

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 525

Introduced by Wishart, 27.

Read first time January 19, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to treatment and corrections; to amend
2 sections 47-902, 47-903, 47-904, 47-905, 47-907, 47-911, 47-914, and
3 47-915, Revised Statutes Cumulative Supplement, 2020; to provide
4 duties and requirements for transitional housing facilities
5 receiving state or county funding; to define terms; to provide for
6 inspections; to provide the Office of Inspector General of the
7 Nebraska Correctional System with authority to oversee the Division
8 of Parole Supervision; to harmonize provisions; and to repeal the
9 original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) For purposes of this section:

2 (a) Community supervision means parole, post-release supervision, or
3 probation or a similar program of supervision of an inmate of a prison or
4 jail or person recently released from a prison or jail;

5 (b) Community supervision agency means a county authority, the
6 department, the Division of Parole Supervision, or the Office of
7 Probation Administration;

8 (c) County authority means the agency or person responsible for
9 supervision of jail inmates or persons released from jail and under
10 county supervision or responsible for paying for housing of persons
11 recently released from jail;

12 (d) Department means the Department of Correctional Services;

13 (e) Provider means a person who operates a transitional housing
14 facility;

15 (f) Resident means a person on community supervision who is ordered
16 to live in a transitional housing facility as a condition of community
17 supervision or whose residence in a transitional housing facility is paid
18 for by a community supervision agency;

19 (g) Transitional housing facility means a building that houses five
20 or more residents. Transitional housing facility does not include a
21 substance abuse treatment center as defined in section 44-772.

22 (2) A provider who receives money from the state or a county to
23 house residents in a transitional housing facility shall:

24 (a) Abide by all zoning and occupancy standards of the jurisdiction
25 in which it is located;

26 (b) Provide the community supervision agency with a phone number for
27 a manager or supervisor of the provider who is accessible twenty-four
28 hours a day, seven days a week. Such number shall also be provided to
29 each resident, shall be posted in a conspicuous place within the
30 transitional housing, and shall be posted in a conspicuous location on
31 the exterior of the transitional housing that is visible to the public;

1 and

2 (c) Post in a conspicuous location on the exterior of the
3 transitional housing, in a location visible to the public, a sign
4 indicating the occupancy limit of the transitional housing.

5 (3) A community supervision agency or its employees, agents, or
6 designees may enter and inspect a transitional housing facility at any
7 time without prior notice if such agency has jurisdiction over a resident
8 of such facility or is paying for the housing of a resident of such
9 facility.

10 Sec. 2. Section 47-902, Revised Statutes Cumulative Supplement,
11 2020, is amended to read:

12 47-902 (1) It is the intent of the Legislature to:

13 (a) Establish a full-time program of investigation and performance
14 review to provide increased accountability and oversight of the Nebraska
15 correctional system;

16 (b) Assist in improving operations of the department, the Division
17 of Parole Supervision, and the Nebraska correctional system;

18 (c) Provide an independent form of inquiry for concerns regarding
19 the actions of individuals and agencies responsible for the supervision
20 and release of persons in the Nebraska correctional system. A lack of
21 responsibility and accountability between individuals and private
22 agencies in the current system make it difficult to monitor and oversee
23 the Nebraska correctional system; and

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

26 (2) It is not the intent of the Legislature in enacting the Office
27 of Inspector General of the Nebraska Correctional System Act to interfere
28 with the duties of the Legislative Auditor or the Legislative Fiscal
29 Analyst or to interfere with the statutorily defined investigative
30 responsibilities or prerogatives of any officer, agency, board, bureau,
31 commission, association, society, or institution of the executive branch

1 of state government, except that the act does not preclude an inquiry on
2 the sole basis that another agency has the same responsibility. The act
3 shall not be construed to interfere with or supplant the responsibilities
4 or prerogatives of the Governor to investigate, monitor, and report on
5 the activities of the agencies, boards, bureaus, commissions,
6 associations, societies, and institutions of the executive branch under
7 his or her administrative direction.

