

*Forty-seventh
Annual Report of
the
Nebraska Public Counsel*

THE OMBUDSMAN



2017

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**“When complaints are freely heard, deeply considered, and speedily reformed,
then is the utmost bound of civil liberty attained that wise men look for.”**

John Milton, Areopagitica

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NEBRASKA PUBLIC COUNSEL'S OFFICE

MISSION STATEMENT

TO PROMOTE ACCOUNTABILITY IN PUBLIC ADMINISTRATION AND PROVIDE CITIZENS WITH AN INFORMAL MEANS FOR THE INVESTIGATION AND RESOLUTION OF THEIR COMPLAINTS AGAINST THE ADMINISTRATIVE AGENCIES OF NEBRASKA STATE GOVERNMENT.

EXPOSITION

- The Public Counsel's Office is a public accountability and problem-solving agency. Its fundamental purposes are to promote accountability by state agencies and to investigate, address and resolve, through informal means, citizens' complaints relating to the administrative acts of state agencies.
- The "administrative acts" that may be addressed by the Public Counsel's Office include any action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an agency of state government.
- In addressing citizen complaints, the emphasis is always on the need for informality in resolving the disputes between citizens and agencies. Because of this emphasis on informality, some of the work of the Public Counsel's Office takes on the appearance of being in the nature of mediation or conciliation. However, the Public Counsel's Office is interested in more than simply resolving disputes and must, particularly in its public accountability role, carry out serious fact-finding. In order to perform this fact-finding, the Public Counsel's Office has been given very real investigative powers, including the subpoena power.
- The approach to each citizen's complaint is tailored to its particular facts, but the Public Counsel's Office always addresses complaints impartially, and does not approach cases from an initial perspective of acting as an advocate for the complainant. In fact, many complaints are found to be unjustified by the Public

Counsel's Office precisely because the results of a neutral investigation show that the complaint is not sustained by the facts. On the other hand, once it has been determined from an investigation that a complaint is justified, then it is the duty of the Public Counsel's Office to approach the relevant administrative agency with recommendations for possible corrective action. In pursuing these recommendations, the Public Counsel's Office takes on the role of an advocate, not for the complainant, but for the corrective action and, in a very real sense, for the general improvement of public administration.

- Because of its interest in improving public administration, the Public Counsel's Office is not necessarily satisfied with the outcome of a case merely because the complainant may be satisfied. The Public Counsel's Office also has to consider the broader implications of a case for the administrative system and, where appropriate, make recommendations for changes that will strengthen agency policies and procedures. By performing this function, and by publishing occasional reports of its findings and recommendations, the Public Counsel's Office also helps to promote public accountability of the agencies of state government and performs a legislative oversight function.

TRANSMITTAL

Neb. Rev. Stat. Section 81-8,251 provides that the Public Counsel shall each year report to the Clerk of the Legislature and to the Governor concerning the exercise of the functions of the office during the preceding calendar year. Pursuant to Section 81-8,251, this Forty-seventh Annual Report of the Nebraska Public Counsel's Office has been prepared as the annual report for the calendar year 2017, and is hereby respectfully submitted.

A MESSAGE FROM THE OMBUDSMAN

Society in every state is a blessing, but government even in its best state is but a necessary evil; in its worst state an intolerable one; for when we suffer, or are exposed to the same miseries by a government, which we might expect in a country without government, our calamity is heightened by reflecting that we furnish the means by which we suffer.

Tom Paine, *Common Sense*

I have found that I can always trust old Tom Paine to make a valuable observation, and to do so in language that is cogent, economical, and unadorned with decorative rhetoric. Would that I could match Paine's style in my own writing, but alas I don't have the necessary self-control. In *Common Sense* Paine was talking about how bad government can cause "miseries" as a part of his much larger project to justify the proposition that Great Britain's colonies in North America ought to declare their independence from the British Empire. His point, in essence, was that, since even the best government is fraught with problems, it made "sense" for the colonists to have and enjoy a form of government that was the best governance possible (Paine, of course, favored republicanism), as opposed to living in the "worst state," namely under the British monarchy of the time, which was brutal, oafish, and ill-led. But there is another important idea encapsulated in this quote from *Common Sense*, that is, the fundamental idea that government is a "necessary evil." Unfortunately, many people will look at this statement by Paine and concentrate on the "evil" part of the equation. I, on the other hand, "believe in government," and I will always focus my attention on the "necessary" part. It would be impossible to be an ombudsman and not believe that government, particularly the bureaucracy of government, is capable of being improved over time. And I would submit that believing otherwise would place one at odds with Tom Paine's ultimate point – that there is such a thing as "better government," and that this is a goal that is worth working for, even when the improvements are modest.

When we approach the ombudsman's role in modern government, we must begin with the clear understanding that the challenges are immense. An important goal of an ombudsman's office is to try to restore and sustain a somewhat more equitable balance between the autonomy of the citizen and the considerable power, both direct

and indirect, of the administrative agencies of modern government. When we think about the citizen's role in a democracy, we tend to romanticize the relationship, and to emphasize the idea that it is the almighty citizen who is the ultimate determinant, in terms of what our government looks like, and how it is organized and acts. And, in fact, it truly is "the citizens," when taken *collectively*, who select our leaders, and whose opinions and interests are being articulated and represented by our elected agents in Congress, and in state legislatures, city councils, etc. But when it comes to the citizen *individually* the story is much, much different. In his *Democracy in America*, the French historian and political analyst Alexis de Tocqueville described the relationship between modern government and the individual citizen as follows:

A centralized government acquires immense power when united to centralized administration. Thus combined, it accustoms men to set their own will habitually and completely aside; to submit, not only for once, or upon one point, but in every respect and at all times. Not only, therefore, does this union of power subdue them compulsorily, but it affects their ordinary habits; it isolates them, and then influences each separately.

In other words, when we confront modern government as lonely, individual citizens, our habit - in effect, our reflex - is "to submit." Why? Because we are always alone, isolated, and helpless in our struggles to resist the enormous gravitational pull of modern government with its centralized administration...what we otherwise refer to as "bureaucracy." There is a great deal of truth in the idea that Tocqueville advances on this point. Remember what they say... "you can't fight city hall," or at least that is a pretty common attitude in some quarters. But the ombudsman-institution offers a remedy to that problem.

As we look at modern bureaucracy there are a couple of "givens" that are particularly important. First, all bureaucracies are systems, some simple, some complex, some very complex. Second, all systems that involve human input, either in design or in execution (and that is a category that clearly includes bureaucracies), are necessarily error-prone, often in rough proportion to the extent of human input. This is why so many bureaucrats want to transact all of their business in the shadows. They don't want us to see what is going on, at least much of the time. And when bureaucratic systems produce bad outcomes due to human error it is desirable to analyze the contributory factors that produced that outcome, particularly where that outcome has

hurt people, and/or will hurt people in the future. The ombudsman-institution has been created: (1) to ferret out those negative outcomes, analyze their cause, and propose solutions; and (2) to provide remedies for the people who have been harmed by those negative outcomes. Fundamentally, the Nebraska Ombudsman's Office (the Office of the Public Counsel) exists to address those problems.

When the legislation that created the Nebraska Ombudsman's Office was enacted in 1969, the idea was considered to be "on the cutting edge," in terms of being an innovation in government. In reality, the ombudsman-idea has been around at least since early in the Nineteenth Century, and the truth is that it was an idea that just took its time in migrating to other governments in other, far-flung places. Today, ombudsman-institutions can be found in countries around the world (ranging from Albania to Uzbekistan, in alphabetical terms), and ombudsmen have been effective institutions of government in many different cultures. Most of the major European countries - including the United Kingdom, France, Germany, Spain, Belgium, the Netherlands, Austria, Norway, Sweden, Denmark, the Czech Republic, etc. - have established ombudsman-institutions, and there are ombudsman's offices in all but one of the Canadian Provinces. So while the ombudsman idea might have been "on the cutting-edge" when the Nebraska Ombudsman's Office was created in 1969, that is certainly not the case now. In any event, we really should not be too surprised that the Nebraska Legislature created in "an innovation in government" when it fashioned the Nebraska Ombudsman's Office back in 1969. After all, Nebraska has a history of innovations in government, like, for example...the non-partisan, unicameral legislature. All of this is proof, I think, that Nebraskans are actually creative and forward-looking in terms of how they organize their civic society

This Annual Report is very different from the dozens of other Annual Reports that I have prepared over the years. For one thing, this is my valedictory Report; the last Annual Report that I will write after decades as Nebraska's Ombudsman. It has been a great honor and privilege to hold this awesome position, and I have always taken great pride in serving as an agent of the Nebraska's unicameral Legislature, and in serving the people of Nebraska who that Legislature represents. My nearly forty years of serving in this office have been more than a job, more even than a "calling;" they have been an opportunity to serve my state and its people, and to help build, with the assistance of many, many others, an institution that will continue to serve the people of this great state long into the future. I am humbled to have had this opportunity.

Another way in which this Annual Report is different is because I have decided to use this format to publish our new *Ombudsman's Office Policies and Procedures*. I have served as Nebraska's Ombudsman for approaching 40 years, and I think that it would be accurate to say that by this point I have been a practicing ombudsman for longer than any other person in the history of the American republic. Throughout the many years that I have had the privilege of observing the ombudsman institution in actual operation there are a couple of important lessons that I have learned. First, I am absolutely convinced that the ombudsman institution is highly valuable, both in terms of the importance of the service it provides to the people of Nebraska, and in terms of the role that it plays in humanizing our state's government. In fact, I believe that the ombudsman-institution generally is a vital missing piece needed to complete constitutional government in our society. That is how important this "ombudsman idea" truly is. Secondly, by serving as an ombudsman over decades of time I have developed a pretty good grasp of how an ombudsman's office "best operates," and what the "best practices" for an ombudsman's office are. After all, when it comes to being a "practicing ombudsman," that is a role that I have been involved in literally for decades...many decades.

The Nebraska Public Counsel Act [specifically **Neb. Rev. Stat.** §81-8,245(2)] generally authorizes the Ombudsman's Office to "prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made; and...determine the form, frequency, and distribution of his or her conclusions, recommendations, and proposals." It should be noted that there is nothing in this language that would require the Ombudsman to articulate these "methods, etc." in writing, let alone anything requiring that they be promulgated as regulations. Back in 1975 Professor Bernard Frank, who was then both the Chair of the Ombudsman Committee of the International Bar Association, and the Chair of the Ombudsman Committee of the Administrative Law Section of the American Bar Association, published a law review article that was basically a "roll-out" of the ABA's new "Model Ombudsman Statute for State Governments." (Frank; University of Miami Law Review; at 398 - 445) In that article, Professor Frank acknowledged that the Model Act gives the ombudsman "the required broad discretion," and that even if the ombudsman did issue "rules and regulations," the ombudsman would still have "the opportunity to fill out a blank check" relating to the "discharge of his duties." In fact, Professor Frank said that the provisions of an ombudsman statute ought to "give broad discretion to the Ombudsman to determine

his procedures in carrying out the functions of the office.” Professor Frank also noted that written requirements along those lines that were too “detailed and specific” might also be too “restrictive.”

I am well aware that the United States Ombudsman Association (of which I am a past-President) has adopted a set of “Governmental Ombudsman Standards” dating back to 2003. In fact, I myself helped to write the USOA’s “Model Ombudsman Act” (not the Standards), adopted by the Association in 1997. I did not, however, help to create the USOA Standards, and I have always felt that those Standards were largely inadequate, and did not perfectly reflect the principles and purposes of the ombudsman institution, in particular, the idea that an ombudsman’s office exists to empower the weak...not to protect the powerful. It should be emphasized, therefore, that the new *Ombudsman’s Office Policies and Procedures* presented in this Annual Report are not derived from the USAO Standards. They are instead a reflection of my own observations and experiences as a practicing ombudsman over almost forty years. They are my understanding of what “best practices” for the operation of an ombudsman’s office are based on my many, many, many years of experience.

One valuable lesson that I have learned is how extremely important it is for those people who do the casework in an ombudsman’s office to be given the freedom to express themselves through their work, and to handle their cases as they see fit. The arduous task of casework in an ombudsman’s office can be very difficult under the best of circumstances, and listening to people’s problems and complaints all day can even be spiritually draining. I have discovered that, in order to avoid the risk of burnout, it is best to give our case managers a significant degree of autonomy and flexibility in handling their caseloads, and in developing a strategy for addressing the issues presented in their cases. Those people who do the actual casework in an ombudsman’s office need to be empowered to use their own internal resources, their own creativity and, to a certain extent, their own judgment, in dealing with what are very often extremely difficult issues, involving differing human outlooks, problems of communication and miscommunication, arguments over priority-setting, and even moral issues. This, I have discovered, is the best way to get a high quality of performance from case management staff, while minimizing the obvious problem of “burnout.”

Another extremely important lesson that I have learned about casework employees in an ombudsman’s office has to do with their training regimen...there isn’t one. In

fact, I have never seen any training program for ombudsman's office caseworkers that I believe would be truly helpful, and/or worth the monetary expenditure that would be necessary for paying the related tuition, and paying for transporting a new staff person to the remote location where the training was being offered. When it is compared to training for those who work in other administrative contexts, work in an ombudsman's office is very different, if not unique. This is particularly the case when we consider the expectation that different case managers will employ different strategies to resolve different cases.

