

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1144

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 the office of Public Counsel; to amend
- 2 section 81-8,251, Reissue Revised Statutes of Nebraska, and section
- 3 43-4318, Revised Statutes Cumulative Supplement, 2018; to provide
- 4 for notice and reporting to the office of Inspector General of
- 5 Nebraska Child Welfare; to require an annual review and physical
- 6 inspection of and a staffing report on certain state institutions;
- 7 and to repeal the original sections.
- 8 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 (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) 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 (a) An assault;

21 (b) An escape or elopement;

22 (c) An attempted suicide;

23 (d) Self harm by a juvenile;

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

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

26 (g) A significant medical event for a juvenile; and

27 (h) Internally substantiated violations of 34 U.S.C. 30301 et seq.,
28 as such act existed on January 1, 2020.

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

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

7 (6) ~~(4)~~ Any investigation conducted by the Inspector General shall
8 be independent of and separate from an investigation pursuant to the
9 Child Protection and Family Safety Act. The Inspector General and his or
10 her staff are subject to the reporting requirements of the Child
11 Protection and Family Safety Act.

12 (7) ~~(5)~~ Notwithstanding the fact that a criminal investigation, a
13 criminal prosecution, or both are in progress, all law enforcement
14 agencies and prosecuting attorneys shall cooperate with any investigation
15 conducted by the Inspector General and shall, immediately upon request by
16 the Inspector General, provide the Inspector General with copies of all
17 law enforcement reports which are relevant to the Inspector General's
18 investigation. All law enforcement reports which have been provided to
19 the Inspector General pursuant to this section are not public records for
20 purposes of sections 84-712 to 84-712.09 and shall not be subject to
21 discovery by any other person or entity. Except to the extent that
22 disclosure of information is otherwise provided for in the Office of
23 Inspector General of Nebraska Child Welfare Act, the Inspector General
24 shall maintain the confidentiality of all law enforcement reports
25 received pursuant to its request under this section. Law enforcement
26 agencies and prosecuting attorneys shall, when requested by the Inspector
27 General, collaborate with the Inspector General regarding all other
28 information relevant to the Inspector General's investigation. If the
29 Inspector General in conjunction with the Public Counsel determines it
30 appropriate, the Inspector General may, when requested to do so by a law
31 enforcement agency or prosecuting attorney, suspend an investigation by

1 the office until a criminal investigation or prosecution is completed or
2 has proceeded to a point that, in the judgment of the Inspector General,
3 reinstatement of the Inspector General's investigation will not impede or
4 infringe upon the criminal investigation or prosecution. Under no
5 circumstance shall the Inspector General interview any minor who has
6 already been interviewed by a law enforcement agency, personnel of the
7 Division of Children and Family Services of the department, or staff of a
8 child advocacy center in connection with a relevant ongoing investigation
9 of a law enforcement agency.

10 Sec. 2. (1) It is the intent of the Legislature to establish a
11 reporting system in order to provide increased accountability and
12 oversight regarding the treatment of juveniles in youth rehabilitation
13 and treatment centers.

14 (2) Beginning on October 1, 2020, the Department of Health and Human
15 Services shall submit a report electronically to the office of Inspector
16 General of Nebraska Child Welfare each January 1, April 1, July 1, and
17 October 1. Such report shall include:

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

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

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

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

24 Sec. 3. Section 81-8,251, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 81-8,251 (1) In addition to whatever reports he or she may make
27 from time to time, the Public Counsel shall on or about February 15 of
28 each year report to the Clerk of the Legislature and to the Governor
29 concerning the exercise of his or her functions during the preceding
30 calendar year. The report submitted to the Clerk of the Legislature shall
31 be submitted electronically. In discussing matters with which he or she

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

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

10 Sec. 4. (1)(a) The office of Public Counsel shall conduct an annual
11 review and physical inspection of the following state institutions:

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

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

14 (iii) The Hastings Regional Center;

15 (iv) The Lincoln Regional Center;

16 (v) The Norfolk Regional Center; and

17 (vi) The Beatrice State Developmental Center.

18 (b) Such inspection shall include a review of the condition of
19 buildings and grounds, physical wear and tear of buildings, fixtures,
20 equipment, furniture, security systems, and any improvements to the
21 facility.

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

27 (a) A detailed summary of the findings from the annual review and
28 physical inspection;

29 (b) Staffing information, listed separately for each state
30 institution, including, but not limited to:

31 (i) The number of assaults on staff;

- 1 (ii) Staffing levels;
- 2 (iii) Staff retention rates; and
- 3 (iv) Staff turnover rates, including unfilled and vacant positions;
- 4 and

5 (c) The number of reports received by the office of Public Counsel
6 for each institution and any systemic issues identified as a result of
7 such review and physical inspection.

8 Sec. 5. Original section 81-8,251, Reissue Revised Statutes of
9 Nebraska, and section 43-4318, Revised Statutes Cumulative Supplement,
10 2018, are repealed.