Introduced by Krist, 10.

Read first time January 15, 2015

Committee: Executive Board

A BILL FOR AN ACT relating to the office of Inspector General of Nebraska Child Welfare; to amend sections 43-4301, 43-4302, 43-4303, 43-4304, 43-4316, 43-4318, 43-4320, 43-4321, 43-4324, 43-4325, 43-4326, 43-4327, 43-4328, 43-4330, and 43-4331, Revised Statutes Cumulative Supplement, 2014; to authorize investigations and reviews of the juvenile justice system; to define terms; to provide powers and duties; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 43-4301, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-4301 Sections 43-4301 to 43-4331 and sections 5 to 8 of this act shall be known and may be cited as the Office of Inspector General of Nebraska Child Welfare Act.

Sec. 2. Section 43-4302, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-4302 (1) It is the intent of the Legislature to:

(a) Establish a full-time program of investigation and performance review to provide increased accountability and oversight of the Nebraska child welfare system;

(b) Assist in improving operations of the department and the Nebraska child welfare system;

(c) Provide an independent form of inquiry for concerns regarding the actions of individuals and agencies responsible for the care and protection of children and youth in the Nebraska child welfare system. Confusion of the roles, responsibilities, and accountability structures between individuals, private contractors, branches of government, and agencies in the current system make it difficult to monitor and oversee the Nebraska child welfare system; and

(d) Provide a process for investigation and review to determine if individual complaints and issues of investigation and inquiry reveal a problem in the child welfare system, not just individual cases, that necessitates legislative action for improved policies and restructuring of the child welfare system.

(2) It is not the intent of the Legislature in enacting the Office of Inspector General of Nebraska Child Welfare Act to interfere with the duties of the Legislative Auditor or the Legislative Fiscal Analyst or to interfere with the statutorily defined investigative responsibilities or prerogatives of any officer, agency, board, bureau, commission, association, society, or institution of the executive branch of state
government, except that the act does not preclude an inquiry on the sole
basis that another agency has the same responsibility. The act shall not
be construed to interfere with or supplant the responsibilities or
prerogatives of the Governor to investigate, monitor, and report on the
activities of the agencies, boards, bureaus, commissions, associations,
societies, and institutions of the executive branch under his or her
administrative direction.

Sec. 3. Section 43-4303, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-4303 For purposes of the Office of Inspector General of Nebraska Child Welfare Act, the definitions found in sections 43-4304 to 43-4316 and sections 5 to 8 of this act apply.

Sec. 4. Section 43-4304, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-4304 Administrator means a person charged with administration of a program, an office, or a division of the department or administration of a private agency or licensed child care facility, the probation administrator, or the executive director.

Sec. 5. Child welfare system means public and private agencies and parties that provide or effect services or supervision to system-involved children and their families.

Sec. 6. Commission means the Nebraska Commission on Law Enforcement and Criminal Justice.

Sec. 7. Executive director means the executive director of the commission.

Sec. 8. Juvenile services division means the Juvenile Services Division of the Office of Probation Administration.

Sec. 9. Section 43-4316, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-4316 Responsible individual means a foster parent, a relative provider of foster care, or an employee of the department, the juvenile
services division, the commission, a foster home, a private agency, a
licensed child care facility, or another provider of child welfare
programs and services responsible for the care or custody of records,
documents, and files.

Sec. 10. Section 43-4318, Revised Statutes Cumulative Supplement,
2014, is amended to read:

43-4318 (1) The office shall investigate:

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

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

(ii) The juvenile services division by an employee of or person
under contract with the juvenile services division, a private agency, a
licensed facility, a foster parent, or any other provider of juvenile
justice services;

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

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

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

Office of Probation Administration and death

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

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

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

(3) Notwithstanding the fact that a criminal investigation, a criminal prosecution, or both are in progress, all law enforcement agencies and prosecuting attorneys shall cooperate with any investigation conducted by the Inspector General and shall, immediately upon request by the Inspector General, provide the Inspector General with copies of all law enforcement reports which are relevant to the Inspector General's investigation. All law enforcement reports which have been provided to the Inspector General pursuant to this section are not public records for purposes of sections 84-712 to 84-712.09 and shall not be subject to discovery by any other person or entity. Except to the extent that
disclosure of information is otherwise provided for in the Office of Inspector General of Nebraska Child Welfare Act, the Inspector General shall maintain the confidentiality of all law enforcement reports received pursuant to its request under this section. Law enforcement agencies and prosecuting attorneys shall, when requested by the Inspector General, collaborate with the Inspector General regarding all other information relevant to the Inspector General's investigation. If the Inspector General in conjunction with the Public Counsel determines it appropriate, the Inspector General may, when requested to do so by a law enforcement agency or prosecuting attorney, suspend an investigation by the office until a criminal investigation or prosecution is completed or has proceeded to a point that, in the judgment of the Inspector General, reinstatement of the Inspector General's investigation will not impede or infringe upon the criminal investigation or prosecution. Under no circumstance shall the Inspector General interview any minor who has already been interviewed by a law enforcement agency, personnel of the Division of Children and Family Services of the department, or staff of a child advocacy center in connection with a relevant ongoing investigation of a law enforcement agency.