When it comes to actual training for casework and general case management in an ombudsman's office, the only sensible, and truly meaningful, approach is in-service or on-the-job training. In essence, the new ombudsman staff person will have to learn-by-doing, rather like a new doctor learns about medical practice as an intern in a hospital. However, there are a few strategies that do need to be employed in handling this ombudsman-apprenticeship. First of all, the new employee must read and carefully study the Public Counsel Act, and the *Ombudsman's Office Policies and Procedures*, to thoroughly familiarize himself or herself with the formal rules and/or formalized expectations of the job. Secondly, the new employee should be treated by veteran staff as what they are - tyros, apprentices, or trainees, who should not be expected to know everything about how an ombudsman's office operates, or to have the capacity to handle complex cases from the outset. Finally, each new ombudsman office casework-employee needs to have a designated veteran of the office to serve as their active mentor during the first six months of their service. This mentorship should involve daily meetings between apprentice and mentor during the first several weeks of the new staff person's tenure, with progressively less frequent meetings over time. The expectation is that the new employee, while learning about the role and culture of the office, will eventually be able to manage their caseload and carry out their duties with the kind of creativity and commitment to public service that is needed in this important work.

In 1975 Professor Bernard Frank also published an article on the ombudsman idea in the *International Bar Journal* (Bernard Frank, *International Bar Journal*, May 1975, 48-60). By that time, Professor Frank was already one of the chief motivating forces for transferring the ombudsman-institution to American government, and Frank's article included a discussion of what he considered to be the "principal elements" of the ombudsman-institution. After first noting that "the Ombudsman

concept is easily adapted to the constitutional requirements and differing needs of countries,” Frank’s remarks included the following observations:

the Ombudsman enjoys a surprising amount of independence even from the legislature...The independence of the Ombudsman is fundamental to the Ombudsman system...The system basically involves speedy, inexpensive and informal procedures. The Ombudsman generally conducts an impartial investigation, calls upon all persons for information, requires a production of documents, and has access to government records.

The critical words in this quotation from Professor Frank are “independence,” “informal,” and “impartial.”

As for the subject of *independence*, the fact is that ever since the time of Professor Frank, the Ombudsman Committee of the International Bar Association, and the ABA’s “Model Ombudsman Statute for State Governments,” it has been understood that the ombudsman’s office must be “headed by an independent, high-level public official who is responsible to the legislature or parliament.” Nothing less than this level of independence will do. In this regard, those “ombudsmen” (so-called) who are situated within and under the control of the agencies over which they supposedly have jurisdiction are especially fraught, and are rarely more than “spinmeisters” for the bureaucracies that employ them. As for the subject of *informality*, that too is an essential feature of an ombudsman’s office. Ombudsman’s offices must be nimble in their response to citizen’s complaints, and must be able to employ their creativity in arriving at resolutions for those situations that harm, aggravate, and otherwise trouble the ombudsman’s complainants. In a setting where governmental agencies are encumbered with multiple layers of bureaucracy, opaque rules and regulations, and often-indecipherable technical jargon, it is the ombudsman’s job to cut through the dense layers of red tape, to help humanize the “system,” and to bring relief to the complaining citizen. All of this points in one direction - toward an emphasis on informality in the ombudsman’s approach to cases, and away from any self-imposed requirements that might slow the ombudsman down in the pursuit of justice for the citizen. Finally, it is essential that the ombudsman’s office not only appear to be, but also in practice truly be, *impartial* in its approach to its complaints. This must be accomplished through assorted means. First of all, the ombudsman’s genuine independence from the agencies under its jurisdiction will empower the ombudsman

to scrupulously and honestly analyze complaints, and arrive at conclusions that are unimpeded by concerns over political repercussions. Secondly, the ombudsman's considerable investigative authority, and power to access all of the relevant facts will help to assure that the ombudsman's conclusions are based on a firm footing of truth, which is the most meaningful weapon that the ombudsman's office has in its basic efforts to secure a fair and favorable outcome for the complainant. And third, the ombudsman must always be protective of the credibility of the office by demanding a high quality of investigative skill, fairness, technical expertise, and objectivity in the office's approach to cases.

With these qualities...with all of this, an ombudsman's office can succeed, not only in performing its core function of helping to resolve complaints, but also in providing that vital missing piece needed to complete constitutional government in our society. Now, as I prepare to leave this position that I love, and in which I have proudly served for nearly four decades, I offer up these *Ombudsman's Office Policies and Procedures* as my understanding of the true "best practices" for an ombudsman's office. I hope that they will sustain the institution of the Ombudsman's Office in the days to come, and that this institution will continue to serve the citizens of this state, address their complaints, give them a recourse to justice, and generally help to humanize Nebraska government, now and far, far into the future.

Marshall Lux
Ombudsman
(1981 - 2018)

Preface to Policies and Procedures

*The right of the people...to petition the government, or
any department thereof, shall never be abridged.*

Nebraska's State Constitution, Article I, Section 19

Modern government is like the iceberg...we have no trouble seeing the obvious, above-the-water parts, the elections, and the policy-making, but we forget that there is much more to government; business that goes on below the surface, the regulation, the enforcement, things that affect individual citizens in terms of their future wellbeing, and the activities of their daily lives. Our system of government is supposed to be about far more than the mere generalities of setting public policy. Our form of government is supposed to be an ongoing conversation – and not only a conversation among the people themselves, but also a conversation between the people and those who govern in their name. When the Bill of Rights of the Nebraska Constitution guarantees the “right of the people...to petition the government, or any department thereof,” it is talking about far more than the right of voter blocs and interest groups to lobby policy-makers for changes in the law; it is also talking about the right of individual citizens to “petition” state government for the redress of individual grievances. But in metaphorical “iceberg” terms, this is all stuff that goes on beneath the surface, in the murky bureaucratic waters occupied by administrators, lawyers, and technocrats, and in this dimly-lit, shadowy realm most individual citizens are at a distinct disadvantage, in their efforts to protect their legal rights and vital interests. This can all change, however, when the ombudsman steps forward.

The Nebraska Ombudsman's Office has been in operation since 1971. It was created by the Public Counsel Act, a “good government” measure that was enacted in order to “humanize” government, and offer assistance to the public in its often fraught relations with the state's administrative agencies. It was designed to provide an informal means for the “redress of grievances;” a way of enabling our otherwise “powerless” citizens to receive “administrative justice.” It was also seen as a means for improving the administration of state government by helping to discover and address problem areas in the operation of state agencies. Sometimes there are things that need to be fixed, and an ombudsman can help to find those things, and fix them.

In direct terms, the role of the Ombudsman's Office seems rather obvious and prosaic. It is a complaint-handling office for citizens who have problems with administrative agencies of government. The best definition of the word “ombudsman” was that authored by the International Bar Association back in the early 1970's: “An office provided for by the constitution or by action of the legislature or parliament and headed by an independent, high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials, and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue reports.” This seems simple

enough, but there is a great deal more to the office in functional and public-policy terms when we look beneath the surface. In fact, the ombudsman institution addresses many otherwise-unmet needs that trouble modern government.

Much of the scholarship on the subject of the ombudsman institution goes back to the 1970's, a time when the ombudsman was the "great new idea" for moderating bureaucratic practices, providing administrative justice, and improving the overall relationship between government and the governed. Today, the idea is still great...it just isn't new. It is also an idea which should motivate interest and support from all shades of philosophy on the modern political spectrum. Its basic goals of protecting people "under the heel of big bureaucracy," and of helping to make our governmental agencies more efficient, effective, and fair are ideas that are broadly supported by public and policy-makers. But unlike other ideas that sound good superficially, but suffer from close examination, the ombudsman idea simply grows more meaningful when it is studied under the microscope.

One of the foremost concerns about our modern government, as it has progressively become more empowered, more complex, and more comprehensive in its reach, is the possibility that this high-octane government could devolve into a source of repression of the human and civil rights of its own people. In his historic treatise on the condition of *Democracy in America*, Alexis de Tocqueville expressed his own deep misgivings about the comprehensive powers of the modern American state, and specifically his concerns about how the "dread of disturbance and the love of well-being" might eventually "lead the democratic nations to increase the functions of central government, as the only power which appears to be intrinsically...strong, enlightened, and secure to protect them from anarchy." This, Tocqueville suggested, might cause "private persons more and more to sacrifice their rights to their tranquility." What Tocqueville was basically worried about was the possibility that our natural desire for "order" in society might encourage us to empower the administrative apparatus of government to the point that it would begin to infringe on our individual rights. And, in fact, looking back to 1787 we know that this was also a central concern addressed in the drafting of the Constitution of the United States

One of the fundamental goals of the delegates to the Constitutional Convention was to so design the federal government that it would be effective in organizing and managing a modern society, without being so heavy-handed that it repressed individual liberties. Part of the answer was the "separation of powers," and the system of "checks and balances," as is reflected in how our federal system of government is structured. Another connected, and yet largely underappreciated, idea for managing the relations between the citizen and the state can be found in the First Amendment's language to the effect that "Congress shall make no law...abridging...the right of the people...to petition the government for a redress of grievances." (Similarly, the right of the people of the State of Nebraska to "petition" their government is guaranteed in Article I, Section 19 of the Nebraska Constitution.) The idea reflected in this part of the First Amendment is that a government is much less likely to be oppressive when it is open, accessible, and responsive to the people who have grievances against it. To a certain extent this goal can be met by our independent judiciary. But legal representation can be extremely expensive and, as a practical matter, our courts are not truly

accessible to everybody who has a grievance against government. An ombudsman's office fills this gap perfectly by offering the citizen another avenue through which to appeal for administrative justice, and thereby ultimately secure a "redress of grievances."

An ombudsman's office has other things to offer as well. Modern government is not only large and powerful; it is also highly complex, both structurally, and in terms of its labyrinth of rules and regulations. And the core values of its administrative agencies, including the expectation that it will treat all citizens "equally," and without preference, can tend to make it seem detached and impersonal from the perspective of the citizen who comes into contact with its intricate processes, standards, and regulations. From the outside looking in, the administrative agencies of modern government can seem to be cold, and machine-like, and altogether too menacing and inscrutable to be "user-friendly." An important part of the mission of an ombudsman's office is to soften this imagery, to humanize government, and make it more approachable to its people. Fundamentally, an ombudsman's office is meant to be a place that is accessible; a place where people who have encountered difficulties in their dealings with government can go to be listened to, and to be treated as human beings, rather than being handled as if they were an "abstraction," or an "object," or a "statistic."

Functionally, there are three features relating to the operation of an ombudsman's office that need to be emphasized. First, while an ombudsman does not have the power to compel an administrative agency to take any substantive corrective action, an ombudsman's office does have a significant measure of power to conduct serious investigations of the issues involved in the complaints brought to the ombudsman's attention. The importance of these investigative powers in terms of enhancing the effectiveness of an ombudsman's office in performing its basic mission cannot be over-emphasized. When it comes to making a case with a state agency for taking some form of corrective action, "the truth" is always the ombudsman's most powerful weapon. And since the ombudsman's investigative powers are the source of that "truth," it is extremely important that the ombudsman be very protective of those powers, and have a low tolerance for public administrators and agency employees who show any inclination to resist the ombudsman's legitimate investigative mission.

A second point to emphasize is that an ombudsman's office will be far more effective in carrying out its mission to the extent that it is capable of analyzing complex administrative issues. If an ombudsman's office is to adequately perform its role as a problem-solver, then it needs to be staffed with people who have developed a significant level of expertise in evaluating the types of administrative issues that are presented to the office. Typically, this means that the ombudsman's office will need a good mix of staff with legal expertise and/or with a grounding in government and public administration. It is also helpful for the ombudsman's staff to have a solid idea of the "roadmap" of the agencies of government under the ombudsman's jurisdiction, with a background knowledge on how those agencies are organized and operate, and who the most important figures are within those agencies. All of these features will prove to be helpful, if not essential, when it comes to touching the right chords to secure an agency's cooperation with the ombudsman's

investigations, and the related efforts to achieve some form of corrective action, when that is appropriate.

The third point that needs emphasis also has to do with staffing of the ombudsman's office, but is more concerned with the "orientation" of the ombudsman's staff, as opposed to their technical knowledge, and professional experience. Above all, the staff of an ombudsman's office needs to be service-oriented. And, given the nature of the services an ombudsman's office is supposed to provide to the public, it is critical that the ombudsman's casework staff all be particularly good problem-solvers. One of the most important qualities for any ombudsman's office staff person is the ability to inspire the confidence of the complainant. The ombudsman is not an "advocate" for those citizens who bring their problems to the ombudsman's office, but the ombudsman's staff must definitely be advocates for problem solving itself...for finding creative ways to resolve conflicts through settlements that are mutually agreeable to all of the parties involved. The staff of the ombudsman's office must also understand that part of their role is to empower and give a voice to complainants, at least in the sense of articulating the content of their complaints to the administrators and governmental officials who are in a position to approve corrective action. This places a high value on the creativity and the persuasive-skills of the ombudsman's staff. It also means that the ombudsman's staff, while they may agree or disagree with the individual complaint or complainant, must necessarily have an empathy generally for ordinary people who find themselves in the grip of an administrative problem that seems to be insoluble.

The work performed in an ombudsman's office is an intensely human-oriented activity. Ombudsmen will never be replaced by robots or computer programs. This is true, in part, because no two cases that come to an ombudsman's office are ever the same. This is also true because one of the central purposes of an ombudsman's office is to provide citizens with a personalized-service; to give a human face, and the human touch, to big government. And the fact that no two cases are the same - they will have different facts, different issues, different complainants, and different ombudsman staff members assigned to them - is really a positive feature, because it helps to "particularize" and "humanize" what might otherwise be a very disagreeable, mechanical, and dehumanizing process. What all of this ultimately comes down to is an extremely important proposition...that when the Ombudsman's Office is processing its complaint cases, it is *not* desirable that the case-management to be too regimented or regularized. The human touch means that the individual personality of the ombudsman staff person who is handling the case must come through. With all of this in mind, what we are left with, when it comes to the important area of "case management," are several very general concerns or principles that must act as all-purpose guidelines for ombudsman staff, in order to establish the kind of case-management culture that will be truly compatible with the role of an ombudsman's office. These general areas of concern have to do with: (1) Confidentiality; (2) Informality; (3) Impartiality/Objectivity; and (4) Credibility. Each of these areas will be featured in these Policies and Procedures.

