

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1144

FINAL READING

Introduced by Health and Human Services Committee: Howard, 9,
Chairperson; Arch, 14; Cavanaugh, 6; Hansen, B., 16;
Murman, 38; Walz, 15; Williams, 36.

Read first time January 22, 2020

Committee: Executive Board

1 A BILL FOR AN ACT relating to state institutions; to amend sections
2 81-8,242, 81-8,243, 81-8,246, 81-8,247, 81-8,249, 81-8,250,
3 81-8,251, 81-8,252, 81-8,253, and 81-8,254, Reissue Revised Statutes
4 of Nebraska, and section 43-4318, Revised Statutes Cumulative
5 Supplement, 2018; to provide for notice and reporting to the office
6 of Inspector General of Nebraska Child Welfare; to create the Youth
7 Rehabilitation and Treatment Center Special Oversight Committee of
8 the Legislature; to eliminate obsolete language relating to the
9 Public Counsel; to require an annual review and physical inspection
10 of and a staffing report on certain state institutions by the Public
11 Counsel; and to repeal the original sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-4318, Revised Statutes Cumulative Supplement,
2 2018, is 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 (5) ~~(3)~~ 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 when the
26 office, upon review, determines the death or serious injury did not occur
27 by chance; and

28 (c) Death or serious injury in any case in which services are
29 provided by the department or the juvenile services division to a child
30 or his or her parents or any case involving an investigation under the
31 Child Protection and Family Safety Act, which case has been open for one

1 year or less and upon review determines the death or serious injury did
2 not occur by chance.

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

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

20 (i) An assault;

21 (ii) An escape or elopement;

22 (iii) An attempted suicide;

23 (iv) Self-harm by a juvenile;

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

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

26 (vii) A significant medical event suffered by a juvenile; and

27 (viii) Internally substantiated violations of 34 U.S.C. 30301 et
28 seq.

29 (b) The Office of Juvenile Services and the office of Inspector
30 General of Nebraska Child Welfare shall, if requested by either party,
31 work in collaboration to clarify the specific parameters to comply with

1 subdivision (3)(a) of this section.

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

5 (5) (3) With respect to any investigation conducted by the Inspector
6 General pursuant to subdivision (1)(a) of this section that involves
7 possible misconduct by an employee of the juvenile services division, the
8 Inspector General shall immediately notify the probation administrator
9 and provide the information pertaining to potential personnel matters to
10 the Office of Probation Administration.

11 (6) (4) Any investigation conducted by the Inspector General shall
12 be independent of and separate from an investigation pursuant to the
13 Child Protection and Family Safety Act. The Inspector General and his or
14 her staff are subject to the reporting requirements of the Child
15 Protection and Family Safety Act.

16 (7) (5) Notwithstanding the fact that a criminal investigation, a
17 criminal prosecution, or both are in progress, all law enforcement
18 agencies and prosecuting attorneys shall cooperate with any investigation
19 conducted by the Inspector General and shall, immediately upon request by
20 the Inspector General, provide the Inspector General with copies of all
21 law enforcement reports which are relevant to the Inspector General's
22 investigation. All law enforcement reports which have been provided to
23 the Inspector General pursuant to this section are not public records for
24 purposes of sections 84-712 to 84-712.09 and shall not be subject to
25 discovery by any other person or entity. Except to the extent that
26 disclosure of information is otherwise provided for in the Office of
27 Inspector General of Nebraska Child Welfare Act, the Inspector General
28 shall maintain the confidentiality of all law enforcement reports
29 received pursuant to its request under this section. Law enforcement
30 agencies and prosecuting attorneys shall, when requested by the Inspector
31 General, collaborate with the Inspector General regarding all other

1 information relevant to the Inspector General's investigation. If the
2 Inspector General in conjunction with the Public Counsel determines it
3 appropriate, the Inspector General may, when requested to do so by a law
4 enforcement agency or prosecuting attorney, suspend an investigation by
5 the office until a criminal investigation or prosecution is completed or
6 has proceeded to a point that, in the judgment of the Inspector General,
7 reinstatement of the Inspector General's investigation will not impede or
8 infringe upon the criminal investigation or prosecution. Under no
9 circumstance shall the Inspector General interview any minor who has
10 already been interviewed by a law enforcement agency, personnel of the
11 Division of Children and Family Services of the department, or staff of a
12 child advocacy center in connection with a relevant ongoing investigation
13 of a law enforcement agency.