8 Sec. 3. Section 47-903, Revised Statutes Cumulative Supplement,
9 2020, is amended to read:

10 47-903 For purposes of the Office of Inspector General of the
11 Nebraska Correctional System Act, the following definitions apply:

12 (1) Administrator means a person charged with administration of a
13 program, an office, or a division of the department or the Division of
14 Parole Supervision or administration of a private agency;

15 (2) Department means the Department of Correctional Services;

16 ~~(3) Director means the Director of Correctional Services;~~

17 ~~(3)~~ ~~(4)~~ Division of Parole Supervision means the division created
18 pursuant to section 83-1,100;

19 ~~(4)~~ ~~(5)~~ Inspector General means the Inspector General of the
20 Nebraska Correctional System appointed under section 47-904;

21 ~~(5)~~ ~~(6)~~ Malfeasance means a wrongful act that the actor has no legal
22 right to do or any wrongful conduct that affects, interrupts, or
23 interferes with performance of an official duty;

24 ~~(6)~~ ~~(7)~~ Management means supervision of subordinate employees;

25 ~~(7)~~ ~~(8)~~ Misfeasance means the improper performance of some act that
26 a person may lawfully do;

27 ~~(8)~~ ~~(9)~~ Obstruction means hindering an investigation, preventing an
28 investigation from progressing, stopping or delaying the progress of an
29 investigation, or making the progress of an investigation difficult or
30 slow;

31 ~~(9)~~ ~~(10)~~ Office means the office of Inspector General of the

1 Nebraska Correctional System and includes the Inspector General and other
2 employees of the office;

3 ~~(10)~~ ~~(11)~~ Private agency means an entity that contracts with the
4 department or the Division of Parole Supervision or contracts to provide
5 services to another entity that contracts with the department or the
6 division; and

7 ~~(11)~~ ~~(12)~~ Record means any recording in written, audio, electronic
8 transmission, or computer storage form, including, but not limited to, a
9 draft, memorandum, note, report, computer printout, notation, or message,
10 and includes, but is not limited to, medical records, mental health
11 records, case files, clinical records, financial records, and
12 administrative records.

13 Sec. 4. Section 47-904, Revised Statutes Cumulative Supplement,
14 2020, is amended to read:

15 47-904 (1) The office of Inspector General of the Nebraska
16 Correctional System is created within the office of Public Counsel for
17 the purpose of conducting investigations, audits, inspections, and other
18 reviews of the Nebraska correctional system. The Inspector General shall
19 be appointed by the Public Counsel with approval from the chairperson of
20 the Executive Board of the Legislative Council and the chairperson of the
21 Judiciary Committee of the Legislature.

22 (2) The Inspector General shall be appointed for a term of five
23 years and may be reappointed. The Inspector General shall be selected
24 without regard to political affiliation and on the basis of integrity,
25 capability for strong leadership, and demonstrated ability in accounting,
26 auditing, financial analysis, law, management, public administration,
27 investigation, or criminal justice administration or other closely
28 related fields. No former or current executive or manager of the
29 department or the Division of Parole Supervision shall be appointed
30 Inspector General within five years after such former or current
31 executive's or manager's period of service with the department or

1 division. Not later than two years after the date of appointment, the
2 Inspector General shall obtain certification as a Certified Inspector
3 General by the Association of Inspectors General, its successor, or
4 another nationally recognized organization that provides and sponsors
5 educational programs and establishes professional qualifications,
6 certifications, and licensing for inspectors general. During his or her
7 employment, the Inspector General shall not be actively involved in
8 partisan affairs.

9 (3) The Inspector General shall employ such investigators and
10 support staff as he or she deems necessary to carry out the duties of the
11 office within the amount available by appropriation through the office of
12 Public Counsel for the office of Inspector General of the Nebraska
13 Correctional System. The Inspector General shall be subject to the
14 control and supervision of the Public Counsel, except that removal of the
15 Inspector General shall require approval of the chairperson of the
16 Executive Board of the Legislative Council and the chairperson of the
17 Judiciary Committee of the Legislature.