It is particularly important to emphasize that, like the legislative Program Audit Office, the Ombudsman's Office is a part of the legislative branch of state government. Being in the legislative branch provides real independence for the Ombudsman's Office, by separating it from

the executive branch, and from the executive agencies that are under its oversight jurisdiction. It also helps to provide a framework for the Ombudsman Office. The work of the Ombudsman's Office in terms of its "helping-to-provide-accountability" function actually situates the Ombudsman's Office as a highly significant element of the "legislative oversight apparatus" of the Nebraska Legislature. And the fact that the Ombudsman's Office is designed to be part of the legislative branch of government also helps to legitimize the critical investigative powers of the Ombudsman's Office. Those powers are, in effect, legislative oversight powers delegated to the Ombudsman by the Legislature. This also helps to explain why the Ombudsman is only able to recommend corrective action, rather than being able to compel agencies to take those corrective actions that the Ombudsman deems suitable. For a legislative officer to have the power to compel executive branch agencies to take corrective actions that are substantive in nature would arguably represent a breach of the principle of separation of powers. The Ombudsman's investigative powers, on the other hand, are perfectly legitimate in constitutional terms, when placed in the larger context of legislative oversight.

Too often our modern administrative state overlooks the humanity of the citizens that it is supposed to serve. It tyrannizes our people over the "details" of their lives, misuses its powers, and generally bullies the very people who are supposed to be its true masters. The principles that are the foundation of our form of government include the expectation that our public administrators will place the highest value on the goal of meeting the needs of the people who they are employed to serve, since those people are, after all, the true master under any system of government founded on the idea of popular sovereignty. But the problem is that, in practice, governmental agencies do not always (or even very often) meet that goal. Thus, the Ombudsman can not only help to improve public administration, but the Ombudsman can also act as a catalyst to help to restore the relationship between citizen and government to what it is supposed to be. And so, although the ombudsman-idea may seem to be simple enough, when it is viewed globally the Ombudsman's Office actually has many important roles, and offers long list of advantages to the State of Nebraska and its people, including the following:

- **It is a source of administrative justice** - Because of the expense involved in taking administrative issues into the courts, our system of government does not offer those who have grievances against governmental agencies an effective and affordable avenue for the resolution of their complaints. For most citizens redress through the courts is not a realistic solution. The Ombudsman addresses this need by providing an inexpensive, informal, quick, and universally accessible means to address these citizen grievances, with no unnecessary "red tape," and no need for a paid advocate.
- **It is an internal critic of public administration** - Through addressing issues raised in citizens' complaints against the agencies of government the Ombudsman is well-positioned to provide ongoing scrutiny and informed criticism of public administration in Nebraska government. And while this informed critique comes from inside government, it is nevertheless objective and independent because it comes from outside the administrative hierarchy of the agencies involved. This arrangement allows the

Ombudsman's Office to carry out a continuing, arm's length dialogue with the administrators concerned, and to offer serious-minded criticism and recommendations for corrective action from a perspective that is well informed, professionalized, apolitical, and truly independent. In this way, the Ombudsman's Office is able to offer up new ideas that will help to improve the administration of state government by making recommendations to governmental agencies on methods through which they can modify their policies, procedures, and practices to make them more efficient and more service-oriented.

- **It offers an alternative form of dispute resolution** - Instead of investigating and adjudicating citizens' complaints, in some instances the Ombudsman's Office can function as an alternative form of dispute resolution; a means through which to explore terms of a potential settlement that would effectively resolve the issues that are raised in a complaint through mediation and the facilitation of communication between the citizen and the agency. Rather than focusing on the question of which party to the complaint is right or wrong in a moral or a legal sense, the Ombudsman can instead treat the dispute itself as being the real problem at hand, and look for answers that will resolve the argument between the citizen and the governmental agency in a way that is ultimately acceptable to both of the parties.
- **It is an avenue for participation in government by citizens who are otherwise disaffected** - Because the primary role of the Ombudsman's Office is to address grievances against governmental agencies, there is a natural and understandable tendency for the Office to be contacted by citizens who are angry and disillusioned, and who will approach the Ombudsman with an extreme "you-can't-fight-city-hall" attitude. By addressing the issues and grievances of these disaffected citizens in a thorough, thoughtful, and professional manner, the Ombudsman's Office has a real opportunity to reintroduce these alienated citizens to active participation in their government, even if it is mostly limited to "participation-by-complaining." This is a phenomenon that is especially significant in the cases of those complainants who are inmates, because in those instances the inmates, by the simple act of taking their complaints to the Ombudsman's Office, are addressing their grievances through "legitimate" channels, which is a positive event, not only for the inmates involved, but also for the state's corrections system as well.
- **It is a means for "humanizing" government** - Modern government, with all of its administrative complexities, its many mysterious rules and regulations, and its drive to conserve its resources, has an all-too unhappy tendency to subordinate the high ideals of "public service" to the lowly practicalities of "consistency" and "efficiency." Modern "big bureaucracy" tends to lose its service-orientation, and to transform itself into a "mechanism" of governance, rather than serving the public as a human-based and service-based organism. In practice, this machinery-of-government approach will not only dehumanizes government itself, but it will also tend to dehumanize the citizens

who come into contact with it, treating them as if they were objects, or abstractions, or mere statistics, rather than as human beings, with all of the normal human needs, worries, problems, and idiosyncrasies. With its emphasis on ease of accessibility and the elimination of needless “red-tape,” and with its commitment to providing personalized-service, the Ombudsman’s Office can provide the human face, and the all-important human touch, that is otherwise too often missing from big government.

- **It is a mechanism to compel accountability** - The Ombudsman’s Office also performs the role of “watchdog” with respect to the operation of the administrative entities under the Ombudsman’s jurisdiction. The complaints that are brought to the Ombudsman’s Office come in all qualities, shapes, and sizes. Some of them are justified, some are not justified, and some are “mixed.” But they all have one thing in common – they all offer the Ombudsman the opportunity to scrutinize the performance of the administrative agency involved, and to draw conclusions on everything from the agency’s administrative culture, to the basic competence of its managers, and the efficiencies of its procedures. Thus, the process of investigation of citizen complaints is itself a key “accountability strategy,” which can expose the mistakes and malpractices of the agencies, and can also act as a deterrent of bad administrative behavior by imposing a regime of transparency to uncover instances of incompetence and/or maladministration in the operation of the agencies. This explains why the Ombudsman may not necessarily be “satisfied” with the ultimate outcome of a citizen’s complaint case, merely because the citizen-complainant involved is personally satisfied. The Ombudsman has to be concerned not only about the outcome of the specific complaint, but also about what has been learned concerning the operations of the administrative agency involved, which means that it is entirely possible that the Ombudsman will need to pursue the matter beyond the point where the initiating complaint has itself been resolved.
- **It can be an advocate for systemic change** - In appropriate circumstances the Ombudsman can be an active advocate for administrative reform, particularly when agencies refuse to address their problems administratively, or where there is an important issue that necessarily requires the attention of the elected policy-makers in the state’s Legislature. In these situations, the legitimate expectation is that the Ombudsman will speak out openly about significant problems that the Ombudsman has observed in public administration, even by calling for appropriate legislation whenever that would appear to be needed to reform public administration. The Ombudsman’s moral and legal responsibilities in this regard are a direct byproduct of some of the Ombudsman’s other important roles: (1) as an internal critic of public administration; and (2) as a “watchdog,” with the duty of holding agencies accountable for their mistakes and ongoing maladministration.
- **It is an instrument of legislative oversight** - Legislative oversight comes in many forms, even on the state level. In the case of Nebraska’s Legislature, the idea of

legislative oversight is expressed in the form of the work of the fourteen standing committees, and special legislative committees, as well as through the work of the two Inspectors General, the Fiscal Analyst's Office, and the Performance Audit Office. And, in its own unique way, the Ombudsman's Office is also a significant contributor to the Legislature's oversight efforts and processes. The work that the Ombudsman does in addressing citizen grievances gives the Ombudsman the opportunity to observe how the administrative agencies of Nebraska government operate in real time, with real people and problems, and quite often in microscopic detail. The observations that the Ombudsman makes in carrying out this role, and the lessons that the staff of the Ombudsman's Office learn over many decades of watching the ordinary performance of the state's administrative agencies, provides the Ombudsman's Office with a deep reservoir of knowledge regarding the overall quality of administration in the agencies, what their strengths are, and where there are weaknesses that will need to be addressed. The Legislature can then draw on this reservoir of knowledge in carrying out its critical legislative oversight role.

- **It is a resource for legitimizing government** - In a system of government based on popular sovereignty there is an obligation to protect the sovereign people from the mistakes and malpractice of public administrators. Too often, our bureaucratic structures fail in their essential missions, and engender a sense of cynicism among the public that will damage the relationship between citizen and government. But the very existence of the Ombudsman says something important to citizens and to governmental administrators alike. To the public administrators, the institution of the Ombudsman says that the citizens' opinions and needs do matter; that work in government is more than just another job – it is a civic responsibility, with moral implications that are not present in jobs outside of the public sector. To the citizens the Ombudsman institution says that the government that they all depend upon, and pay for through their taxes, does care about their wellbeing, and about the quality of the service that it is providing. No...the administration of government will never be perfect, but it should always at least be seen to be trying to do the very best job possible. The legitimacy of government, in the end, comes down to the quality of the relationship between government and the governed. The Ombudsman can play an critical role in legitimizing government in a modern world where the scope and the powers of agencies of government have become outsized relative to the citizen. By emphasizing the need for the agencies of government to function as the servants of our citizens, and not their master, and by realizing the First Amendment “right of the people...to petition the government for a redress of grievances,” the work of the Ombudsman will help to restore the fundamental relationship between citizen and government to a respectable balance.

Finally, it must be emphasized here that all of these benefits, all of these multiple, positive “spin-offs” of the ombudsman institution, are utterly and completely dependent upon one factor, and one factor alone...the structural independence of the Ombudsman's Office. None of the real “magic”

that can be achieved through the ombudsman institution – the administrative justice, the advancement and reform of public administration, the enhanced transparency and improved accountability, the humanizing and legitimizing of modern government, the legislative oversight – none of it is achievable, or even possible, unless the ombudsman is made structurally independent of the executive branch of government. When the International Bar Association defined the term “ombudsman” all those many decades ago, it was particularly careful to stress the point that the ombudsman’s office must be “headed by an independent, high-level public official who is responsible to the legislature or parliament.” In other words, the ombudsman institution absolutely must be structurally independent, if it is going to be an effective means of actuating the civil and constitutional “right of the people...to petition the government for a redress of grievances.” Nothing less than structural independence will do.

In 1975, Professor Bernard Frank of the University of Pennsylvania, who was active in the International Bar Association, and instrumental in bringing the ombudsman-institution to the United States, summed up the core purpose of the ombudsman perfectly.

The right to complain, the right to be heard, the right to have corrective action taken if one has suffered harm from government - are human rights. We know that human rights are not protected merely by words and phrases in constitutions, charters, laws, proclamations, and declarations. Human rights are primarily protected by effective machinery which implements the constitution, the charter, the law, the proclamation and the declaration. The Ombudsman is one of the institutions essential to a society under the Rule of Law, a society in which fundamental rights and human dignity are respected.

Bernard Frank, *International Bar Journal*, May 1975, pp. 48-60

The Policies and Procedures presented in this document are intended to be a reflection of that fundamental idea, and an expression, in detail, of the best means through which to create a truly “effective machinery” to protect the human rights of Nebraska’s people.

Marshall Lux
Nebraska Ombudsman
(1981 - 2018)

Office of the Public Counsel Policies and Procedures

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CHAPTER 1 MISSION AND DEFINITIONS

I. Mission Statement

The Ombudsman's Office is created pursuant to the Public Counsel Act of 1969. (See **Neb. Rev. Stat.** §§81-8,240 through 81-8,254.) The mission of the Ombudsman's Office is: To promote accountability in public administration and to provide citizens with an informal means for the investigation and resolution of their complaints against administrative agencies of Nebraska state government (and other entities as provided by law). This mission entails, but is not limited to, the following propositions:

- A.** The Ombudsman's Office is a public accountability and problem-solving agency. Its fundamental purposes are to promote accountability by state agencies and to investigate, address and resolve, through informal means, citizens' complaints relating to the administrative acts of state agencies and other entities within its jurisdiction.
- B.** The "administrative acts" that may be addressed by the Ombudsman's Office include any action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an agency of state government.
- C.** In addressing citizen complaints, the emphasis is always on the need for informality in resolving the disputes between citizens and agencies. Because of this emphasis on informality, some of the work of the Ombudsman's Office takes on the appearance of being in the nature of mediation or conciliation. However, the Ombudsman's Office is interested in more than simply resolving disputes and must, particularly in its public accountability role, carry out serious fact-finding. In order to perform this fact-finding, the Ombudsman's Office has been given very real investigative powers, including the subpoena power.
- D.** The approach to each citizen's complaint is tailored to its particular facts, but the Ombudsman's Office always addresses complaints impartially, and does not approach cases from an initial perspective of acting as an advocate for the complainant. In fact, many complaints are found to be unjustified by the Ombudsman's Office precisely because the results of an objective investigation show that the complaint is not sustained by the facts. On the other hand, once it has been determined from an investigation that a complaint is justified, then it is the duty of the Ombudsman's Office to approach the relevant administrative agency

with recommendations for possible corrective action. In pursuing these recommendations, the Ombudsman's Office takes on the role of an advocate, not for the complainant, but for the corrective action and, in a very real sense, for the general improvement of public administration.