14 Sec. 2. (1) It is the intent of the Legislature to establish a
15 reporting system in order to provide increased accountability and
16 oversight regarding the treatment of juveniles in youth rehabilitation
17 and treatment centers.

18 (2) Beginning on January 1, 2021, the Department of Health and Human
19 Services shall submit a report electronically to the office of Inspector
20 General of Nebraska Child Welfare each January 1, April 1, July 1, and
21 October 1. Such report shall include the following information for the
22 prior calendar quarter:

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

25 (b) A categorization of the issues to which each grievance relates
26 and the number of grievances received in each category;

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

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

29 Sec. 3. The Legislature finds that in the summer of 2019, the
30 Department of Health and Human Services notified the Health and Human
31 Services Committee of the Legislature of deteriorating conditions at the

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

22 Sec. 4. (1) The Executive Board of the Legislative Council shall
23 appoint a special committee of the Legislature to be known as the Youth
24 Rehabilitation and Treatment Center Special Oversight Committee of the
25 Legislature. The committee shall consist of no more than eleven members
26 of the Legislature appointed by the executive board. Members shall
27 include the chairperson of the Health and Human Services Committee of the
28 Legislature, two other members of the Health and Human Services Committee
29 of the Legislature, one member of the Appropriations Committee of the
30 Legislature, two members of the Education Committee of the Legislature,
31 the chairperson of the Judiciary Committee of the Legislature, one other

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

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

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

25 Sec. 5. Section 81-8,242, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 81-8,242 The Public Counsel shall be a person well equipped to
28 analyze problems of law, administration, and public policy, and during
29 such person's ~~his~~ term of office shall not be actively involved in
30 partisan affairs. No person may serve as Public Counsel within two years
31 of the last day on which such person ~~he~~ served as a member of the

1 Legislature, or while such person he is a candidate for or holds any
2 other state office, or while such person he is engaged in any other
3 occupation for reward or profit.

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

6 81-8,243 The Public Counsel shall serve for a term of six years,
7 unless removed by vote of two-thirds of the members of the Legislature
8 upon their determining that the Public Counsel he has become
9 incapacitated or has been guilty of neglect of duty or misconduct. If the
10 office of Public Counsel becomes vacant for any cause, the deputy public
11 counsel shall serve as acting public counsel until a Public Counsel has
12 been appointed for a full term. The Public Counsel shall receive such
13 salary as is set by the Executive Board of the Legislative Council.

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

16 81-8,246 In selecting matters for his attention, the Public Counsel
17 shall ~~address himself~~ particularly review to an administrative act that
18 might be:

- 19 (1) Contrary to law or regulation;
20 (2) Unreasonable, unfair, oppressive, or inconsistent with the
21 general course of an administrative agency's judgments;
22 (3) Mistaken in law or arbitrary in ascertainments of fact;
23 (4) Improper in motivation or based on irrelevant considerations;
24 (5) Unclear or inadequately explained when reasons should have been
25 revealed; or
26 (6) Inefficiently performed.

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

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

1 81-8,247 The Public Counsel may receive a complaint from any person
2 concerning an administrative act. The Public Counsel ~~He~~ shall conduct a
3 suitable investigation into the things complained of unless the Public
4 Counsel ~~he~~ believes that:

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

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

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

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

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

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

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

18 The Public Counsel's declining to investigate a complaint shall not
19 bar the Public Counsel ~~him~~ from proceeding on the Public Counsel's ~~his~~
20 own motion to inquire into related problems. After completing ~~his~~
21 consideration of a complaint, whether or not it has been investigated,
22 the Public Counsel shall suitably inform the complainant and the
23 administrative agency involved.

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

26 81-8,249 (1) If, having considered a complaint and whatever material
27 the Public Counsel ~~he~~ deems pertinent, the Public Counsel is of the
28 opinion that an administrative agency should (a) consider the matter
29 further, (b) modify or cancel an administrative act, (c) alter a
30 regulation or ruling, (d) explain more fully the administrative act in
31 question, or (e) take any other step, the Public Counsel ~~he~~ shall make

1 ~~state his~~ recommendations to the administrative agency. If the Public
2 Counsel so requests, the agency shall, within the time ~~he has~~ specified,
3 inform the Public Counsel ~~him~~ about the action taken on such ~~his~~
4 recommendations or the reasons for not complying with them.