18 Sec. 5. Section 47-905, Revised Statutes Cumulative Supplement,
19 2020, is amended to read:

20 47-905 (1) The office shall investigate:

21 (a) Allegations or incidents of possible misconduct, misfeasance,
22 malfeasance, or violations of statutes or of rules or regulations of the
23 department or the Division of Parole Supervision by an employee of or a
24 person under contract with the department, the division, or a private
25 agency; and

26 (b) Death or serious injury in private agencies, department
27 correctional facilities, and other programs and facilities licensed by or
28 under contract with the department or the Division of Parole Supervision.
29 The department and division shall report all cases of death or serious
30 injury of a person in a private agency, department correctional facility
31 or program, or other program or facility licensed by the department or

1 division to the Inspector General as soon as reasonably possible after
2 the department or division learns of such death or serious injury. The
3 department and division shall also report all cases of the death or
4 serious injury of an employee when acting in his or her capacity as an
5 employee of the department or division as soon as reasonably possible
6 after the department or division learns of such death or serious injury.
7 The department and division shall also report all cases when an employee
8 is hospitalized in response to an injury received when acting in his or
9 her capacity as an employee of the department or division as soon as
10 reasonably possible after the department or division learns of such
11 hospitalization. For purposes of this subdivision, serious injury means
12 an injury which requires urgent and immediate medical treatment and
13 restricts the injured person's usual activity.

14 (2) Any investigation conducted by the Inspector General shall be
15 independent of and separate from an investigation pursuant to sections
16 23-1821 to 23-1823.

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

1 General, collaborate with the Inspector General regarding all other
2 information relevant to the Inspector General's investigation. If the
3 Inspector General in conjunction with the Public Counsel determines it
4 appropriate, the Inspector General may, when requested to do so by a law
5 enforcement agency or prosecuting attorney, suspend an investigation by
6 the office until a criminal investigation or prosecution is completed or
7 has proceeded to a point that, in the judgment of the Inspector General,
8 reinstatement of the Inspector General's investigation will not impede or
9 infringe upon the criminal investigation or prosecution.

10 Sec. 6. Section 47-907, Revised Statutes Cumulative Supplement,
11 2020, is amended to read:

12 47-907 (1) Complaints to the office may be made in writing. A
13 complaint shall be evaluated to determine if it alleges possible
14 misconduct, misfeasance, malfeasance, or violation of a statute or of
15 rules and regulations of the department or the Division of Parole
16 Supervision by an employee of or a person under contract with the
17 department, the division, or a private agency. All complaints shall be
18 evaluated to determine whether a full investigation is warranted.

19 (2) The office shall not conduct a full investigation of a complaint
20 unless:

21 (a) The complaint alleges misconduct, misfeasance, malfeasance, or
22 violation of a statute or of rules and regulations of the department or
23 division;

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

26 (c) The allegations can be independently verified through
27 investigation.

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

31 (4) When a full investigation is opened on a private agency that

1 contracts with the department or division, the Inspector General shall
2 give notice of such investigation to the department or division.

3 Sec. 7. Section 47-911, Revised Statutes Cumulative Supplement,
4 2020, is amended to read:

5 47-911 (1) In conducting investigations, the office shall access all
6 relevant records through subpoena, compliance with a request by the
7 office, and voluntary production. The office may request or subpoena any
8 record necessary for the investigation from the department, the Division
9 of Parole Supervision, or a private agency that is pertinent to an
10 investigation. All case files, licensing files, medical records,
11 financial and administrative records, and records required to be
12 maintained pursuant to applicable licensing rules shall be produced for
13 review by the office in the course of an investigation.

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

15 (a) Production of all records requested;

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

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

21 (3) The office shall seek access in a manner that respects the
22 dignity and human rights of all persons involved, maintains the integrity
23 of the investigation, and does not unnecessarily disrupt department or
24 division programs or services. When advance notice to an administrator or
25 his or her designee is not provided, the office investigator shall, upon
26 arrival at the facility ~~departmental office, bureau, or division or~~
27 ~~private agency~~, request that an onsite employee notify the administrator
28 or his or her designee of the investigator's arrival.