- E. Because of its interest in improving public administration, the Ombudsman's Office is not necessarily satisfied with the outcome of a case merely because the complainant may be satisfied. The Ombudsman's Office also has to consider the broader implications of a case for the administrative system and, where appropriate, make recommendations for changes that will strengthen agency policies and procedures. By performing this function, and by publishing occasional reports of its findings and recommendations, the Ombudsman's Office also helps to promote public accountability of the agencies of state government and performs a legislative oversight function.

II. Definitions

As used in these Policies and Procedures:

- A. **Administrative agency** shall mean any department, board, commission, or other governmental unit, any official, or any employee of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska, or any corporation, partnership, business, firm, governmental entity, or person who is providing health and human services to individuals under contract with the State of Nebraska and who is subject to the jurisdiction of the Ombudsman's Office as required by section 73-401, any regional behavioral health authority, any community-based behavioral health services provider that contracts with a regional behavioral health authority, and any county or municipal correctional or jail facility and employee thereof acting or purporting to act by reason of connection with the county or municipal correctional or jail facility; but shall not include (a) any court, (b) any member or employee of the Legislature or the Legislative Council, (c) the Governor or his personal staff, (d) any political subdivision or entity thereof, (e) any instrumentality formed pursuant to an interstate compact and answerable to more than one state, or (f) any entity of the federal government.
- B. **Administrative act** shall mean and include every action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an administrative agency.
- C. **Anonymous complaint** shall mean any complaint where the identity of the complainant is unknown to the staff of the Ombudsman's Office.

- D. Case management** shall mean the routine work of an Ombudsman’s Office case manager who has been assigned to manage an Ombudsman’s Office complaint/inquiry/contact, including all case analysis and planning, all related communication with the complainant and the administrative agency involved, all investigative actions and research related to the case, the proper management of information related to the case, and all efforts by the Ombudsman’s Office directed at resolving the complaint/inquiry/contact.
- E. Case manager** shall mean any employee of the Ombudsman’s Office who is assigned to manage/handle any complaints, inquiries, and contacts received by the Ombudsman’s Office.
- F. Complainant** shall mean any person who submits a complaint, inquiry, or contact to the Ombudsman’s Office, and who is the real party in interest in the subject matter of the complaint, inquiry, or contact.
- G. Custodian** shall mean the person directly responsible for maintaining and managing any records. The Public Counsel is the custodian of all records of the Ombudsman’s Office.
- H. Decline a case** shall mean a decision not to take action on a case or complaint where the subject matter is within the jurisdiction of the Ombudsman’s Office, but where a determination has been made not to carry out an investigation of the case or complaint pursuant to the Ombudsman’s authority under the provisions of **Neb. Rev. Stat.** §81-8,247(1) and/or (3) through (7).
- I. Employee** shall mean any employee of any administrative agency.
- J. Facilitator** shall mean any individual who is not the complainant, or the complainant’s legal counsel, but who purports to speak as an advocate, enabler, or mediator for the complainant. (As used in this definition, an attorney-in-fact does not qualify as a complainant’s legal counsel.)
- K. Jurisdiction of the Ombudsman’s Office** shall mean the official scope of the authority of the Ombudsman’s Office to investigate and address complaints and issues, as that scope is defined by **Neb. Rev. Stat.** §81-8,240(1), and as that scope is modified by **Neb. Rev. Stat.** §73-401.
- L. Office** shall mean the Public Counsel of the State of Nebraska.
- M. Ombudsman** shall mean the Public Counsel of the State of Nebraska as created by, authorized, and empowered pursuant to the Public Counsel Act of 1969, **Neb. Rev. Stat.** §§81-8,240 through 81-8,254.

- N. Person** shall mean and include any individual, aggregation of individuals, partnership, corporation, or unincorporated association.
- O. Provisional confidentiality** shall mean a promise made by a case manager to treat certain information obtained from a complainant or witness as confidential subject to limitations on that promise of confidentiality, as specified by the case manager in direct communication with that complainant or witness.
- P. Real party in interest** shall mean the person or persons whose legal rights or personal interests are specifically and directly affected by an administrative act.
- Q. Records** mean all records and documents, regardless of physical form, of or belonging to any person or administrative agency, including all writings, memoranda, drawings, books, indices, directories, graphs, maps, charts, plats, photographs, microfilms, audio and/or video recordings, and any other data or information stored or preserved in any medium whatsoever. Data which is a record in its original form shall remain a record when maintained in or transferred to digital/computer files.
- R. Whistleblower** shall mean any person employed by an administrative agency who makes a disclosure to the Ombudsman, the Ombudsman's staff, or any elected State official of information or allegations which the person reasonably believes to be evidence of wrongdoing in an administrative agency. [See **Neb. Rev. Stat.** §81-2705]
- S. Wrongdoing** shall mean any action by an administrative agency or employee which: (1) is a violation of any law; (2) results in gross mismanagement or gross waste of funds; or (3) creates a substantial and specific danger to public health or safety. [See **Neb. Rev. Stat.** §81-2703(5)]



**CHAPTER 2
MANAGEMENT OF
COMPLAINTS AND INQUIRIES**

I. Receipt of Complaints, Inquiries, and Contacts

Ease of accessibility of an ombudsman's office's services is an essential element of any ombudsman program, and it is the policy of the Nebraska Ombudsman's Office that any person may contact the Ombudsman's Office concerning any administrative act of any administrative agency. The Ombudsman's Office will accept complaints, inquiries, and contacts whether via mail, email, office visit, or telephone contact, subject however to the following limitations:

- A.** Generally, complaints from inmates in correctional facilities and jails must be submitted in writing via a letter. Inmate complaints involving emergency or time-sensitive matters will be accepted via telephone call or email at the discretion of the Ombudsman or his/her designee. The Ombudsman's Office may also accept complaints via telephone from inmates who have a language barrier, who have literacy issues, and/or who are developmentally disabled. In some instances spontaneous cases involving inmate complaints may be opened and acted upon when a staff person from the Ombudsman's Office is informally contacted by an inmate during a personal visit to a correctional facility. It will be the responsibility of the staff person so contacted to see that a related case file is opened, and that the case is properly memorialized.
- B.** The Ombudsman's Office may accept and act upon an anonymous complaint. However, if the Ombudsman's Office determines the complainant's identity is needed to pursue an investigation of the anonymous complaint, then the Ombudsman's may close the case unless and until the complainant's identity is disclosed to the Ombudsman's Office. The Ombudsman's Office may also decline or discontinue any anonymous complaint pursuant to the standards set forth in **Neb. Rev. Stat.** §81-8,247, or if, in the judgment of the Ombudsman, it would be unfair to any person who is the subject of the anonymous complaint to carry out an investigation of the complaint.
- C.** The Ombudsman's Office may accept a complaint from a surrogate or proxy of the real party in interest in a complaint, including complaints from family members, guardians, agents, attorneys, and attorneys-in-fact of the real party in interest. If a surrogate or a proxy contacts the Ombudsman's Office on behalf of a real party in interest, the case manager assigned to the case may, at his or her discretion, request that the real party in interest: (1) provide a statement in writing signed by the real party in interest validating the complaint; or (2) otherwise contact the Ombudsman's Office in order to verify that the real party in interest does consent to the Ombudsman's Office acting on the complaint.

- D.** The Ombudsman's Office may accept a complaint in the form of a petition that has been signed by multiple inmates/patients/residents of institutions under the jurisdiction of the Ombudsman's Office. In cases of complaints submitted in the form of petitions, it shall be the responsibility of Ombudsman's Office case manager to identify/determine a signatory to the petition who will be used as the party to be contacted by the Ombudsman's Office in regard to the progress of the case, including the conclusion and closing of the case.
- E.** In any case where a complaint, inquiry, or contact has been submitted to the Ombudsman's Office not in a written form, the Ombudsman's Office case manager assigned to manage/handle that complaint, inquiry, or contact may require the complainant to submit the complaint, inquiry, or contact in written form at the sole discretion of the case manager.
- F.** As a matter of sound public policy, it is desirable that the Ombudsman's Office generally respond substantively to as many of the complaints, inquiries, or contacts received by the Office as possible. However, the Ombudsman's Office has the discretion to decline to act on some complaints that are received by the Ombudsman's Office, pursuant to the standards provided for in **Neb. Rev. Stat. §81-8,247**. The Ombudsman's Office has the discretion to decline to act on any complaint received by the office for any of the following reasons:
- (1) The complainant has available another remedy which the complainant could reasonably be expected to use;
 - (2) The complaint pertains to a matter outside of the Ombudsman's jurisdiction;
 - (3) The complainant's interest is insufficiently related to the subject matter of the complaint;
 - (4) The complaint is trivial, frivolous, vexatious, or not made in good faith;
 - (5) Other complaints received by the Ombudsman's Office are deemed more worthy of attention;
 - (6) The Ombudsman's resources are insufficient for adequate intervention by the Ombudsman's Office; or
 - (7) The subject matter of the complaint has been too long delayed to justify present intervention by the Ombudsman's Office.
- G.** The Ombudsman's Office may also initiate a suitable investigation into an agency's administrative action on its own motion, as provided for in **Neb. Rev. Stat. §81-8,247**, and may undertake, participate in, or cooperate with general studies or inquiries,

whether or not related to any particular administrative agency or any particular administrative act, if he or she believes that they may enhance knowledge about or lead to improvements in the functioning of administrative agencies as provided for in **Neb. Rev. Stat. §81-8,245(6)**. (See also Chapter 2, III, B of these Policies and Procedures)

II. Scope of Investigation/Action on Cases

In selecting matters for attention, the Ombudsman's Office has the authority to investigate and/or act on any issue involving an administrative act of an administrative agency. As is provided for in **Neb. Rev. Stat. §81-8,246**, it shall be the general policy and practice of the Ombudsman's Office to particularly address those administrative acts which are or may 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 Ombudsman's Office will also concentrate on identifying issues and concerns that relate to strengthening administrative procedures and practices in such a way as to lessen the risk that objectionable administrative acts will occur in the future. Because of the Ombudsman's general oversight responsibilities and duty to hold administrative agencies accountable for their actions, the Ombudsman's Office has the authority to act on all complaints and issues that qualify as an administrative act of an administrative agency, without regard to whether the act involves a matter that is provisional, pending, or not final, and/or without regard to whether the act remains subject to being addressed by or through a grievance procedure, or other administrative review process that is as yet incomplete.

III. Case Management - General

The Ombudsman's Office has the sole discretion to: (1) prescribe the methods by which complaints are to be made, received, and acted upon; (2) determine the scope and manner of investigations to be made; and (3) subject to the requirements stated in **Neb. Rev. Stat. §§81-8,240 through 81-8,254**, determine the form, the frequency, and the distribution of the Office's conclusions, recommendations, and proposals. The case manager assigned to analyze, investigate,

and resolve a case opened/accepted by the Ombudsman's Office will be primarily responsible for completing all work on the case, subject to the supervision of the Ombudsman, and/or his or her designee. In managing these cases, the authority and responsibilities of the case manager shall be controlled by the following policies:

- A. In all cases assigned to a case manager it will be the primary responsibility of the case manager to determine whether and/or to what extent the substance of the complaint is within the jurisdiction of the Ombudsman's Office, as defined by **Neb. Rev. Stat.** §81-8,240(1), and as modified by **Neb. Rev. Stat.** §73-401. [Please note that according to §73-401 the jurisdiction of the Ombudsman's Office over a "contracting agency" does not apply to "long-term care facilities subject to the jurisdiction of the state long-term care ombudsman pursuant to the Long-Term Care Ombudsman Act." For the purposes of 73-401 "long-term care facilities" include: (1) nursing facilities; (2) assisted-living facilities; (3) other adult care homes; (4) continuing care communities; (5) a swing bed in an acute care facility or extended care facility; and (6) any adult day service. It should be additionally noted, however, that "long-term care facilities" could be indirectly involved in an Ombudsman's Office investigation or inquiry where the subject matter of the case was the quality of the services provided by such a long-term care facility to a client of the state, or the quality of the regulatory oversight of such long-term care facilities by some agency otherwise under the jurisdiction of the Ombudsman's Office.] If the substance of a complaint is not within the jurisdiction of the Ombudsman's Office, then the case manager shall suitably inform the complainant of that fact and, if feasible, will recommend alternatives or refer the complainant to any other resource that might be able to assist the complainant.
- B. The case manager may recommend that a case assigned to that case manager be declined, pursuant to **Neb. Rev. Stat.** §81-8,247 (as provided for in Chapter II, 1, F of these Policies and Procedures). The final decision on whether to decline a case resides within the sole discretion of the Ombudsman. The fact that the Ombudsman's Office has declined to investigate/address a complaint pursuant to **Neb. Rev. Stat.** §81-8,247 does not preclude the Ombudsman's Office from conducting an investigation into the background or general subject matter of the complaint.
- C. In a case where the complainant has available to him/her an administrative remedy which he/she could reasonably be expected to use, such as access to existing internal appeals processes, grievance procedures, or administrative hearing procedures, the case manager may, in his/her discretion, direct the complainant to pursue that administrative remedy as a preliminary step to the Ombudsman's Office conducting an investigation of the case. In exercising this discretion the designated case manager will need to be mindful that: (1) the Ombudsman's Office represents an alternative form of dispute resolution that is designed to expedite the informal resolution of concerns, complaints, and/or grievances, thereby avoiding the

necessity of employing an administrative remedy; and (2) that even if the complainant has an available administrative remedy, directing the complainant to utilize that remedy does not necessarily satisfy the oversight responsibilities of the Office, in terms of its duty to identify those areas where an administrative agency's policies and procedures need to be addressed or improved.

