

AMENDMENTS TO LB1144

Introduced by Executive Board.

1           1. Strike the original sections and insert the following new  
2 sections:

3           Section 1. Section 43-4318, Revised Statutes Cumulative Supplement,  
4 2018, is amended to read:

5           43-4318 (1) The office shall investigate:

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

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

13           (ii) Subject to subsection (3) of this section, the juvenile  
14 services division by an employee of or person under contract with the  
15 juvenile services division, a private agency, a licensed facility, a  
16 foster parent, or any other provider of juvenile justice services;

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

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

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

1 office, upon review, determines the death or serious injury did not occur  
2 by chance; and

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

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

22 (3)(a) The Office of Juvenile Services shall report to the office of  
23 Inspector General of Nebraska Child Welfare as soon as reasonably  
24 possible after any of the following instances occur at a youth  
25 rehabilitation and treatment center:

26 (i) An assault;

27 (ii) An escape or elopement;

28 (iii) An attempted suicide;

29 (iv) Self-harm by a juvenile;

30 (v) Property damage not caused by normal wear and tear;

31 (vi) The use of mechanical restraints on a juvenile;

1           (vii) A significant medical event suffered by a juvenile; and  
2           (viii) Internally substantiated violations of 34 U.S.C. 30301 et  
3           seq.

4           (b) The Office of Juvenile Services and the office of Inspector  
5           General of Nebraska Child Welfare shall, if requested by either party,  
6           work in collaboration to clarify the specific parameters to comply with  
7           subdivision (3)(a) of this section.

8           (4) The department shall notify the office of Inspector General of  
9           Nebraska Child Welfare of any leadership changes within the Office of  
10          Juvenile Services and the youth rehabilitation and treatment centers.

11          (5) (3) 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          (6) (4) Any investigation conducted by the Inspector General shall  
18          be independent of and separate from an investigation pursuant to the  
19          Child Protection and Family Safety Act. The Inspector General and his or  
20          her staff are subject to the reporting requirements of the Child  
21          Protection and Family Safety Act.

22          (7) (5) 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. 2. (1) It is the intent of the Legislature to establish a  
21 reporting system in order to provide increased accountability and  
22 oversight regarding the treatment of juveniles in youth rehabilitation  
23 and treatment centers.

24 (2) Beginning on October 1, 2020, the Department of Health and Human  
25 Services shall submit a report electronically to the office of Inspector  
26 General of Nebraska Child Welfare each January 1, April 1, July 1, and  
27 October 1. Such report shall include the following information for the  
28 prior calendar quarter:

29 (a) The number of grievances filed at each youth rehabilitation and  
30 treatment center separated by facility;

31 (b) A categorization of the issues to which each grievance relates

1 and the number of grievances received in each category;

2 (c) The process for addressing such grievances; and

3 (d) Any actions or changes made as a result of such grievances.

4 Sec. 3. The Legislature finds that in the summer of 2019, the  
5 Department of Health and Human Services notified the Health and Human  
6 Services Committee of the Legislature of deteriorating conditions at the  
7 Youth Rehabilitation and Treatment Center-Geneva. Such conditions  
8 necessitated the relocation of female youth from the Youth Rehabilitation  
9 and Treatment Center-Geneva due to living conditions posing a threat to  
10 the health, safety, and welfare of the female youth residing at the  
11 facility under court order. The Health and Human Services Committee of  
12 the Legislature found, through a series of public hearings and comments  
13 during the 2019 interim, that there was a breakdown in the day-to-day  
14 operations of the Youth Rehabilitation and Treatment Center-Geneva,  
15 including (1) disrepair of the facilities making them uninhabitable, (2)  
16 inadequate staffing, (3) a lack of proper behavioral or mental health  
17 services and treatment programming, and (4) a lack of health care,  
18 including, but not limited to, medication management. The Department of  
19 Health and Human Services has released a business plan to reorganize the  
20 youth rehabilitation and treatment center model in Nebraska on a  
21 condensed timeline without consultation or input from the Legislature or  
22 stakeholders with experience and expertise in youth rehabilitation and  
23 treatment. The safety, quality of life, and right to a safe treatment  
24 environment for these youth is of the utmost concern to the Legislature,  
25 and it is clear the Youth Rehabilitation and Treatment Center-Geneva has  
26 reached a critical point in its ability to care for the female youth  
27 entrusted to its care.

