gain supervisory approval prior to

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

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

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

6 Sec. 20. Failure to cooperate with an investigation by the office  
7 may result in discipline or other sanctions.

8 Sec. 21. The Inspector General may issue a subpoena, enforceable by  
9 action in an appropriate court, to compel any person to appear, give  
10 sworn testimony, or produce documentary or other evidence deemed relevant  
11 to a matter under his or her inquiry. A person thus required to provide  
12 information shall be paid the same fees and travel allowances and shall  
13 be accorded the same privileges and immunities as are extended to  
14 witnesses in the district courts of this state and shall also be entitled  
15 to have counsel present while being questioned.

16 Sec. 22. (1) In conducting investigations, the office shall access  
17 all relevant records through subpoena, compliance with a request of the  
18 office, and voluntary production. The office may request or subpoena any  
19 record necessary for the investigation from the department or a private  
20 agency that is pertinent to an investigation. All case files, licensing  
21 files, medical records, financial and administrative records, and records  
22 required to be maintained pursuant to applicable licensing rules shall be  
23 produced for review by the office in the course of an investigation.

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

25 (a) Production of all records requested;

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

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

31 (3) The office shall seek access in a manner that respects the



1 dignity and human rights of all persons involved, maintains the integrity  
2 of the investigation, and does not unnecessarily disrupt department  
3 programs or services. When advance notice to an administrator or his or  
4 her designee is not provided, the office investigator shall, upon arrival  
5 at the departmental office, bureau, or division or private agency,  
6 request that an onsite employee notify the administrator or his or her  
7 designee of the investigator's arrival.

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

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

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

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

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

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

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

1 manner that assures confidentiality.

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

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

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

12 Sec. 23. (1) Reports of investigations conducted by the office  
13 shall not be distributed beyond the entity that is the subject of the  
14 report without the consent of the Inspector General.

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

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

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

30 Sec. 24. The department shall provide the Public Counsel and the  
31 Inspector General with direct computer access to all computerized

1 records, reports, and documents maintained by the department in  
2 connection with administration of the Nebraska correctional system.

3       Sec. 25. (1) The Inspector General's report of an investigation  
4 shall be in writing to the Public Counsel and shall contain  
5 recommendations. The report may recommend systemic reform or case-  
6 specific action, including a recommendation for discharge or discipline  
7 of employees or for sanctions against a private agency. All  
8 recommendations to pursue discipline shall be in writing and signed by  
9 the Inspector General. A report of an investigation shall be presented to  
10 the director within fifteen days after the report is presented to the  
11 Public Counsel.

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

16       (3) A report that identifies misconduct, misfeasance, malfeasance,  
17 or violation of statute, rules, or regulations by an employee of the  
18 department or a private agency that is relevant to providing appropriate  
19 supervision of an employee may be shared with the employer of such  
20 employee. The employer may not further distribute the report or any  
21 confidential information contained in the report.

22       Sec. 26. (1) Within fifteen days after a report is presented to the  
23 director under section 25 of this act, he or she shall determine whether  
24 to accept, reject, or request in writing modification of the  
25 recommendations contained in the report. The Inspector General, with  
26 input from the Public Counsel, may consider the director's request for  
27 modifications but is not obligated to accept such request. Such report  
28 shall become final upon the decision of the director to accept or reject  
29 the recommendations in the report or, if the director requests  
30 modifications, within fifteen days after such request or after the  
31 Inspector General incorporates such modifications, whichever occurs

1 earlier.

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

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

19 Sec. 27. No report or other work product of an investigation by the  
20 Inspector General shall be reviewable in any court. Neither the Inspector  
21 General nor any member of his or her staff shall be required to testify  
22 or produce evidence in any judicial or administrative proceeding  
23 concerning matters within his or her official cognizance except in a  
24 proceeding brought to enforce the Office of Inspector General of the  
25 Nebraska Correctional System Act.

26 Sec. 28. The Office of Inspector General of the Nebraska  
27 Correctional System Act does not require the Inspector General to  
28 investigate all complaints. The Inspector General, with input from the  
29 Public Counsel, shall prioritize and select investigations and inquiries  
30 that further the intent of the act and assist in legislative oversight of  
31 the Nebraska correctional system. If the Inspector General determines

1 that he or she will not investigate a complaint, the Inspector General  
2 may recommend to the parties alternative means of resolution of the  
3 issues in the complaint.

