

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 954

Introduced by Krist, 10.

Read first time January 14, 2016

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 43-2,108, 43-4318, 43-4319,
3 43-4321, 43-4324, and 43-4326, Revised Statutes Supplement, 2015; to
4 change provisions relating to access to records; to change
5 provisions relating to investigations by the Inspector General; to
6 harmonize provisions; and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-2,108, Revised Statutes Supplement, 2015, is
2 amended to read:

3 43-2,108 (1) The juvenile court judge shall keep a minute book in
4 which he or she shall enter minutes of all proceedings of the court in
5 each case, including appearances, findings, orders, decrees, and
6 judgments, and any evidence which he or she feels it is necessary and
7 proper to record. Juvenile court legal records shall be deposited in
8 files and shall include the petition, summons, notice, certificates or
9 receipts of mailing, minutes of the court, findings, orders, decrees,
10 judgments, and motions.

11 (2) Except as provided in subsections (3) and ~~(4)~~, ~~and~~ ~~(5)~~ of this
12 section, the medical, psychological, psychiatric, and social welfare
13 reports and the records of juvenile probation officers as they relate to
14 individual proceedings in the juvenile court shall not be open to
15 inspection, without order of the court. Such records shall be made
16 available to a district court of this state or the District Court of the
17 United States on the order of a judge thereof for the confidential use of
18 such judge or his or her probation officer as to matters pending before
19 such court but shall not be made available to parties or their counsel;
20 and such district court records shall be made available to a county court
21 or separate juvenile court upon request of the county judge or separate
22 juvenile judge for the confidential use of such judge and his or her
23 probation officer as to matters pending before such court, but shall not
24 be made available by such judge to the parties or their counsel.

25 (3) As used in this section, confidential record information means
26 all docket records, other than the pleadings, orders, decrees, and
27 judgments; case files and records; reports and records of probation
28 officers; and information supplied to the court of jurisdiction in such
29 cases by any individual or any public or private institution, agency,
30 facility, or clinic, which is compiled by, produced by, and in the
31 possession of any court. In all cases under subdivision (3)(a) of section

1 43-247, access to all confidential record information in such cases shall
2 be granted only as follows: (a) The court of jurisdiction may, subject to
3 applicable federal and state regulations, disseminate such confidential
4 record information to any individual, or public or private agency,
5 institution, facility, or clinic which is providing services directly to
6 the juvenile and such juvenile's parents or guardian and his or her
7 immediate family who are the subject of such record information; (b) the
8 court of jurisdiction may disseminate such confidential record
9 information, with the consent of persons who are subjects of such
10 information, or by order of such court after showing of good cause, to
11 any law enforcement agency upon such agency's specific request for such
12 agency's exclusive use in the investigation of any protective service
13 case or investigation of allegations under subdivision (3)(a) of section
14 43-247, regarding the juvenile or such juvenile's immediate family, who
15 are the subject of such investigation; and (c) the court of jurisdiction
16 may disseminate such confidential record information to any court, which
17 has jurisdiction of the juvenile who is the subject of such information
18 upon such court's request.

19 (4) The court shall provide copies of predispositional reports and
20 evaluations of the juvenile to the juvenile's attorney and the county
21 attorney or city attorney prior to any hearing in which the report or
22 evaluation will be relied upon.

23 (5) In all cases under sections 43-246.01 and 43-247, ~~the court or~~
24 ~~the probation officer shall disseminate confidential record information~~
25 ~~to~~ (a) the office of Inspector General of Nebraska Child Welfare may
26 submit a written request to the probation administrator for access to the
27 records of juvenile probation officers in a specific case. Upon a
28 juvenile court order, the records shall be provided to the Inspector
29 General within five days upon request for the exclusive use in an
30 investigation pursuant to the Office of Inspector General of Nebraska
31 Child Welfare Act and (b) ~~the Foster Care Review Office pursuant to the~~

1 ~~Foster Care Review Act~~. Nothing in this subsection shall prevent the
2 notification of death or serious injury of a juvenile to the Inspector
3 General of Nebraska Child Welfare pursuant to section 43-4318 as soon as
4 reasonably possible after the Office of Probation Administration learns
5 of such death or serious injury.

6 (6) In all cases under sections 43-246.01 and 43-247, the juvenile
7 court shall disseminate confidential record information to the Foster
8 Care Review Office pursuant to the Foster Care Review Act.

9 (7) (6) Nothing in subsections (3), ~~and~~ (5), and (6) of this section
10 shall be construed to restrict the dissemination of confidential record
11 information between any individual or public or private agency,
12 institute, facility, or clinic, except any such confidential record
13 information disseminated by the court of jurisdiction pursuant to this
14 section shall be for the exclusive and private use of those to whom it
15 was released and shall not be disseminated further without order of such
16 court.

17 (8)(a) (7)(a) Any records concerning a juvenile court petition filed
18 pursuant to subdivision (3)(c) of section 43-247 shall remain
19 confidential except as may be provided otherwise by law. Such records
20 shall be accessible to (i) the juvenile except as provided in subdivision
21 (b) of this subsection, (ii) the juvenile's counsel, (iii) the juvenile's
22 parent or guardian, and (iv) persons authorized by an order of a judge or
23 court.

24 (b) Upon application by the county attorney or by the director of
25 the facility where the juvenile is placed and upon a showing of good
26 cause therefor, a judge of the juvenile court having jurisdiction over
27 the juvenile or of the county where the facility is located may order
28 that the records shall not be made available to the juvenile if, in the
29 judgment of the court, the availability of such records to the juvenile
30 will adversely affect the juvenile's mental state and the treatment
31 thereof.