28 Sec. 4. (1) The Executive Board of the Legislative Council shall  
29 appoint a special committee of the Legislature to be known as the Youth  
30 Rehabilitation and Treatment Center Special Oversight Committee of the  
31 Legislature. The committee shall consist of no more than eleven members

1 of the Legislature appointed by the executive board. Members shall  
2 include the chairperson of the Health and Human Services Committee of the  
3 Legislature, two other members of the Health and Human Services Committee  
4 of the Legislature, one member of the Appropriations Committee of the  
5 Legislature, two members of the Education Committee of the Legislature,  
6 the chairperson of the Judiciary Committee of the Legislature, one other  
7 member of the Judiciary Committee of the Legislature, and one member of  
8 the Legislature from each legislative district in which a youth  
9 rehabilitation and treatment center is located. The Youth Rehabilitation  
10 and Treatment Center Special Oversight Committee shall elect a  
11 chairperson and vice-chairperson from the membership of the committee.  
12 The executive board may provide the committee with a legal counsel,  
13 committee clerk, and other staff as required by the committee from  
14 existing legislative staff. The committee may hold hearings and request  
15 and receive progress reports from the Department of Health and Human  
16 Services regarding the youth rehabilitation and treatment centers.

17 (2) The Youth Rehabilitation and Treatment Center Special Oversight  
18 Committee of the Legislature may study the quality of care and related  
19 issues at the youth rehabilitation and treatment centers. The committee  
20 shall provide oversight of the administration and operations, including  
21 funding, capacity, and staffing practices at the youth rehabilitation and  
22 treatment centers. The committee shall provide oversight for planning at  
23 the youth rehabilitation and treatment centers. The committee shall  
24 utilize existing studies, reports, and legislation developed to address  
25 the conditions existing at the youth rehabilitation and treatment  
26 centers. The committee shall not be limited to such studies, reports, or  
27 legislation. The committee shall issue a report with its findings and  
28 recommendations to the Legislature on or before December 15, 2020.

29 (3) The Youth Rehabilitation and Treatment Center Special Oversight  
30 Committee of the Legislature shall terminate on December 31, 2020.

31 Sec. 5. Section 81-8,242, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 81-8,242 The Public Counsel shall be a person well equipped to  
3 analyze problems of law, administration, and public policy, and during  
4 such person's ~~his~~ term of office shall not be actively involved in  
5 partisan affairs. No person may serve as Public Counsel within two years  
6 of the last day on which such person ~~he~~ served as a member of the  
7 Legislature, or while such person ~~he~~ is a candidate for or holds any  
8 other state office, or while such person ~~he~~ is engaged in any other  
9 occupation for reward or profit.

10 Sec. 6. Section 81-8,243, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12 81-8,243 The Public Counsel shall serve for a term of six years,  
13 unless removed by vote of two-thirds of the members of the Legislature  
14 upon their determining that the Public Counsel ~~he~~ has become  
15 incapacitated or has been guilty of neglect of duty or misconduct. If the  
16 office of Public Counsel becomes vacant for any cause, the deputy public  
17 counsel shall serve as acting public counsel until a Public Counsel has  
18 been appointed for a full term. The Public Counsel shall receive such  
19 salary as is set by the Executive Board of the Legislative Council.