4       Sec. 29. On or before September 15 of each year, the Inspector  
5 General shall provide to the Judiciary Committee of the Legislature and  
6 the Governor a summary of reports and investigations made under the  
7 Office of Inspector General of the Nebraska Correctional System Act for  
8 the preceding year. The summary provided to the committee shall be  
9 provided electronically. The summaries shall detail recommendations and  
10 the status of implementation of recommendations and may also include  
11 recommendations to the committee regarding issues discovered through  
12 investigation, audits, inspections, and reviews by the office that will  
13 increase accountability and legislative oversight of the Nebraska  
14 correctional system, improve operations of the department and the  
15 Nebraska correctional system, or deter and identify fraud, abuse, and  
16 illegal acts. The summaries shall not contain any confidential or  
17 identifying information concerning the subjects of the reports and  
18 investigations.

19       Sec. 30. Section 81-8,241, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21       81-8,241 The office of Public Counsel is hereby established to  
22 exercise the authority and perform the duties provided by sections  
23 81-8,240 to 81-8,254, ~~and~~ the Office of Inspector General of Nebraska  
24 Child Welfare Act, and the Office of Inspector General of the Nebraska  
25 Correctional System Act. The Public Counsel shall be appointed by the  
26 Legislature, with the vote of two-thirds of the members required for  
27 approval of such appointment from nominations submitted by the Executive  
28 Board of the Legislative Council.

29       Sec. 31. Section 81-8,244, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31       81-8,244 (1)(a) The Public Counsel may select, appoint, and

1 compensate as he or she sees fit, within the amount available by  
2 appropriation, such assistants and employees as he or she deems necessary  
3 to discharge the responsibilities under sections 81-8,240 to 81-8,254. He  
4 or she shall appoint and designate one assistant to be a deputy public  
5 counsel, one assistant to be a deputy public counsel for corrections, one  
6 assistant to be a deputy public counsel for institutions, and one  
7 assistant to be a deputy public counsel for welfare services.

8 (b) Such deputy public counsels shall be subject to the control and  
9 supervision of the Public Counsel.

10 (c) The authority of the deputy public counsel for corrections shall  
11 extend to all facilities and parts of facilities, offices, houses of  
12 confinement, and institutions which are operated by the Department of  
13 Correctional Services and all county or municipal correctional or jail  
14 facilities.

15 (d) The authority of the deputy public counsel for institutions  
16 shall extend to all mental health and veterans institutions and  
17 facilities operated by the Department of Health and Human Services and to  
18 all regional behavioral health authorities that provide services and all  
19 community-based behavioral health services providers that contract with a  
20 regional behavioral health authority to provide services, for any  
21 individual who was a patient within the prior twelve months of a state-  
22 owned and state-operated regional center, and to all complaints  
23 pertaining to administrative acts of the department, authority, or  
24 provider when those acts are concerned with the rights and interests of  
25 individuals placed within those institutions and facilities or receiving  
26 community-based behavioral health services.

27 (e) The authority of the deputy public counsel for welfare services  
28 shall extend to all complaints pertaining to administrative acts of  
29 administrative agencies when those acts are concerned with the rights and  
30 interests of individuals involved in the welfare services system of the  
31 State of Nebraska.

1 (f) The Public Counsel may delegate to members of the staff any  
2 authority or duty under sections 81-8,240 to 81-8,254 except the power of  
3 delegation and the duty of formally making recommendations to  
4 administrative agencies or reports to the Governor or the Legislature.

5 (2) The Public Counsel shall appoint the Inspector General of  
6 Nebraska Child Welfare as provided in section 43-4317. The Inspector  
7 General of Nebraska Child Welfare shall have the powers and duties  
8 provided in the Office of Inspector General of Nebraska Child Welfare  
9 Act.

10 (3) The Public Counsel shall appoint the Inspector General of the  
11 Nebraska Correctional System as provided in section 15 of this act. The  
12 Inspector General of the Nebraska Correctional System shall have the  
13 powers and duties provided in the Office of Inspector General of the  
14 Nebraska Correctional System Act.