29 (4) When circumstances of an investigation require, the office may
30 make an unannounced visit to a ~~departmental office, bureau, or division,~~
31 ~~a department correctional facility, or a private agency~~ to request

1 records relevant to an investigation.

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

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

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

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

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

17 (6) The office shall permit a responsible individual, an
18 administrator, or an employee of a ~~departmental office, bureau, or~~
19 ~~division, a private agency, or a department correctional~~ facility to make
20 photocopies of the original records within a reasonable time in the
21 presence of the office for purposes of creating a working record in a
22 manner that assures confidentiality.

23 (7) The office shall present to the responsible individual or the
24 administrator or other employee of the ~~departmental office, bureau, or~~
25 ~~division, private agency, or department correctional~~ facility a copy of
26 the request, stating the date and the titles of the records received.

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

30 (9) All investigations conducted by the office shall be conducted in
31 a manner designed to ensure the preservation of evidence for possible use

1 in a criminal prosecution.

2 (10) For purposes of this section, facility means any office,
3 bureau, division, or facility of the department, the Division of Parole
4 Supervision, or a private agency.

5 Sec. 8. Section 47-914, Revised Statutes Cumulative Supplement,
6 2020, is amended to read:

7 47-914 (1) The Inspector General's report of an investigation of the
8 department or the Division of Parole Supervision shall be in writing to
9 the Public Counsel and shall contain recommendations. The report may
10 recommend systemic reform or case-specific action, including a
11 recommendation for discharge or discipline of employees or for sanctions
12 against a private agency. All recommendations to pursue discipline shall
13 be in writing and signed by the Inspector General. A report of an
14 investigation shall be presented to the Director of Correctional Services
15 or the Director of Supervision and Services, as applicable, director
16 within fifteen days after the report is presented to the Public Counsel.

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

21 (3) A report that identifies misconduct, misfeasance, malfeasance,
22 violation of statute, or violation of rules and regulations by an
23 employee of the department, the Division of Parole Supervision, or a
24 private agency that is relevant to providing appropriate supervision of
25 an employee may be shared with the employer of such employee. The
26 employer may not further distribute the report or any confidential
27 information contained in the report.

28 Sec. 9. Section 47-915, Revised Statutes Cumulative Supplement,
29 2020, is amended to read:

30 47-915 (1) Within fifteen days after a report is presented to the
31 Director of Correctional Services or the Director of Supervision and

1 Services, as applicable, director under section 47-914, he or she shall
2 determine whether to accept, reject, or request in writing modification
3 of the recommendations contained in the report. The Inspector General,
4 with input from the Public Counsel, may consider the director's request
5 for modifications but is not obligated to accept such request. Such
6 report shall become final upon the decision of the director to accept or
7 reject the recommendations in the report or, if the director requests
8 modifications, within fifteen days after such request or after the
9 Inspector General incorporates such modifications, whichever occurs
10 earlier.

11 (2) Within fifteen days after the report is presented to the
12 Director of Correctional Services or the Director of Supervision and
13 Services ~~director~~, the report shall be presented to the private agency or
14 other provider of correctional services that is the subject of the report
15 and to persons involved in the implementation of the recommendations in
16 the report. Within forty-five days after receipt of the report, the
17 private agency or other provider may submit a written response to the
18 office to correct any factual errors in the report. The Inspector
19 General, with input from the Public Counsel, shall consider all materials
20 submitted under this subsection to determine whether a corrected report
21 shall be issued. If the Inspector General determines that a corrected
22 report is necessary, the corrected report shall be issued within fifteen
23 days after receipt of the written response.

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

29 Sec. 10. Original sections 47-902, 47-903, 47-904, 47-905, 47-907,
30 47-911, 47-914, and 47-915, Revised Statutes Cumulative Supplement, 2020,
31 are repealed.