

## LEGISLATIVE BILL 1144

Approved by the Governor August 06, 2020

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

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

Be it enacted by the people of the State of Nebraska,

Section 1. Section 43-4318, Revised Statutes Cumulative Supplement, 2018, 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;

(ii) Subject to subsection (5) ~~(3)~~ of this section, 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 when the office, upon review, determines the death or serious injury did not occur by chance; and

(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.

(2) The department, the juvenile services division, each juvenile detention facility, and each staff secure juvenile facility shall report to the office (a) 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 and (b) all allegations of sexual abuse of a state ward, juvenile on probation, juvenile in a detention facility, and juvenile in a residential child-caring agency. For purposes of this subsection, serious injury means an injury or illness caused by suspected abuse, neglect, or maltreatment which leaves a child in critical or serious condition.

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

(i) An assault;

(ii) An escape or elopement;

(iii) An attempted suicide;

(iv) Self-harm by a juvenile;

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

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

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

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

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

(4) The department shall notify the office of Inspector General of

Nebraska Child Welfare of any leadership changes within the Office of Juvenile Services and the youth rehabilitation and treatment centers.

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

(6) (4) 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.

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

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

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

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

(c) The process for addressing such grievances; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) The complainant has ~~available to him~~ another remedy available which the complainant he could reasonably be expected to use;
- (2) The grievance pertains to a matter outside the Public Counsel's his power;
- (3) The complainant's interest is insufficiently related to the subject matter;
- (4) The complaint is trivial, frivolous, vexatious, or not made in good faith;
- (5) Other complaints are more worthy of attention;
- (6) The Public Counsel's His resources are insufficient for adequate investigation; or
- (7) The complaint has been too long delayed to justify present examination of its merit.

The Public Counsel's declining to investigate a complaint shall not bar the Public Counsel him from proceeding on the Public Counsel's his own motion to inquire into related problems. After completing his consideration of a complaint, whether or not it has been investigated, the Public Counsel shall

suitably inform the complainant and the administrative agency involved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

section:

- (a) The findings and observations from the annual physical review;
- (b) Recent inspection reports regarding the facility;
- (c) Staffing information, listed separately for each state institution, including, but not limited to:
  - (i) The number of assaults on staff;
  - (ii) Staffing levels;
  - (iii) Staff retention rates; and
  - (iv) Staff turnover rates, including unfilled and vacant positions; and
- (d) The number of reports received by the office of Public Counsel for each institution and any systemic issues identified as a result of such physical review.

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