Sec. 11. Section 43-4320, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-4320 (1) Complaints to the office may be made in writing. The office shall also maintain a toll-free telephone line for complaints. A complaint shall be evaluated to determine if it alleges possible misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations pursuant to section 43-4318 of the department by an employee of or a person under contract with the department, a private agency, or a licensed child care facility, a foster parent, or any other provider of child welfare services or alleges a basis for discipline pursuant to the Uniform Credentialing Act. All complaints shall be evaluated to determine whether a full investigation is warranted.
(2) The office shall not conduct a full investigation of a complaint unless:

(a) The complaint alleges misconduct, misfeasance, malfeasance, violation of a statute or of rules and regulations pursuant to section 43-4318 of the department, or a basis for discipline pursuant to the Uniform Credentialing Act;

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

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

(3) The Inspector General shall determine within fourteen days after receipt of a complaint whether it will conduct a full investigation. A complaint alleging facts which, if verified, would provide a basis for discipline under the Uniform Credentialing Act shall be referred to the appropriate credentialing board under the act.

(4) When a full investigation is opened on a private agency that contracts with the Office of Probation Administration, the Inspector General shall give notice of such investigation to the Office of Probation Administration.

Sec. 12. Section 43-4321, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-4321 All employees of the department, the juvenile services division, or the commission, all foster parents, and all owners, operators, managers, supervisors, and employees of private agencies, licensed child care facilities, juvenile detention facilities, staff secure juvenile facilities, and other providers of child welfare services or juvenile justice services shall cooperate with the office. Cooperation includes, but is not limited to, the following:

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

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

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

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

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

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

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

Sec. 13. Section 43-4324, Revised Statutes Cumulative Supplement, 2014, is amended to read:

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

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

(a) Production of all records requested;
(b) A diligent search to ensure that all appropriate records are included; and

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

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

(4) When circumstances of an investigation require, the office may make an unannounced visit to a foster home, a departmental office, bureau, or division, a licensed child care facility, a juvenile detention facility, a staff secure juvenile facility, a private agency, or another provider to request records relevant to an investigation.

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

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

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

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

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

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

(7) The office shall present to the responsible individual or the administrator or other employee of the departmental office, bureau, or division, private agency, licensed child care facility, juvenile detention facility, staff secure juvenile facility, or other service provider a copy of the request, stating the date and the titles of the records received.

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

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

Sec. 14. Section 43-4325, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-4325 (1) Reports of investigations conducted by the office shall not be distributed beyond the entity that is the subject of the report without the consent of the Inspector General.

(2) Except when a report is provided to a guardian ad litem or an
attorney in the juvenile court pursuant to subsection (2) of section 43-4327, the office shall redact confidential information before distributing a report of an investigation. The office may disclose confidential information to the chairperson of the Health and Human Services Committee of the Legislature or the chairperson of the Judiciary Committee of the Legislature when such disclosure is, in the judgment of the Public Counsel, desirable to keep the chairperson informed of important events, issues, and developments in the Nebraska child welfare system.

(3) Records and documents, regardless of physical form, that are obtained or produced by the office in the course of an investigation are not public records for purposes of sections 84-712 to 84-712.09. Reports of investigations conducted by the office are not public records for purposes of sections 84-712 to 84-712.09.

(4) The office may withhold the identity of sources of information to protect from retaliation any person who files a complaint or provides information in good faith pursuant to the Office of Inspector General of Nebraska Child Welfare Act.

Sec. 15. Section 43-4326, Revised Statutes Cumulative Supplement, 2014, is amended to read:

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

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

Sec. 16. Section 43-4327, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-4327 (1) The Inspector General's report of an investigation shall
be in writing to the Public Counsel and shall contain recommendations. The report may recommend systemic reform or case-specific action, including a recommendation for discharge or discipline of employees or for sanctions against a foster parent, private agency, licensed child care facility, or other provider of child welfare services or juvenile justice services. All recommendations to pursue discipline shall be in writing and signed by the Inspector General. A report of an investigation shall be presented to the director, the probation administrator, or the executive director, within fifteen days after the report is presented to the Public Counsel.