- D.** In cases where the complainant requests anonymity, the case manager will have the discretion to determine whether it is practicable for the case to be properly investigated and resolved without disclosing the identity of the complainant. If it is determined that it would not be practicable to proceed with the case without disclosing the identity of the complainant, then the case manager will suitably inform the complainant of that determination. If the complainant remains unwilling to have his/her identity disclosed in connection with the investigation, then the case manager may decline to pursue an investigation of the complaint under those circumstances, and discontinue the case.
- E.** State law requires any person who suspects that a child has been physically or sexually abused or neglected to report those suspicions promptly to the Nebraska Department of Health and Human Services. In addition, state law requires the prompt reporting to the Nebraska Department of Health and Human Services of any situation where there is reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation. To facilitate reporting of this information, the Nebraska Department of Health and Human Services maintains an **Adult and Child Abuse and Neglect Hotline** at **800-652-1999**. In any case or situation where the receipt and/or investigation of a complaint, or of any other matter, by an Ombudsman's Office case manager finds, discloses, or uncovers any facts and/or any reasonable allegations, or suspicions of abuse or neglect that is required under law to be reported to the Nebraska Department of Health and Human Services Hotline, it shall be the responsibility of the Ombudsman's Office case manager to immediately make that report by contacting the Hotline.
- F.** In any circumstance where it will be necessary to have a release signed by the complainant or a guardian of a complainant in order to conduct an investigation of a complaint, it shall be the responsibility of the case manager to see that the release is signed and placed in the appropriate Ombudsman's Office file.
- G.** In any situation where a case manager is managing a case that was received from a surrogate or proxy of the real party in interest in a complaint, it shall be the primary responsibility of the case manager to make certain that confidential information that should only be shared with the real party in interest in the case is not inadvertently disclosed to the surrogate or proxy.
- H.** As a matter of general practice, the case manager will limit communication with the complainant to direct questioning of, and/or communication of information to the

complainant himself or herself, and/or to the complainant's legal counsel. Generally, the case manager should not permit a facilitator, or any other intermediary, to participate in any of the case-related communications by the Ombudsman's Office with the complainant. However, the case manager may, at his or her discretion, permit a facilitator to participate in the case manager's communications with the complainant when it is deemed desirable to do so in circumstances where, for example, there is a language barrier that interferes with such communication, or where the complainant has a disability that would significantly diminish the complainant's ability to understand and communicate with the case manager.

IV. Case Management - Confidentiality

- A.** In general terms (except for cases involving "whistleblowers" as defined in Chapter I, Section I, P) the Ombudsman's Office is *not* legally obligated to treat as confidential information that has been received by the Office, whether from a complainant, or witness, or an administrative agency. Therefore, maintaining confidentiality of most information received by the Ombudsman's Office is a decision that rests in the discretion of the Ombudsman and/or the case manager assigned to manage the case to which the information relates. However, there are exceptions to this general rule in cases where there are controlling statutory provisions that state that information of a specific nature is required to be treated as being confidential (for example, any medical information subject to the provisions of the Health Insurance Portability and Accountability Act of 1996; or the identity of an employee presenting an allegation of "wrongdoing" subject to **Neb. Rev. Stat.** §81-2704). Also, in any situation where the case manager has reason to believe that release of certain information by the Ombudsman's Office, although not specifically prohibited by law, would nevertheless result in unnecessary harm to one or more persons, the case manager shall protect that information, and/or the sources of that information, unless the case manager is expressly directed to do otherwise by the Ombudsman.
- B.** The case manager who is assigned to a case will be immediately responsible to use his or her independent judgment to determine how information will be shared/used for the purposes of case management, to include those instances where it is necessary to obtain a signed release from a complainant or other party authorizing the release of information to or by the Ombudsman's Office. In deciding what information received from a complainant or witness should be treated as confidential, the case manager should balance the need to protect sensitive information received from the complainant, an agency, or a witness against the value of disclosing that information in order to fulfill the duties of the office. In a communication with a complainant or a witness, the case manager is not obligated to raise the issue of confidentiality, but if the complainant or witness raises the issue of confidentiality, then the case manager has the duty to advise the complainant or witness that there may be some practical situations where the

expectation of confidentiality might not be honored by the case manager in the management of information relating to the case.

- C. In the interest of encouraging a complainant or witness to feel free to disclose information which the complainant or witness might otherwise be reluctant to disclose, the case manager who is assigned to any case is authorized to offer provisional confidentiality to the complainant, and/or to any witness, with respect to any or all information received from that complainant or witness. In those instances where the case manager offers provisional confidentiality to a complainant or witness, it will be the responsibility of the case manager to adequately explain the limits of that promise of provisional confidentiality. Once the complainant or witness has been promised provisional confidentiality by the case manager, the case manager will honor that promise within the specified limits. However, if the case manager, after having given a promise of provisional confidentiality, comes into possession of information from a complainant or witness which involves knowledge of possible criminal activity, and/or knowledge of threats to public health or safety, and/or a matter which should be reported to the Adult and Child Abuse and Neglect Hotline, then the case manager will consult immediately with the Ombudsman with regard to whether that information will need to be disclosed to the appropriate authorities. The case manager is also authorized to share any information that is obtained from a complainant or witness who is promised provisional confidentiality with other staff working in the Ombudsman's Office. The case manager may also share such information with an agency or party outside of the Ombudsman's Office, on a strictly limited basis, and provided that the case manager exercises due care in the selection of the agency or party, and warns the agency or party that the information in question should be kept confidential.
- D. In any case where the complainant is an employee of any agency, department, board, commission, or other governmental unit of the State of Nebraska, it is possible that the complainant might have access to legal protections as a whistleblower, pursuant to the Nebraska State Government Effectiveness Act, **Neb. Rev Stat.** §§81-2701 through 81-2711. It shall be the responsibility of all case managers to immediately inform the Ombudsman of any case or situation where such an employee might have access to the legal protections under the Act. In order to qualify for protection pursuant to the Act, an employee must first establish his/her status as a whistleblower under the Act by raising an issue or concern that constitutes "wrongdoing" as defined in the Act. "Wrongdoing" is defined as an allegation which includes any action by an agency or employee which: (1) is a violation of any law; (2) results in gross mismanagement or gross waste of funds; or (3) creates a substantial and specific danger to public health or safety. In order to qualify for protection under the Act, it is also necessary that the whistleblower has presented the allegation of wrongdoing either to the Ombudsman's Office, or to an elected state official.
- E. The case managers and other employees of the Ombudsman's Office are obligated: (1) to honor a promise of provisional confidentiality to a complainant or witness; (2) to

honor the requirements of confidentiality pursuant to the State Government Effectiveness Act; or (3) to prevent the disclosure of information that is made confidential pursuant to the provisions of Nebraska law and/or the Health Insurance Portability and Accountability Act of 1996. These obligations of the case managers and the other employees of the Ombudsman's Office continue after the case has been closed.

- F. All Ombudsman Office new-hires and all volunteers should be informed that care should be exercised by to prevent the disclosure of confidential information in possession of the Office, and all new-hires and volunteers will be required to sign a document which acknowledges that they have read these standards, and that they fully understand the need to hold information relating to any case in confidence, unless directed otherwise: (1) by the case manager who is assigned to the case; or (2) by the Ombudsman.

V. Case Management - Informality

- A. The Ombudsman's Office is intended to be an informal complaint-handling mechanism. However, even cases/complaints handled through an informal complaint-handling mechanism are likely to require an "investigation" on some level, even if that "investigation" consists of merely making informal requests for information or for clarification from the agency that is involved in the case; researching statutes and/or regulations; or reviewing information available in an agency's digital files. Because it is an informal mechanism, action by the Ombudsman's Office can typically involve the engagement of many different strategies, including recommending remedial action by the agency, mediation, coaching the citizen on how to better act on their own behalf, expediting agency actions, and/or facilitating improved communication between the complainant and the agency. All of these strategies are appropriate forms of action by the Ombudsman's Office, and the decisions regarding the optimal approach to take in any case will usually be left to the discretion of the case manager who has been assigned to handle the case, subject, when necessary, to the direction of the Ombudsman.
- B. In some cases, particularly those that are unusually complex, or where factual detail is critical, the case manager may be required to resort to the submission of written questions (interrogatories), and/or extensive records requests to the administrative agency involved. Because these instances are unusual, the case manager should consult with the Ombudsman before making submissions of this nature to the administrative agency in question. It is usually good practice to give the agency involved a specific suspense date for submitting its response to the request. If the agency asks for an extension of the suspense date, then it is usually desirable to accommodate the agency and set a new suspense date, unless there is good cause to

do otherwise (i.e., where there is an “emergency,” and/or where there are concerns that are otherwise time-sensitive). In some of these instances it will be desirable protocol to inform someone in the agency’s upper management of the request for information submitted to the agency.

- C. As a general matter, it is desirable to treat most cases as informally as possible, particularly if that strategy will help to expedite a resolution of the case that is acceptable to the complainant. In many instances, the principle of “informality” legitimizes an approach which tries to resolve the issues involved in a complaint at a level that is as low as possible in the administrative hierarchy of the agency. However, it is also expected that each case manager will have his or her own preferred strategy for the managing of certain cases and issues, and if the case manager believes that an expedited resolution of a case will be more likely to occur by contacting an agency’s leadership team, then the case manager should do so.
- D. When it comes to promoting solutions of complaint cases, the authority of the Ombudsman’s Office is strictly limited by law to making recommendations to the agency involved. Because of this, the most important element in promoting the resolution of cases is the ability of the Ombudsman’s Office to have a complete command of the relevant facts of the case, as the product of a thorough investigation. This means that the Ombudsman’s Office needs to be zealous in defending its one actual power vis-à-vis the agencies, that is, its investigative powers. Any event or indication that an administrative agency under the jurisdiction of the Ombudsman’s Office is unwilling or reluctant to cooperate with the investigation of a case by the Ombudsman’s Office should be treated by the case manager as a serious matter, and should be reported to the Ombudsman as soon as reasonably possible.
- E. There will be some instances where the complainant who originally contacted the Ombudsman’s Office seeking an informal resolution of his or her complaint will decide to pursue a resolution of the issues through litigation in the civil courts. It is certainly the privilege of the complainant to choose this option, but in most such instances it will be desirable for the Ombudsman’s Office to discontinue the case, once it becomes clear that the complainant has decided to pursue the matter through litigation. It is highly unlikely that the Ombudsman’s Office will be able to successfully resolve a case through informal means once the complainant has opted to take the matter to court, and if the Ombudsman’s Office continues to investigate a case in such a circumstance it runs the risk that the complainant’s attorney will try to use the Ombudsman’s investigation as a means of discovery.
- F. In some cases the Ombudsman’s Office will be asked to conduct investigations and/or to make inquiries with administrative agencies in conjunction with a study being conducted by a special or standing committee of the Legislature. [See **Neb. Rev Stat.** §81-8,245(6)] In these cases the staff of the Ombudsman’s Office who

have been assigned to manage the work in support of or on the behalf of the committee will coordinate their efforts with the committee's chairperson and/or staff, and will consult closely with the Ombudsman when submitting questions in writing to the administrative agency involved, and/or when making extensive records requests to the administrative agency.

VI. Case Management - Impartiality and Objectivity

- A.** At the outset of his/her work on a complaint case, the case manager is expected to address the complaint impartially, and conduct an objective investigation of the complaint and its allegations. The principle of impartiality means that the role of the Ombudsman's Office does not involve acting as an advocate for the complainant in the manner in which the complainant's own attorney might in an adversarial setting. Like a judge in a judicial setting, the case manager may have personal views and opinions on the issues/personalities involved in a case, but he or she must set those views and opinions aside in the management of the case. Accordingly, the case manager's approach to a case should be objective and impartial, to the extent that fact-finding is involved. However, under the principle of informality the Ombudsman's Office is expected to be an advocate for the prompt, amicable, and informal resolution of complaints, which is an outcome that can frequently be best accomplished through "advocating" for a settlement/resolution of the issues in a case, without the necessity of carrying out a complete investigation with a finding by the Ombudsman's Office on the ultimate merits of the complaint. This means that, as an alternative form of dispute resolution, the Ombudsman's Office is legitimately expected to be an "advocate," not for one side in the dispute involved in the complaint, but for the amicable and peaceful resolution of all disputes.
- B.** In those instances where the complaint has been thoroughly and objectively investigated, and where it has been determined that the complaint is justified in whole or in part, and where it is of the opinion of the Ombudsman's Office that an administrative agency should: (1) consider the matter further; (2) modify or cancel an administrative act; (3) alter a regulation, decision, or ruling; (4) explain more fully the administrative act in question; or (5) take any other step to address the complaint, it will be the duty of the Ombudsman's Office to approach the relevant administrative agency with its recommendations for the appropriate corrective action in the case. In pursuing these recommendations, the Ombudsman's Office necessarily takes on the role of an "advocate," but technically the Office is acting as an advocate for the corrective action itself, and not as an advocate for the complainant. This distinction can be seen, for example, in a case where there is a disagreement between the complainant and the Ombudsman's Office on what the nature of the corrective action should be; in which case the Ombudsman's Office should continue to advocate for its own version of a proper outcome, even though the complainant wants something different.