20 Sec. 7. Section 81-8,246, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 81-8,246 In selecting matters for ~~his~~ attention, the Public Counsel  
23 shall ~~address himself~~ particularly review ~~to~~ an administrative act that  
24 might be:

25 (1) Contrary to law or regulation;

26 (2) Unreasonable, unfair, oppressive, or inconsistent with the  
27 general course of an administrative agency's judgments;

28 (3) Mistaken in law or arbitrary in ascertainments of fact;

29 (4) Improper in motivation or based on irrelevant considerations;

30 (5) Unclear or inadequately explained when reasons should have been  
31 revealed; or

1 (6) Inefficiently performed.

2 The Public Counsel may ~~concern himself~~ also work to strengthen with  
3 ~~strengthening~~ procedures and practices which lessen the risk that  
4 objectionable administrative acts will occur.

5 Sec. 8. Section 81-8,247, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7 81-8,247 The Public Counsel may receive a complaint from any person  
8 concerning an administrative act. The Public Counsel ~~He~~ shall conduct a  
9 suitable investigation into the things complained of unless the Public  
10 Counsel ~~he~~ believes that:

11 (1) The complainant has ~~available to him~~ another remedy available  
12 which the complainant ~~he~~ could reasonably be expected to use;

13 (2) The grievance pertains to a matter outside the Public Counsel's  
14 ~~his~~ power;

15 (3) The complainant's interest is insufficiently related to the  
16 subject matter;

17 (4) The complaint is trivial, frivolous, vexatious, or not made in  
18 good faith;

19 (5) Other complaints are more worthy of attention;

20 (6) The Public Counsel's ~~His~~ resources are insufficient for adequate  
21 investigation; or

22 (7) The complaint has been too long delayed to justify present  
23 examination of its merit.

24 The Public Counsel's declining to investigate a complaint shall not  
25 bar the Public Counsel ~~him~~ from proceeding on the Public Counsel's ~~his~~  
26 own motion to inquire into related problems. After completing ~~his~~  
27 consideration of a complaint, whether or not it has been investigated,  
28 the Public Counsel shall suitably inform the complainant and the  
29 administrative agency involved.

30 Sec. 9. Section 81-8,249, Reissue Revised Statutes of Nebraska, is  
31 amended to read:



1           81-8,249 (1) If, having considered a complaint and whatever material  
2 the Public Counsel he deems pertinent, the Public Counsel is of the  
3 opinion that an administrative agency should (a) consider the matter  
4 further, (b) modify or cancel an administrative act, (c) alter a  
5 regulation or ruling, (d) explain more fully the administrative act in  
6 question, or (e) take any other step, the Public Counsel he shall make  
7 ~~state his~~ recommendations to the administrative agency. If the Public  
8 Counsel so requests, the agency shall, within the time he ~~has~~ specified,  
9 inform the Public Counsel ~~him~~ about the action taken on such ~~his~~  
10 recommendations or the reasons for not complying with them.

11           (2) If the Public Counsel believes that an administrative action has  
12 been dictated by a statute whose results are unfair or otherwise  
13 objectionable, the Public Counsel he shall notify ~~bring~~ to the  
14 Legislature of such ~~Legislature's notice his~~ views concerning desirable  
15 statutory change.

16           Sec. 10. Section 81-8,250, Reissue Revised Statutes of Nebraska, is  
17 amended to read:

18           81-8,250 The Public Counsel may report ~~publish his~~ conclusions and  
19 suggestions by transmitting them to the Governor, the Legislature or any  
20 of its committees, the press, and others who may be concerned. When  
21 publishing an opinion adverse to an administrative agency, the Public  
22 Counsel he shall include any statement the administrative agency may have  
23 made to the Public Counsel ~~him~~ by way of explaining its past difficulties  
24 or its present rejection of the Public Counsel's proposals.