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

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

12 81-8,250 The Public Counsel may report ~~publish his~~ conclusions and
13 suggestions by transmitting them to the Governor, the Legislature or any
14 of its committees, the press, and others who may be concerned. When
15 publishing an opinion adverse to an administrative agency, the Public
16 Counsel ~~he~~ shall include any statement the administrative agency may have
17 made to the Public Counsel ~~him~~ by way of explaining its past difficulties
18 or its present rejection of the Public Counsel's proposals.

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

21 81-8,251 (1) In addition to whatever reports he or she may make
22 from time to time, the Public Counsel shall on or about February 15 of
23 each year report to the Clerk of the Legislature and to the Governor
24 concerning the exercise of his or her functions during the preceding
25 calendar year. The report submitted to the Clerk of the Legislature shall
26 be submitted electronically. In discussing matters with which he or she
27 has dealt, the Public Counsel need not identify those immediately
28 concerned if to do so would cause needless hardship. So far as the annual
29 report may criticize named agencies or officials, it must include also
30 their replies to the criticism. Each member of the Legislature shall
31 receive an electronic copy of such report by making a request for it to

1 the Public Counsel.

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

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

7 81-8,252 If the Public Counsel has reason to believe that any public
8 officer or employee has acted in a manner warranting criminal or
9 disciplinary proceedings, the Public Counsel ~~he~~ shall refer the matter to
10 the appropriate authorities.

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

13 81-8,253 No proceeding, opinion, or expression of the Public Counsel
14 shall be reviewable in any court. Neither the Public Counsel nor any
15 member of the Public Counsel's ~~his~~ staff shall be required to testify or
16 produce evidence in any judicial or administrative proceeding concerning
17 matters within the Public Counsel's ~~his~~ official cognizance, except in a
18 proceeding brought to enforce sections 81-8,240 to 81-8,254.

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

21 81-8,254 A person who willfully obstructs or hinders the proper
22 exercise of the Public Counsel's functions, or who willfully misleads or
23 attempts to mislead the Public Counsel's ~~Counsel in his~~ inquiries, shall
24 be guilty of a Class II misdemeanor. No employee of the State of
25 Nebraska, who files a complaint pursuant to sections 81-8,240 to
26 81-8,254, shall be subject to any penalties, sanctions, or restrictions
27 in connection with such employee's ~~his~~ employment because of such
28 complaint.

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

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

- 1 (ii) The Youth Rehabilitation and Treatment Center-Kearney;
- 2 (iii) Any other facility operated and utilized as a youth
- 3 rehabilitation and treatment center under state law;
- 4 (iv) The Hastings Regional Center;
- 5 (v) The Lincoln Regional Center;
- 6 (vi) The Norfolk Regional Center; and
- 7 (vii) The Beatrice State Developmental Center.

8 (b) Such physical review may include a review of the condition of
9 buildings and grounds and the physical wear and tear of buildings,
10 fixtures, equipment, furniture, security systems, and any improvements to
11 the facility.

12 (2) The office of Public Counsel shall report to the Legislature on
13 the condition of such state institutions. The report shall be due on or
14 before March 15, 2021, for the 2020 calendar year, and on or before
15 December 15 of each year beginning in 2021, for the period beginning with
16 December 1 of the prior year through November 30 of the then current
17 year. Such report shall include, for each state institution listed in
18 subdivision (1)(a) of this section:

- 19 (a) The findings and observations from the annual physical review;
- 20 (b) Recent inspection reports regarding the facility;
- 21 (c) Staffing information, listed separately for each state
- 22 institution, including, but not limited to:

- 23 (i) The number of assaults on staff;
- 24 (ii) Staffing levels;
- 25 (iii) Staff retention rates; and
- 26 (iv) Staff turnover rates, including unfilled and vacant positions;
- 27 and

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

31 Sec. 16. Original sections 81-8,242, 81-8,243, 81-8,246, 81-8,247,

1 81-8,249, 81-8,250, 81-8,251, 81-8,252, 81-8,253, and 81-8,254, Reissue
2 Revised Statutes of Nebraska, and section 43-4318, Revised Statutes
3 Cumulative Supplement, 2018, are repealed.