(2) Any person receiving a report under this section shall not further distribute the report or any confidential information contained in the report. The Inspector General, upon notifying the Public Counsel and the director, the probation administrator, or the executive director, may distribute the report, to the extent that it is relevant to a child's welfare, to the guardian ad litem and attorneys in the juvenile court in which a case is pending involving the child or family who is the subject of the report. The report shall not be distributed beyond the parties except through the appropriate court procedures to the judge.

(3) A report that identifies misconduct, misfeasance, malfeasance, or violation of statute, rules, or regulations by an employee of the department, the juvenile services division, or the commission, a private agency, a licensed child care facility, or another provider that is relevant to providing appropriate supervision of an employee may be shared with the employer of such employee. The employer may not further distribute the report or any confidential information contained in the report.

Sec. 17. Section 43-4328, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-4328 (1) Within fifteen days after a report is presented to the director, the probation administrator, or the executive director under
section 43-4327, he or she shall determine whether to accept, reject, or request in writing modification of the recommendations contained in the report. The Inspector General, with input from the Public Counsel, may consider the director's, probation administrator's, or executive director's request for modifications but is not obligated to accept such request. Such report shall become final upon the decision of the director, the probation administrator, or the executive director to accept or reject the recommendations in the report or, if the director, the probation administrator, or the executive director requests modifications, within fifteen days after such request or after the Inspector General incorporates such modifications, whichever occurs earlier.

(2) Within fifteen days after the report is presented to the director, the probation administrator, or the executive director, the report shall be presented to the foster parent, private agency, licensed child care facility, or other provider of child welfare services or juvenile justice services that is the subject of the report and to persons involved in the implementation of the recommendations in the report. Within forty-five days after receipt of the report, the foster parent, private agency, licensed child care facility, or other provider may submit a written response to the office to correct any factual errors in the report. The Inspector General, with input from the Public Counsel, shall consider all materials submitted under this subsection to determine whether a corrected report shall be issued. If the Inspector General determines that a corrected report is necessary, the corrected report shall be issued within fifteen days after receipt of the written response.

(3) If the Inspector General does not issue a corrected report pursuant to subsection (2) of this section, or if the corrected report does not address all issues raised in the written response, the foster parent, private agency, licensed child care facility, or other provider
may request that its written response, or portions of the response, be appended to the report or corrected report.

(4) A report which raises issues related to credentialing under the Uniform Credentialing Act shall be submitted to the appropriate credentialing board under the act.

Sec. 18. Section 43-4330, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-4330 The Office of Inspector General of Nebraska Child Welfare Act does not require the Inspector General to investigate all complaints. The Inspector General, with input from the Public Counsel, shall prioritize and select investigations and inquiries that further the intent of the act and assist in legislative oversight of the Nebraska child welfare system and juvenile justice system. If the Inspector General determines that he or she will not investigate a complaint, the Inspector General may recommend to the parties alternative means of resolution of the issues in the complaint.

Sec. 19. Section 43-4331, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-4331 On or before September 15 of each year, the Inspector General shall provide to the Health and Human Services Committee of the Legislature, the Judiciary Committee of the Legislature, the Supreme Court, and the Governor a summary of reports and investigations made under the Office of Inspector General of Nebraska Child Welfare Act for the preceding year. The summary provided to the committee shall be provided electronically. The summaries shall detail recommendations and the status of implementation of recommendations and may also include recommendations to the committee regarding issues discovered through investigation, audits, inspections, and reviews by the office that will increase accountability and legislative oversight of the Nebraska child welfare system, improve operations of the department, the juvenile services division, the commission, and the Nebraska child welfare system,
or deter and identify fraud, abuse, and illegal acts. Such summary shall
include summaries of alternative response cases under alternative
response demonstration projects implemented in accordance with sections
28-710.01, 28-712, and 28-712.01 reviewed by the Inspector General. The
summaries shall not contain any confidential or identifying information
concerning the subjects of the reports and investigations.

Sec. 20. Original sections 43-4301, 43-4302, 43-4303, 43-4304,
43-4316, 43-4318, 43-4320, 43-4321, 43-4324, 43-4325, 43-4326, 43-4327,
43-4328, 43-4330, and 43-4331, Revised Statutes Cumulative Supplement,
2014, are repealed.