- C. Pursuant to its duties under **Neb Rev. Stat.** §81-8,246, the Ombudsman’s Office must be concerned “with strengthening procedures and practices which lessen the risk that objectionable administrative acts will occur,” and therefore it is expected and appropriate that the Office will also act as an “advocate” for improved performance in the administration of government generally. In some instances this responsibility will mean actively advocating with policy-makers for changes/reforms in administrative systems.

VII. Case Management - Credibility

Credibility for an ombudsman’s office is not a matter of rules or processes. It is a status won over many years of consistent performance, and is based upon a mixture of diligence, hard work, expertise, and the fair treatment of all interested parties, particularly through maintaining a welcoming, open-minded, even-handed, compassionate attitude toward the ordinary citizens who come to the ombudsman’s office with their problems. One concern that all ombudsman’s offices must have is to win, retain, and deserve the confidence of the complainants who are its true clientele. In fact, this imperative is institutionalized in the structure of the classic ombudsman’s office – specifically in the arrangement that makes the ombudsman a part of the legislative branch of government as a means of separating it from the agencies under its jurisdiction. It is not the mission of an ombudsman’s office to be an apologist for administrative agencies, or to make excuses for the inadequacies, mistakes, and misdeeds of administrative officers and managers. Typically, there is an enormous differential between the power of the agents of government and the citizen, and the ombudsman’s office does not exist in order to comfort the powerful. On the contrary, the ombudsman’s office exists to help protect the powerless from being victimized by the errors, omissions, offenses, and lapses in judgment that can too easily happen in the complex, rule-bound, and often under-resourced, administrative agencies of modern government. At the very least the ordinary citizens who come to the ombudsman’s office for help, whether they are right or wrong insofar as the merits of their complaints are concerned, deserve to be fully heard, and to be treated as though their complaints, opinions, and concerns matter...because they do matter. With all of this in mind, there are several finer points that can be added on the subject of credibility.

- A. The most significant source of credibility for the Ombudsman’s Office is found in the quality of its investigations, that is, from conducting an investigation that is well-planned, thoroughly documented, and scrupulous in its attention to detail. When the Ombudsman’s Office approaches an administrative agency for the purpose of resolving a case, the Ombudsman does so without any legal authority to compel the agency to take remedial or corrective action. The only real force that the Ombudsman’s Office can bring to a discussion of that nature is in its ability to make sound and convincing legal and/or moral arguments on the behalf of the complainant. The quality of these arguments will substantially depend upon the overall quality of the Ombudsman’s fact-finding in the case. Similarly, whenever

the Ombudsman's Office is presenting its findings to the complainant, the strength of its argument will largely depend upon the quality of its fact-finding. This necessarily means that the strongest rhetorical weapon that the Ombudsman possesses is his or her: (1) command of the facts of the case; and (2) understanding of how those facts are applicable to the laws, and/or to the administrative rules, regulations, criteria, and processes involved. Any deficiency in regard to its knowledge of, or grasp of, the essential facts of the case will seriously diminish the credibility of the Ombudsman's Office in its negotiation with the interested parties. For these reasons, the case managers in their work on complaint cases need to be particularly aware of the importance of the quality of their investigations as it relates to the strength and credibility of their findings and conclusions.

- B.** A second source of credibility for the Ombudsman's Office comes from having a solid grasp of the laws, rules, regulations, processes, standards, and/or criteria applicable to the case at hand. In most cases, knowledge of the facts will be of little use without a comprehensive understanding of principles to which those facts should be applied. This does not necessarily mean that the case managers in the Ombudsman's Office will need to have an all-inclusive knowledge of the subject area involved in a case that they are addressing, but it does mean that the case managers will need to have a strong, if narrow, understanding of the laws, rules, regulations, processes, standards, and/or criteria that are specifically applicable to the case in question. It is also usually advisable for case managers to conduct any research that is necessary to identify the applicable laws, rules, regulations, processes, standards, and/or criteria as a preliminary or early step in the investigative process, since that will assist the case managers in isolating all of the factual issues that will need to be answered as an ultimate result of the investigation to be conducted by the Ombudsman's Office.
- C.** Unlike lawyers, who represent specific clients, and must act in a professional capacity solely on behalf of and in the interests of their clients, without any compromising influences and loyalties, the Ombudsman does not have a client as such, and owes his or her loyalty to the State, and to the mission of the office. Nevertheless, it is generally desirable, from a perspective of credibility, for the Ombudsman and the Office staff to avoid any conflict of interests or appearance of such conflict. It should be understood, however, that a "conflict of interests" as referenced herein has nothing whatsoever to do with a staff member's past affiliations, or employments, or with any previous professional or personal relationships of a staff member. Staff members of the Ombudsman's Office are counseled to avoid any involvement as an individual in any case where the investigation or outcome of the matter might have a bearing or effect upon a personal or professional relationship or interest of the staff person in question. Staff of the Ombudsman's Office should also avoid involvement in any case where the staff member is in a position to derive personal benefit from actions or decisions made in his or her official capacity. (Note: The employees of the Ombudsman's

Office are subject to the conflict of interests provisions of **Neb. Rev. Stat.** §49-14,101.01.) In addition, as a general matter the Ombudsman's Office will try to avoid involvement in any situation in which the concerns or interests of two or more complainants are, or might be, incompatible.

- D.** It is likely that, from time to time, there will be complainants who disagree with the proceedings of, or the conclusions arrived at by, the Ombudsman's Office in connection with their individual complaint cases. The sheer volume of the Ombudsman's caseload means that most of the complaints that come to the office will be handled by case management staff, without the direct involvement of the Ombudsman him/herself in the handling of the case. When a complainant expresses dissatisfaction with the outcome of such a case, it is in the interests of justice, and the credibility of the Ombudsman's Office generally, that there be a review of the case by the Ombudsman personally, or by senior staff. In those situations where such a review determines that the Ombudsman's Office needs to do more, or needs to modify its handling of the case in any respect, there should be no barrier or reluctance to taking corrective action on the case. Just as the Ombudsman's Office would expect of any other administrative agency under its jurisdiction, having corrective action be taken after the fact is preferable to an attitude that stubbornly perpetuates mistakes.



CHAPTER 3
INVESTIGATIONS, REPORTS
AND THE
DISSEMINATION OF INFORMATION / RECORDS

I. INVESTIGATIONS

As indicated in the previous chapter, the quality of the Ombudsman's investigation is a critical factor, not only in the resolution of the particular case at hand, but also in regard to the long term credibility of the Ombudsman's Office. In other words, there is a direct correlation between the quality of the Ombudsman's investigations, and the value of the work of the Office, in terms of bringing administrative justice to the complainants, holding the agencies of government accountable, and improving the operation of government generally. It should not be necessary to emphasize that insofar as Ombudsman's Office investigations are concerned our ultimate responsibility is to the truth. When it comes to conducting their investigations Case Managers should avoid any impulse to prejudge the parties or the issues, and all forms of "tunnel vision" that might result in findings that are not supported by the evidence when viewed objectively. Because of this commitment to the truth, and because reliable findings by the Ombudsman's Office will depend upon securing all information that is relevant, as well as related documentation that is detailed and fully accurate, the staff of the Ombudsman's Office should have a very low level of tolerance for agencies and or state employees who demonstrate a reluctance to cooperate with the Ombudsman's Office in its investigation of cases/complaints.

A. Investigative Methodology - Pursuant to **Neb. Rev. Stat.** §81-8,245(2) the Ombudsman's Office has the authority to "determine the scope and manner of investigations to be made" by the Ombudsman's Office. Further, **Neb. Rev. Stat.** §81-8,245(4) empowers the Ombudsman to "request and receive from each administrative agency, and such agency shall provide," the assistance and information that the Ombudsman deems "necessary for the discharge of his or her responsibilities." Investigations by the Ombudsman's Office may employ a number of investigative methods. Those investigative methods may include, but are not limited to:

1. A request (whether verbally or in writing) directed to the complainant seeking clarification of the nature of the complaint, preferably in writing;
2. A request (whether verbally or in writing) directed to the seeking copies of relevant documents in the possession of the complainant;
3. A request (whether verbally or in writing) directed to the administrative agency involved seeking copies of relevant documents in the possession of the agency [See **Neb. Rev. Stat.** §81-8,245(3)];

4. A request (whether verbally or in writing) directed to the administrative agency involved in a complaint or inquiry seeking a summary of the agency's response to the complaint or inquiry, and/or the agency's explanation of the administrative action involved;
 5. The preparation and submission to the administrative agency involved of written questions/interrogatories addressing the complaint or inquiry, and seeking the agency's written response to those questions/interrogatories;
 6. The conducting of inspections of the premises, or any parts thereof, of any administrative agency, or of any property owned, leased, or operated by any administrative agency, as frequently as is necessary to carry out duties of the Ombudsman's Office [See **Neb. Rev. Stat.** §81-8,245(4)];
 7. The interview of witnesses who have information relative to the substance of the complaint or inquiry, including interview of witnesses who are employees of the administrative agency involved;
 8. The onsite inspection and examination of the records and documents of any administrative agencies, notwithstanding any other provision of law [See **Neb. Rev. Stat.** §81-8,245(4)]; and
 9. Attendance of any administrative hearings or proceedings held or conducted by an administrative agency.
- B. Making a Verbatim Record of the Investigation** - In the course of conducting its investigations, the Ombudsman's Office may use electronic audio and/or video recording devices to make a verbatim record the statements and testimony of complainants and/or witnesses, including those witnesses who are employees of the administrative agency involved in the case. The Ombudsman's Office case manager may also make a verbatim record the statements/testimony of witnesses through the use of a certified court reporter.
- C. Access to Confidential Medical Records** - The investigative authority of the Ombudsman's Office includes the power to inspect and examine the medical and mental health records of inmates in the custody of those prisons, jails, and other facilities that are under the jurisdiction of the Ombudsman's Office, subject to the inmate's permission, in writing, authorizing the Ombudsman's Office to have access to those records. [See **Neb. Rev. Stat.** §83-178(6)]
- D. Legal Representation for Witnesses** - According to **Neb. Rev. Stat.** §81-8,245(5) a witness who is being compelled to give evidence to the Ombudsman's Office under subpoena is entitled to have his or her legal counsel present while he or she is being questioned pursuant to a subpoena. Neither the Ombudsman's Office nor the

employing agency of a state employee can force an employee/witness to provide evidence without the requested presence of his or her attorney. (See Nebraska Attorney General's Opinion #102; May 14, 1981) It is emphasized that this right to have an attorney present belongs solely to the witness, and not to the agency involved. Furthermore, the right of the witness in this regard to have his or her own personal legal counsel be present while he or she is being questioned does not authorize either the witness or the agency to insist on the presence of the agency's legal counsel during any interview of the witness. The presence of an agency attorney, or of any agency supervisory personnel, at such an interview of an agency employee by the Ombudsman's Office is not desirable because: (1) the presence of an agency attorney or agency supervisory personnel may intimidate the witness, and have a chilling effect on the willingness of the witness to volunteer information to the Ombudsman's Office; and (2) the agency's attorney or agency supervisory personnel may use information that is obtained from being present at the interview to prepare other agency witnesses in ways that might frustrate the progress of the investigation and the Ombudsman's efforts to get the facts. Additionally, an agency attorney's professional responsibility is to protect the interests of the agency, not the interests of the employee, and any agency attorney who would attend such an interview under the pretext that he or she was there to represent the interests of the agency employee would arguably be placing himself or herself in an unprofessional conflict of interests situation, since it is entirely possible that the interests of the agency and the interests of the employee might diverge in such a setting.

- E. Subpoenas** - The Ombudsman's Office may issue a subpoena, enforceable by an action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence that is deemed relevant to a matter under investigation by the Ombudsman. [See **Neb. Rev. Stat.** §81-8,245(5)] Any person who is required to provide information shall be paid the same fees and travel allowances, and shall be accorded the same privileges and immunities, as are extended to witnesses in the district courts of this state, and shall also be entitled to have their legal counsel present while he or she is being questioned pursuant to a subpoena.

II. REPORTS

- A. Status Reports** - The Ombudsman's Office shall make a report on the status of an investigation into a complainant or inquiry upon request of the complainant, or whenever the case manager deems it appropriate to do so.
- B. Special Reports** - If, after having considered a complaint or inquiry, and after reviewing whatever evidence or material the Ombudsman deems pertinent, the Ombudsman is of the opinion that an administrative agency should: (1) consider

the matter further (2) modify or cancel an administrative act, (3) alter a regulation or ruling, (4) explain more fully the administrative act in question, or (5) take any other corrective step, the Ombudsman's Office may create and disseminate its conclusions, recommendations, and proposals in the form of a special report addressed to the administrative agency. In addition to submitting the special report to the administrative agency involved, the Ombudsman's Office may also publish/disseminate its special report reflecting its conclusions, recommendations, and proposals by communicating the report to the Governor, the Legislature or any of its committees, the news media, and/or any other parties who may be concerned. However, before publishing/disseminating any report that contains a narrative, conclusion, and/or recommendation that expressly or impliedly criticizes an administrative agency, or any person, the Ombudsman's Office shall consult with that agency or person. Before the general release of any special report that is critical, the Ombudsman shall transmit a copy of the special report to the administrative agency, and to each officer or employee of the agency who is a subject of the criticism, and shall allow the agency, officer, and/or employee a reasonable opportunity to reply to the report in a written format to be submitted to the Ombudsman's Office by a date certain set by the Ombudsman. Whenever publishing/disseminating a special report adverse to an administrative agency the Ombudsman's Office shall include as an attachment thereto any statement in writing that the administrative agency may have made to the Ombudsman's Office by way of explaining its past difficulties or the reasons for the agency's present rejection of the Ombudsman's conclusions, recommendations, and/or proposals. (See **Neb. Rev. Stat.** §§81-8,248 through 81-8,250)

- C. **Exception** - The provisions of Chapter 3, Section II, of these Policies and Procedures relating to the publishing/disseminating of a special report by the Ombudsman's Office do not apply to any letters, memoranda, emails, or other informal documents or forms of communication by the Ombudsman's Office, but are applicable solely to the formal special reports of the Office.