15 Sec. 32. Section 81-8,245, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

17 81-8,245 The Public Counsel shall have the power to:

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

20 (2) Prescribe the methods by which complaints are to be made,  
21 received, and acted upon; determine the scope and manner of  
22 investigations to be made; and, subject to the requirements of sections  
23 81-8,240 to 81-8,254, determine the form, frequency, and distribution of  
24 his or her conclusions, recommendations, and proposals;

25 (3) Conduct inspections of the premises, or any parts thereof, of  
26 any administrative agency or any property owned, leased, or operated by  
27 any administrative agency as frequently as is necessary, in his or her  
28 opinion, to carry out duties prescribed under sections 81-8,240 to  
29 81-8,254;

30 (4) Request and receive from each administrative agency, and such  
31 agency shall provide, the assistance and information the counsel deems

1 necessary for the discharge of his or her responsibilities; inspect and  
2 examine the records and documents of all administrative agencies  
3 notwithstanding any other provision of law; and enter and inspect  
4 premises within any administrative agency's control;

5 (5) Issue a subpoena, enforceable by action in an appropriate court,  
6 to compel any person to appear, give sworn testimony, or produce  
7 documentary or other evidence deemed relevant to a matter under his or  
8 her inquiry. A person thus required to provide information shall be paid  
9 the same fees and travel allowances and shall be accorded the same  
10 privileges and immunities as are extended to witnesses in the district  
11 courts of this state and shall also be entitled to have counsel present  
12 while being questioned;

13 (6) Undertake, participate in, or cooperate with general studies or  
14 inquiries, whether or not related to any particular administrative agency  
15 or any particular administrative act, if he or she believes that they may  
16 enhance knowledge about or lead to improvements in the functioning of  
17 administrative agencies;

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

20 (8) Carry out his or her duties under the Office of Inspector  
21 General of Nebraska Child Welfare Act. If any of the provisions of  
22 sections 81-8,240 to 81-8,254 conflict with provisions of the Office of  
23 Inspector General of Nebraska Child Welfare Act, the provisions of such  
24 act shall control;

25 (9) Carry out his or her duties under the Office of Inspector  
26 General of the Nebraska Correctional System Act. If any of the provisions  
27 of sections 81-8,240 to 81-8,254 conflict with the provisions of the  
28 Office of Inspector General of the Nebraska Correctional System Act, the  
29 provisions of such act shall control;

30 (10 9) Investigate allegations of violation of subsection (2) of  
31 section 84-908 by an administrative agency pursuant to a complaint made



1 to his or her office and make a determination as to whether such  
2 administrative agency has violated such subsection. The Public Counsel  
3 shall report his or her determination in writing to the Governor, the  
4 Secretary of State, the Attorney General, the Executive Board of the  
5 Legislative Council, and the director or chief executive officer of the  
6 agency. The report to the executive board shall be submitted  
7 electronically; and

8 (~~11 10~~) Investigate and address the complaint and case of:

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

11 (b) Any juvenile released from a youth rehabilitation and treatment  
12 center for reentry into the community, while that juvenile is subject to  
13 the Community and Family Reentry Process and a service or treatment  
14 program in which the juvenile may be involved after his or her release  
15 from a youth rehabilitation and treatment center, whether that service or  
16 program is administrated by the Office of Juvenile Services or a private  
17 provider in the community. The Office of Juvenile Services and private  
18 providers in the community shall cooperate with any investigation  
19 conducted by the Public Counsel pursuant to this subdivision and provide  
20 all documentation and information requested by the Public Counsel in  
21 connection with such an investigation.

22 Sec. 33. The department shall provide the Public Counsel with  
23 direct computer access to all computerized records, reports, and  
24 documents maintained by the department in connection with administration  
25 of the correctional system.

26 Sec. 34. Section 83-1,135, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

28 83-1,135 Sections 83-170 to 83-1,135 and section 33 of this act  
29 shall be known and may be cited as the Nebraska Treatment and Corrections  
30 Act.