25           Sec. 11. Section 81-8,251, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27           81-8,251 (1) In addition to whatever reports he or she may make  
28 from time to time, the Public Counsel shall on or about February 15 of  
29 each year report to the Clerk of the Legislature and to the Governor  
30 concerning the exercise of his or her functions during the preceding  
31 calendar year. The report submitted to the Clerk of the Legislature shall

1 be submitted electronically. In discussing matters with which he or she  
2 has dealt, the Public Counsel need not identify those immediately  
3 concerned if to do so would cause needless hardship. So far as the annual  
4 report may criticize named agencies or officials, it must include also  
5 their replies to the criticism. Each member of the Legislature shall  
6 receive an electronic copy of such report by making a request for it to  
7 the Public Counsel.

8 (2)(a) On or before December 15 of each year, the Public Counsel  
9 shall submit a report electronically to the Clerk of the Legislature as  
10 required under section 17 of this act regarding state institutions.

11 Sec. 12. Section 81-8,252, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13 81-8,252 If the Public Counsel has reason to believe that any public  
14 officer or employee has acted in a manner warranting criminal or  
15 disciplinary proceedings, the Public Counsel he shall refer the matter to  
16 the appropriate authorities.

17 Sec. 13. Section 81-8,253, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19 81-8,253 No proceeding, opinion, or expression of the Public Counsel  
20 shall be reviewable in any court. Neither the Public Counsel nor any  
21 member of the Public Counsel's ~~his~~ staff shall be required to testify or  
22 produce evidence in any judicial or administrative proceeding concerning  
23 matters within the Public Counsel's ~~his~~ official cognizance, except in a  
24 proceeding brought to enforce sections 81-8,240 to 81-8,254.

25 Sec. 14. Section 81-8,254, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27 81-8,254 A person who willfully obstructs or hinders the proper  
28 exercise of the Public Counsel's functions, or who willfully misleads or  
29 attempts to mislead the Public Counsel's ~~Counsel~~ in his inquiries, shall  
30 be guilty of a Class II misdemeanor. No employee of the State of  
31 Nebraska, who files a complaint pursuant to sections 81-8,240 to

1 81-8,254, shall be subject to any penalties, sanctions, or restrictions  
2 in connection with such employee's ~~his~~ employment because of such  
3 complaint.

4 Sec. 15. (1)(a) The office of Public Counsel shall conduct an  
5 annual physical review of the following state institutions:

6 (i) The Youth Rehabilitation and Treatment Center-Geneva;

7 (ii) The Youth Rehabilitation and Treatment Center-Kearney;

8 (iii) Any other facility operated and utilized as a youth  
9 rehabilitation and treatment center under state law;

10 (iv) The Hastings Regional Center;

11 (v) The Lincoln Regional Center;

12 (vi) The Norfolk Regional Center; and

13 (vii) The Beatrice State Developmental Center.

14 (b) Such physical review may include a review of the condition of  
15 buildings and grounds and the physical wear and tear of buildings,  
16 fixtures, equipment, furniture, security systems, and any improvements to  
17 the facility.

18 (2) The office of Public Counsel shall report to the Legislature on  
19 or before December 15 of each year on the condition of such state  
20 institutions, beginning with December of the prior year. Such report  
21 shall include, for each state institution listed in subdivision (1)(a) of  
22 this section:

23 (a) The findings and observations from the annual physical review;

24 (b) Recent inspection reports regarding the facility;

25 (c) Staffing information, listed separately for each state  
26 institution, including, but not limited to:

27 (i) The number of assaults on staff;

28 (ii) Staffing levels;

29 (iii) Staff retention rates; and

30 (iv) Staff turnover rates, including unfilled and vacant positions;

31 and

1           (d) The number of reports received by the office of Public Counsel  
2           for each institution and any systemic issues identified as a result of  
3           such physical review.

4           Sec. 16. Original sections 81-8,242, 81-8,243, 81-8,246, 81-8,247,  
5           81-8,249, 81-8,250, 81-8,251, 81-8,252, 81-8,253, and 81-8,254, Reissue  
6           Revised Statutes of Nebraska, and section 43-4318, Revised Statutes  
7           Cumulative Supplement, 2018, are repealed.