III. DISSEMINATION OF INFORMATION / RECORDS

The Ombudsman is the custodian of the files of the Ombudsman's Office with the legal responsibility and authority to make the decisions on how documents from those files will be managed, to include those situations where parties outside of the office will be allowed to see or obtain copies of records and documents in those files. All documents in the investigation-related files of the Ombudsman's Office may be withheld from disclosure under Nebraska's Public Records Law, pursuant to **Neb. Rev. Stat.** §84-712.05(5). This does not mean, however, that the Ombudsman is generally prohibited from disclosing those documents and records. As the custodian of the records and files of the Ombudsman's Office, it is entirely within the Ombudsman's legal authority to disclose those records at the Ombudsman's sole discretion. (See

Nebraska Attorney General's Opinion #94080; Oct. 14, 1994) The only statutory exceptions to this are with respect to: (1) medical and mental health records of Department of Correctional Services inmates covered by **Neb. Rev. Stat.** §83-178(6); (2) any disclosure that would identify of a State employee who is a "whistleblower" covered by **Neb. Rev. Stat.** §81-2704(2), and who has not given prior written consent to the disclosure of his or her identity; and (3) any disclosure of medical records that is prohibited by the federal Health Insurance Portability and Accountability Act of 1996, unless the party covered by the records has given the Ombudsman's Office a signed release authorizing the disclosure. The exercise of the authority to disclose or disseminate documents and related information in the possession of the Ombudsman's Office is otherwise subject to the following considerations:

- A.** Generally speaking, under the provisions of the Health Insurance Portability and Accountability Act of 1996 the Ombudsman's Office is not allowed to disclose the medical or mental health records of any party. This prohibition would include the disclosure of a Department of Correctional Services inmate's medical or mental health records to any other person committed to the Department, except as authorized by law [see **Neb. Rev. Stat.** §83-178(6)]. However:

 - 1. The disclosure by Ombudsman's Office of the *medical records* of a specific complainant to the complainant himself/herself, when done in the interest of the investigation or the resolution of a case, is authorized by law. The Ombudsman's Office shall not, however, disclose *mental health records* of any complainant to the complainant. (See **Neb. Rev. Stat.** §71-84003)
 - 2. The disclosure of a complainant's medical or mental health records in the form of a public report of the Ombudsman's Office, when such use of the records is authorized by a release signed by the complainant, is a disclosure that is authorized by law. This would include cases where reports disclose a Department of Correctional Services inmate's medical or mental health records. (See **Neb. Rev. Stat.** §81-8,250)
- B.** Ombudsman's Office case managers are generally authorized to disclose those documents (and the information related in documents) that are in the possession of the Ombudsman's Office, so long as such disclosure is: (1) part of the routine investigation and/or resolution of a case; (2) within the limits provided by the laws relating to maintaining the confidentiality of records/information; and (3) authorized (whenever necessary) by a release that is signed by the complainant, or by the affected or responsible party. Assuring that the Ombudsman's Office has secured those signed releases will be the immediate responsibility of the case manager assigned to the case. If a case manager has any doubts concerning whether it would be appropriate to disclose any documents or information, then the case manager should consult with the Ombudsman prior to making the disclosure.
- C.** **Neb. Rev. Stat.** §81-8,253 provides that: "Neither the Public Counsel nor any member of his staff shall be required to testify or produce evidence in any judicial

or administrative proceeding concerning matters within his official cognizance.” The effect of this statute is to create a “shield” or evidentiary privilege with regard to documents and information in the Ombudsman’s files which may be invoked by the office when the Ombudsman determines not to testify or to provide documents in response to a subpoena from a litigant in a judicial or administrative proceeding. Section 81-8,253 does not *require* the Ombudsman to refuse to testify or disclose records in response to a subpoena, and the responsibility to make that decision resides in the sole discretion of the Ombudsman as the custodian of the records. However, §81-8,253 should be interpreted as an expression of a “generalized policy” of protecting documents and information in the Ombudsman’s files from being “discovered” by litigants involved in judicial or administrative proceedings, including by attorneys who are representing the State of Nebraska. The practical considerations behind this policy are threefold: (1) the administrative agencies under the jurisdiction of the Ombudsman’s Office would be more reluctant to provide documentation and information in response to an Ombudsman’s Office investigation, if they were concerned that the documents and information provided might be discovered from the Ombudsman’s Office by a litigant suing the agency or the State; (2) if documents and information in the possession of the Ombudsman’s Office could be obtained by attorneys for the State in the context of litigation, then that would have a chilling effect on the willingness of complainants and/or witnesses (including whistleblowers and confidential informants) to complain or provide information to the Ombudsman’s Office; and (3) if documents and information in the possession of the Ombudsman’s Office could be obtained by litigants, then that might make it more difficult for the Ombudsman’s Office to obtain documents and information from other sources that is “confidential,” and that the Ombudsman’s Office would be required to refrain from disclosing under State or Federal law.

- D.** There have been a number of instances over the years when the Ombudsman’s Office was contacted by or on behalf of a party who had previously complained to the Office asking that the Office return materials that the complainant had provided to the Ombudsman’s Office in the past. In those instances it has been the consistent practice of the Ombudsman’s Office to return to the former complainant the original documents (or copies of the original documents) that the complainant had previously provided to the office, including the original, or a copy of the original, of any letter of complaint or complaint-form that the complainant had submitted to the Ombudsman’s Office. This practice is based on the idea that these requests are simply asking the Ombudsman’s Office to give back to the complainant what the complainant had given to the office in the first place. The documents that would be provided under this policy/practice would include only: (1) the letter of complaint or complaint-form that the complainant had submitted directly to the Ombudsman’s Office; and (2) the other related documents that the complainant had obtained from another source, and submitted to the Ombudsman’s Office. The Ombudsman’s Office may also provide copies of documents of this nature to the attorney

representing the former complainant, but only where the attorney has provided a release signed by the former complainant authorizing the Ombudsman’s Office to give the documents in question (or copies) to the complainant’s attorney. Although this policy/practice would not include giving a complainant or former complainant (or the complainant’s attorney) copies of documents that had been obtained by the Ombudsman’s Office from any source other than the complainant, including from the agency’s digital files, there is nothing in this policy/practice that would prohibit a case manager from sharing such documents or information with the complainant when done in the interest of furthering the investigation or the resolution of a case.



CHAPTER 4 ADVOCACY

Neb. Rev. Stat. §81-8,246 provides that the Ombudsman “may concern himself...with strengthening procedures and practices which lessen the risk that objectionable administrative acts will occur,” and **Neb. Rev. Stat.** §81-8,249(2) provides that if the Ombudsman “believes that an administrative action has been dictated by a statute whose results are unfair or otherwise objectionable,” then the Ombudsman “shall bring to the Legislature's notice his views concerning desirable statutory change.” This language supports the idea that there will be circumstances where the Ombudsman should be expected to act in the capacity of an advocate for systemic change, including both statutory and regulatory change, as well as changes in the administration and management of those administrative agencies and programs under the Ombudsman’s jurisdiction. In addition **Neb. Rev. Stat.** §81-8,245(6) provides that the Ombudsman may “participate in, or cooperate with general studies or inquiries, whether or not related to any particular administrative agency or any particular administrative act, if he or she believes that they may enhance knowledge about or lead to improvements in the functioning of administrative agencies.” This language, read together with §81-8,249(2), acknowledges the role of the Ombudsman’s Office in helping to provide legislative oversight of administrative agencies and programs. Because of its advocacy responsibilities, the Ombudsman’s Office, in conducting its ordinary casework, needs to be watchful for significant administrative issues, and patterns of mistakes that need the attention of the public and policy-makers.



CHAPTER 5 POLITICAL ACTIVITIES

Because the Ombudsman's Office is not subsidized by federal funds, the Hatch Act of 1939 relating to political activities engaged in by public officials and employees does not apply to Ombudsman's Office staff. Political activities by the Ombudsman and Ombudsman's Office staff are, however, subject to the limits imposed by State law and by the policies of the Nebraska Legislature.

- A.** Pursuant to **Neb. Rev Stat.** §81-8,242, the Ombudsman, during his or her term of office, shall not be actively involved in partisan affairs. Pursuant to the policies of the Nebraska Legislature the staff of the Ombudsman's Office may not: (1) use, or authorize the use of, government resources, personnel, computers, emails, property, or funds for campaign purposes; or (2) engage in any political or campaign activity during office hours, or while otherwise engaged in Ombudsman's Office duties, including the wearing of partisan or nonpartisan political buttons or stickers while on duty. If an Ombudsman's Office staff person wishes to engage in any political activity during what would be normal working hours, then he or she may only do so while using vacation leave, compensatory time, or leave of absence time.

- B.** Although the Ombudsman may not be actively involved in partisan affairs, the Public Counsel Act does not place a similar restraint on the other employees of the Ombudsman's Office. The staff of the Ombudsman's Office are entitled to: (1) vote; (2) be registered as having a partisan affiliation; (3) help to register voters; (4) serve at the polls as election officials, clerks, checkers, watchers, or challengers for any candidate; (5) contribute money or goods or services in-kind to partisan political organizations; (6) openly express their opinions concerning candidates and/or issues; (7) attend partisan political rallies, meetings, conventions, and fundraising functions, except during office hours or while otherwise engaged in Ombudsman's Office duties; (8) originate, circulate, and sign nominating petitions and petitions calling for a referendum; (9) be an active member of, and hold office in, a political party or club; (10) openly campaign for or against candidates in partisan and nonpartisan elections, except during office hours or while otherwise engaged in Ombudsman's Office duties; (11) openly campaign for or against constitutional amendments, and other referendum issues, except during office hours or while otherwise engaged in Ombudsman's Office duties; (12) make campaign speeches for candidates in partisan and nonpartisan elections, except during office hours or while otherwise engaged in Ombudsman's Office duties; and (13) file and run for public office in partisan or nonpartisan elections. (In those cases where an Ombudsman's Office staff person has won a partisan or nonpartisan elective office the Executive Board, pursuant to the Legislature's Personnel Policies,

shall have final authority to determine whether that staff person may continue employment with the Ombudsman's Office while holding that office.)



CHAPTER 6

APPLICABILITY

These Policies and Procedures relate solely to the operation of the Ombudsman's Office, and the management of its cases. These Policies and Procedures are not applicable to the business of or the activities of the Office of Inspector General of Nebraska Child Welfare, or the Office of the Inspector General of the Nebraska Correctional System. The activities of those Offices are controlled by **Neb. Rev. Stat.** §§43-4301 through 43-4332, and by **Neb. Rev. Stat.** §§47-901 through 47-918, respectively.



INFORMATION AND REFERRAL

In addition to performing its specific statutory mandate regarding the resolution of citizen complaints, the Office of the Public Counsel has assumed the additional function of responding to citizen requests for general information relative to government. In this day of complex bureaucratic structures and imponderable regulatory provisions, it is not unusual for citizens to be confused or simply "lost" in their dealings with government. The Office of the Public Counsel is frequently contacted by citizens with questions regarding the provision of governmental services, the content of specific laws and regulations and a variety of miscellaneous issues relating to government in general.

Historically, the Office of the Public Counsel has responded to such inquiries either by providing the information sought directly or by referring the citizens involved to the organizations or governmental entities that would be best equipped to provide the information sought. The Office of the Public Counsel, with its broad expertise in the organization and operation of government, particularly on the state level, has proven to be ideally suited to serve as a clearinghouse for citizen inquiries pertaining to government. Over the years, thousands of citizens have contacted the Office of the Public Counsel and have received the information necessary to enable them to better understand and interact with their government.

HISTORY OF THE OFFICE

On July 22, 1969, the Nebraska Legislature passed LB 521, providing for the establishment of the Office of the Public Counsel. LB 521 was approved by Governor Norbert T. Tiemann, on July 29, 1969. (See Appendix.) The Office commenced actual operation on June 1, 1971, with the appointment of Mr. Murrell B. McNeil to the position of Public Counsel.

In creating the Office of the Public Counsel, the Nebraska Legislature established an office that was, in all significant respects, consistent with the classic model of an ombudsman's office as articulated in the American Bar Association's Resolution setting forth the twelve essential characteristics of an ombudsman for government. The new law contemplated that the Public Counsel would be an independent officer, appointed by the Legislature for a term of six years and subject to removal, for good cause, only by a vote of 2/3 of the members of the Legislature. In order to facilitate its efforts to resolve citizen complaints, the Office of the Public Counsel was endowed with very thorough investigatory powers, including the authority to address questions to officers and employees of state agencies, free access to agency records and facilities, and the subpoena power. The Office of the Public Counsel was further empowered to publish its findings and conclusions relative to citizen complaints and to make recommendations to the agencies under its jurisdiction. The Office was also authorized to participate, on its own motion, in general studies and inquiries not relating to specific citizen complaints. The jurisdiction of the Office of the Public Counsel was limited to scrutiny of the administrative agencies of the state government. The Office was not given jurisdiction over complaints relating to the courts, to the Legislature or to the Governor and her personal staff. Most significantly, the Office of the Public Counsel was not given jurisdiction over political subdivisions of the State.