1 Sec. 2. Section 43-4318, Revised Statutes Supplement, 2015, is
2 amended to read:

3 43-4318 (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:

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

11 (ii) Subject to subsection (2) of this section, ~~The~~ juvenile
12 services division by an employee of or person under contract with the
13 juvenile services division, a private agency, a licensed facility, a
14 foster parent, or any other provider of juvenile justice services;

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

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

22 (b) Death or serious injury in foster homes, private agencies, child
23 care facilities, juvenile detention facilities, staff secure juvenile
24 facilities, and other programs and facilities licensed by or under
25 contract with the department or the juvenile services division; and

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

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

11 (2) With respect to any investigation conducted by the Inspector
12 General pursuant to subdivision (1)(a) of this section that involves
13 possible misconduct by an employee of the juvenile services division, the
14 Inspector General shall immediately notify the probation administrator
15 and provide the information pertaining to potential personnel matters to
16 the Office of Probation Administration.

17 (3 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 (4 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. 3. Section 43-4319, Revised Statutes Supplement, 2015, is
21 amended to read:

22 43-4319 (1) The office shall have access to all information and
23 personnel necessary to perform the duties of the office.

24 (2) A full investigation conducted by the office shall consist of
25 retrieval of relevant records through subpoena, request, or voluntary
26 production, review of all relevant records, and interviews of all
27 relevant persons.

28 (3) For a request for confidential record information pursuant to
29 subsection (5) of section 43-2,108 involving death or serious injury, the
30 office may submit a written request to the probation administrator. The
31 record information shall be provided to the office within five days after

1 ~~approval of the request by the Supreme Court.~~

2 Sec. 4. Section 43-4321, Revised Statutes Supplement, 2015, is
3 amended to read:

4 43-4321 All employees of the department, the juvenile services
5 division as directed by the juvenile court or the Office of Probation
6 Administration, or the commission, all foster parents, and all owners,
7 operators, managers, supervisors, and employees of private agencies,
8 licensed child care facilities, juvenile detention facilities, staff
9 secure juvenile facilities, and other providers of child welfare services
10 or juvenile justice services shall cooperate with the office. Cooperation
11 includes, but is not limited to, the following:

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

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

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

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

25 (5) Not requiring employees to gain supervisory approval prior to
26 filing a complaint with or providing records or information to the
27 office;

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

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

31 Sec. 5. Section 43-4324, Revised Statutes Supplement, 2015, is

1 amended to read:

2 43-4324 (1) In conducting investigations, the office shall access
3 all relevant records through subpoena, compliance with a request of the
4 office, and voluntary production. The office may request or subpoena any
5 record necessary for the investigation from the department, the juvenile
6 services division as permitted by law, the commission, a foster parent, a
7 licensed child care facility, a juvenile detention facility, a staff
8 secure juvenile facility, or a private agency that is pertinent to an
9 investigation. All case files, licensing files, medical records,
10 financial and administrative records, and records required to be
11 maintained pursuant to applicable licensing rules shall be produced for
12 review by the office in the course of an investigation.

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

14 (a) Production of all records requested;

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

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

20 (3) The office shall seek access in a manner that respects the
21 dignity and human rights of all persons involved, maintains the integrity
22 of the investigation, and does not unnecessarily disrupt child welfare
23 programs or services. When advance notice to a foster parent or to an
24 administrator or his or her designee is not provided, the office
25 investigator shall, upon arrival at the departmental office, bureau, or
26 division, the private agency, the licensed child care facility, the
27 juvenile detention facility, the staff secure juvenile facility, or the
28 location of another provider of child welfare services, request that an
29 onsite employee notify the administrator or his or her designee of the
30 investigator's arrival.

31 (4) When circumstances of an investigation require, the office may

1 make an unannounced visit to a foster home, a departmental office,
2 bureau, or division, a licensed child care facility, a juvenile detention
3 facility, a staff secure juvenile facility, a private agency, or another
4 provider to request records relevant to an investigation.

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

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

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

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

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

21 (6) The office shall permit a responsible individual, an
22 administrator, or an employee of a departmental office, bureau, or
23 division, a private agency, a licensed child care facility, a juvenile
24 detention facility, a staff secure juvenile facility, or another provider
25 to make photocopies of the original records within a reasonable time in
26 the presence of the office for purposes of creating a working record in a
27 manner that assures confidentiality.

28 (7) The office shall present to the responsible individual or the
29 administrator or other employee of the departmental office, bureau, or
30 division, private agency, licensed child care facility, juvenile
31 detention facility, staff secure juvenile facility, or other service

1 provider a copy of the request, stating the date and the titles of the
2 records received.

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

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

9 Sec. 6. Section 43-4326, Revised Statutes Supplement, 2015, is
10 amended to read:

11 43-4326 (1) The department shall provide the Public Counsel and the
12 Inspector General with direct computer access to all computerized
13 records, reports, and documents maintained by the department in
14 connection with administration of the Nebraska child welfare system.

15 (2) ~~The juvenile services division and the commission shall provide~~
16 the Inspector General with direct computer access to all computerized
17 records, reports, and documents maintained ~~by the juvenile services~~
18 ~~division~~ in connection with administration of juvenile justice services.

19 (3) The juvenile services division, as directed by the juvenile
20 court or the Office of Probation Administration, shall provide the
21 Inspector General with direct computer access to all computerized
22 records, reports, and documents maintained by the juvenile services
23 division in connection with a specific case under investigation.

24 Sec. 7. Original sections 43-2,108, 43-4318, 43-4319, 43-4321,
25 43-4324, and 43-4326, Revised Statutes Supplement, 2015, are repealed.