31 Sec. 35. Section 83-962, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 83-962 (1) The Governor shall ~~may~~ declare a correctional system  
3 overcrowding emergency whenever the director certifies that the  
4 population is over one hundred forty percent of design capacity. The  
5 director shall so certify within thirty days after the date on which the  
6 population first exceeds one hundred forty percent of design capacity.

7 (2) Upon declaration of a correctional system overcrowding  
8 emergency, the board shall immediately consider or reconsider committed  
9 offenders eligible for parole who have not been released on parole.

10 (3) Upon such consideration or reconsideration, and for all other  
11 consideration of committed offenders eligible for parole while the  
12 correctional system overcrowding emergency is in effect, the board shall  
13 order the release of each committed offender unless it is of the opinion  
14 that such release should be deferred because:

15 (a) The board has determined that it is more likely than not that  
16 the committed offender will not conform to the conditions of parole;

17 (b) The board has determined that release of the committed offender  
18 would have a very significant and quantifiable effect on institutional  
19 discipline; or

20 (c) The board has determined that there is a very substantial risk  
21 that the committed offender will commit a violent act against a person.

22 (4) In making the determination regarding the risk that a committed  
23 offender will not conform to the conditions of parole, the board shall  
24 take into account the factors set forth in subsection (2) of section  
25 83-1,114.

26 (5) The board shall continue granting parole to offenders under this  
27 section until the director certifies that the population is at  
28 operational capacity. The director shall so certify within thirty days  
29 after the date on which the population first reaches operational  
30 capacity.

31 Sec. 36. Section 84-901, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 84-901 For purposes of the Administrative Procedure Act:

3 (1) Agency shall mean each board, commission, department, officer,  
4 division, or other administrative office or unit of the state government  
5 authorized by law to make rules and regulations, except the Adjutant  
6 General's office as provided in Chapter 55, the courts including the  
7 Nebraska Workers' Compensation Court, the Commission of Industrial  
8 Relations, the Legislature, and the Secretary of State with respect to  
9 the duties imposed by the act;

10 (2) Rule or regulation shall mean any rule, regulation, statement,  
11 policy, instruction, guideline, criterion, or standard of general  
12 applicability issued by an agency, including the amendment or repeal  
13 thereof whether with or without prior hearing and designed to implement,  
14 interpret, or make specific the law enforced or administered by it or  
15 governing its organization or procedure. Rule or regulation shall not  
16 include (a) rules and regulations concerning the internal management of  
17 the agency not affecting private rights, private interests, or procedures  
18 available to the public, ~~or~~ (b) permits, certificates of public  
19 convenience and necessity, franchises, rate orders, and rate tariffs and  
20 any rules of interpretation thereof, or (c) forms, manuals, opinions,  
21 bulletins, or rulings designed to provide guidance and assistance to the  
22 public. For purposes of the act, every rule and regulation which  
23 prescribes a penalty shall be presumed to have general applicability or  
24 to affect private rights and interests;

25 (3) Contested case shall mean a proceeding before an agency in which  
26 the legal rights, duties, or privileges of specific parties are required  
27 by law or constitutional right to be determined after an agency hearing;

28 (4) Ex parte communication shall mean an oral or written  
29 communication which is not on the record in a contested case with respect  
30 to which reasonable notice to all parties was not given. Filing and  
31 notice of filing provided under subdivision (6)(d) of section 84-914

1 shall not be considered on the record and reasonable notice for purposes  
2 of this subdivision. Ex parte communication shall not include:

3 (a) Communications which do not pertain to the merits of a contested  
4 case;

5 (b) Communications required for the disposition of ex parte matters  
6 as authorized by law;

7 (c) Communications in a ratemaking or rulemaking proceeding; and

8 (d) Communications to which all parties have given consent; and

9 (5) Hearing officer shall mean the person or persons conducting a  
10 hearing, contested case, or other proceeding pursuant to the act, whether  
11 designated as the presiding officer, administrative law judge, or some  
12 other title designation.

13 Sec. 37. Original sections 81-8,241, 81-8,244, 81-8,245, 83-1,135,  
14 83-962, and 84-901, Reissue Revised Statutes of Nebraska, are repealed.