After serving for over nine years as Nebraska's Public Counsel, Murrell McNeil retired from office, effective July 31, 1980. Upon Mr. McNeil's retirement, Mr. Marshall Lux, then the Deputy Public Counsel, became the Acting Public Counsel, by operation of law. On February 19, 1981, the Executive Board of the Legislative Council nominated Mr. Lux for

appointment to the position of Public Counsel, pursuant to **Neb. Rev. Stat.** Section 81-8,241. That nomination was approved by the Nebraska Legislature on February 20, 1981. The Legislature reappointed Mr. Lux to successive terms in 1987, 1993, 1999, 2005, 2011, and 2017.

Throughout its history, the Public Counsel's Office has been the subject of legislative initiatives that have refined and extended the scope of the office's role in Nebraska government. The first of these developments was seen in 1976, as policy-makers around the country were searching for new ways to reform the corrections system in the wake of the Attica riots. The Nebraska Legislature responded to that situation in part by amending the Public Counsel Act to create the new position of the Deputy Public Counsel (Ombudsman) for Corrections. In creating this new position, the Legislature was, in effect, saying that it wanted to give special emphasis to resolving prison complaints and to have someone on the Legislature's staff who could act as an expert in that area. It was anticipated that this new position would not only offer inmates an effective avenue for obtaining administrative justice and the redress of grievances, but that it would also serve the interests of the state by helping to reduce sources of anger and frustration that led to inmate violence, and by decreasing the number of inmate lawsuits relating to prison conditions and operation. The Deputy Public Counsel for Corrections is Mr. James Davis III.

A significant issue before the Nebraska Legislature in 1989 was concerned with demands by Native Americans, particularly the Pawnee Tribe, that the Nebraska State Historical Society repatriate to the tribes those human remains and artifacts that archaeologists had recovered over the decades from Native American burial sites. The Legislature met these demands by adopting the Nebraska Unmarked Human Burial Sites and Skeletal Remains Protection Act, which established procedures that allowed the tribes to seek the repatriation of human remains and burial goods that were being held in the collections of the Historical Society and other museums across the state. The Ombudsman's Office was given an important role in this procedure by being designated by the Legislature as the body responsible to arbitrate any dispute that arose between the tribes and the museums in the repatriation process. The Ombudsman's Office was actually called upon to perform this arbitration

role on two occasions in disputes between the Pawnee Tribe and the Historical Society.

In 1993, in an effort to find new ways to encourage efficiency and discourage misconduct in state government, the Nebraska Legislature passed the State Government Effectiveness Act. Among other things, the Act contemplated that the Ombudsman's Office would become a focal point for the investigation of allegations of significant wrongdoing in state agencies. The Act also provided for a new procedure designed to protect state employees who acted as whistleblowers to disclose wrongdoing in state government from being retaliated against by their supervisors. The Ombudsman's Office was given the key role in investigating and responding to these retaliation complaints and has, over the years, addressed many such cases. Early in 1997, the Nebraska Supreme Court found one important provision of the Act to be unconstitutional under the theory that it was a violation of the principle of separation of powers. *State ex rel. Shepherd v. Nebraska Equal Opportunity Commission*, 251 Neb. 517, 557 N.W.2d 684 (1997). However, those constitutional objections, as well as several other perceived difficulties with the functioning of the Act, were addressed by the Nebraska Legislature in LB 15 of 1997, which was signed by the Governor on March 10, 1997.

One of the most important issues before the Nebraska Legislature in 1994 was an initiative to restructure the state's system for the delivery of welfare services. In the process of changing this system, it was recognized that the recipients of welfare services would need to have a special problem-solver to help in dealing with the redesigned welfare system. It was also recognized that the Legislature itself would benefit from having the input and expertise of a staff person who was directly involved in addressing the day-to-day problems that arose in the implementation of the new welfare system. Responding to these needs in much the same way that it had in 1976, the Legislature created the new position of Deputy Public Counsel for Welfare Services as a part of the legislation that ultimately enacted the changes to the state's welfare system. The first Deputy Public Counsel for Welfare Services was Ms. Marilyn McNabb, and the current is Deputy Public Counsel for Welfare Services Ms. Julie Pham.

In 2008, the Nebraska Legislature passed LB 467, which had been introduced by Senator Ernie Chambers. LB 467 made two significant changes to the Public Counsel's authority and focus. One part of LB 467 extended the Public Counsel's jurisdiction to include complaints that come from Nebraska's county and city jails. Since its inception, the authority of the Public Counsel's Office has been limited to addressing complaints that involve administrative agencies of State government. However, LB 467 changed that for the first time, and carved out a small segment of local governmental authority to place under the Public Counsel's jurisdiction. The State of Nebraska currently has over seventy active jail facilities that now fall under the Public Counsel's jurisdiction. The second element of LB 467 created a new position in the office for a Deputy Public Counsel for Institutions. This new position was created to provide for a person in the Public Counsel's Office who will have primary responsibility to examine complaints received from the state's non-correctional institutions, which includes the regional centers (mental health facilities), the state's veteran's homes, and the Beatrice Developmental Center, the State's only residential facility designed to treat, rehabilitate, and train the developmentally disabled. LB 467 also contemplated that the Public Counsel's jurisdiction and services would "follow" individuals involved in the State's system for behavioral health and developmental disability services who were transitioned out of State-run facilities to receive care in the community. Mr. Jerall Moreland, has been designated to serve as the Deputy Public Counsel for Institutions. The Deputies are assisted in their duties by several employees designated as Assistant Public Counsels. These Assistant Public Counsels are Lucas Atkinson, Stephanie Beran, Barb Brunkow, April Dunning, and Anthony Kay.

During its legislative session in 2012, the Nebraska Legislature created a new oversight entity designed to function as a part of the legislative branch of government, the Office of Inspector General of Nebraska Child Welfare. The legislation in question was part of a much larger and more comprehensive Child Welfare Act (LB 821), a major piece of legislation addressing problems and systemic deficits exposed in a previous legislative examination of Nebraska's child welfare system by the Legislature's Health and Human Services Committee. The Act established the position of Inspector General of Nebraska Child Welfare (see **Neb. Rev. Stat.** §§43-4301 to 43-4331, reproduced in Appendix B)

with the intent and expectation that an Inspector General of Child Welfare would be able to provide for increased accountability and legislative oversight of the Nebraska child welfare system. The Inspector General was also expected to investigate and review specific child welfare system matters and cases to determine whether those situations might disclose the existence of latent systematic problems in the state's child welfare system, issues that, in other words, needed to be addressed. Effective July 23, 2012, Ms. Julie L. Rogers was appointed to the position of Inspector General of Nebraska Child Welfare. Ms. Rogers was reappointed to a second five year term in 2017. In 2017, she was assisted by IG Assistants Sarah Forrest, and Mark Forster.

In 2015 the Nebraska Legislature passed LB 598, which related to the operation of the Nebraska corrections system. The bill was the result of interim study work done by the LR 424 Special Committee in the summer and fall of 2014. Among its many provisions directed at the reform of the Nebraska corrections system, LB 598 provided for the creation of an inspector general's position for corrections that would be comparable to the Inspector General of Nebraska Child Welfare. These provisions, the Office of Inspector General of the Nebraska Correctional System Act, took effect as Nebraska law on August 30, 2015. (See **Neb. Rev. Stat.** §§47-901 to 47-919, reproduced in Appendix C herein.) On September 16, 2015, Mr. Doug Koebernick was appointed to serve as the first Inspector General for the Nebraska Correctional System. Both IG's are assisted by Division Executive Assistant Sarah Amsberry.

STATISTICAL ANALYSIS

The following tables and graphs illustrate the size, and nature, of the caseload of the Nebraska Public Counsel's Office for calendar year 2017. The caseload total for 2017 was 3,084 cases, the fifth consecutive year that the Public Counsel's has had an annual caseload of over 3,000 cases. The rundown of the total annual caseload of the Public Counsel's Office by year since 2000 is as follows:

2000	-	2,206 cases
2001	-	2,202 cases
2002	-	2,482 cases
2003	-	2,291 cases
2004	-	2,290 cases
2005	-	2,174 cases
2006	-	2,290 cases
2007	-	2,250 cases
2008	-	2,114 cases
2009	-	2,328 cases
2010	-	2,346 cases
2011	-	2,302 cases
2012	-	2,462 cases
2013	-	3,042 cases
2014	-	3,174 cases
2015	-	3,283 cases
2016	-	3,058 cases
2017	-	3,084 cases

The caseload total for 2017 represents a .8% increase over the total for 2016. However, this caseload total for 2017 is still a reduction of roughly 6.5% relative to the high-water mark for the Public Counsel's caseload, which was recorded in 2015. A useful method for examining how the annual caseload of the Public Counsel's Office has developed over the last several years is to divide each calendar year into segments of $\frac{1}{3}$ - January thru April, May thru August, and September thru December. When this is done, it is immediately notable that in 2015, 2016, and

through the first eight months of 2017 the Public Counsel's caseload totals for each four month period was 990 cases or more. However, the Public Counsel's total caseload for the last four months of 2017 was only 866 cases, significantly fewer cases than the standards seen over the previous four-month periods since the beginning of 2015.

As noted in previous reports, the Public Counsel's Office has in general terms experienced a dramatic increase in its annual caseload ever since the year 2000, and this phenomenon was particularly pronounced in the years between 2012 and 2015. But now there are signs that the Public Counsel's annual caseload may be slipping back to a level that is more comparable to the standard set in the period from 2006 through 2011, which is several hundred cases less than the standard that was set from 2012 through 2017. For the period from 2012 through 2017 the average annual caseload for the Public Counsel's Office was 3,017 cases. This is compared to the Public Counsel's annual caseload for the period from 2006 through 2011, when the average annual caseload was 2,272 cases. In this connection, it is particularly notable that the total number of cases received by the Public Counsel's Office during the last four months of 2017 was only 866 cases. If this continues, the likelihood is that the annual caseload of the Public Counsel's office in 2018 may well be much nearer to the standard set in 2006 through 2011 (2,272 cases annually) than the standard that was set over the period from 2012 through 2017 (3,017 cases annually).

We have discussed in our Annual Reports in the past how the annual caseload of the Public Counsel's has increased dramatically since the year 2000, when the annual caseload was only about 2,200 cases. There are two ways at looking at this situation. On the one hand, the success of the Public Counsel's Office in achieving its fundamental goals is heavily influenced by the number of cases that the Office receives, so that it could well be argued that more cases equals a more effective ombudsman's operation. On the other hand, there is arguably a limit to this calculus, particularly insofar as the caseload of the Public Counsel's Office relates to its resources. In 2015, with its all-time high caseload, it certainly felt at times as though we were being pressed to the limits of our resources.

**TABLE 1
SUMMARY OF CONTACTS 2017**

Month	Total Inquiries	Complaint	Information
January	264	252	12
February	260	248	12
March	338	332	6
April	268	256	12
May	318	308	10
June	264	259	5
July	243	236	7
August	263	256	7
September	177	166	11
October	279	267	12
November	197	192	5
December	213	208	5
TOTAL	3084	2980	104

% of Total	100%	97%	3%
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**TABLE 2
OMBUDSMAN CONTACTS 2017**

	Total Logged Inquiries	Total Logged Complaint	Pending Complaint	Justified	Unjustified	Partially Justified	Discontinued	No Jurisdiction	No Jurisdiction But Assisted	Total Logged Information	Info Cases Pending
January	264	252	1	72	47	73	35	16	8	12	0
February	260	248	0	75	45	72	40	8	8	12	0
March	338	332	1	105	70	68	48	26	14	6	0
April	268	256	4	71	51	71	41	11	7	12	0
May	318	308	2	87	63	77	57	13	9	10	0
June	264	259	6	73	46	66	43	12	13	5	0
July	243	236	0	73	40	59	36	13	15	7	0
August	263	256	1	67	52	62	42	18	14	7	0
September	177	166	3	45	29	41	34	10	4	11	0
October	279	267	11	73	47	72	50	7	7	12	0
November	197	192	20	46	44	43	32	6	1	5	0
December	213	208	45	33	44	39	39	5	3	5	1
TOTAL	3084	2980	94	820	578	743	497	145	103	104	1

% of TOTAL	100%	97%	3%	27%	19%	24%	16%	5%	3%	3%	0%
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**TABLE 3
ANALYSIS OF NO-JURISDICTION CASES - 2017**

	Total No Jurisdiction Cases	Federal Jurisdiction	County Jurisdiction	Municipal Jurisdiction	Other Subdivisions of Government	Legislative or Policy Issues	Issues Before Courts	Private Matters Between Individuals	Issues Involving Governor or Staff
January	24	1	2	0	2	5	10	4	5
February	16	0	2	1	0	0	8	1	0
March	40	5	1	2	2	0	19	7	0
April	18	3	0	0	1	0	12	0	0
May	22	1	2	2	1	0	7	4	0
June	25	1	1	1	0	0	10	1	0
July	28	0	0	0	0	0	0	0	0
August	32	0	0	0	0	0	0	0	0
September	14	0	0	0	0	0	0	0	0
October	14	0	0	0	0	0	0	0	0
November	7	0	0	0	0	0	0	0	0
December	8	0	0	0	0	0	0	0	0
TOTAL	248	11	8	6	6	5	66	17	5
PERCENT	100%	4%	3%	2%	2%	2%	27%	7%	2%

**TABLE 4
MEANS OF RECEIPT AND LOCATION 2017**

MONTH	Location					Means of Receipt				
	Metropolitan Lincoln	Metropolitan Omaha	Non Metropolitan	Out Of State	State Instiution	Letter	Visit	Telephone	Email	Fax
	C I	C I	C I	C I	C I	C I	C I	C I	C I	C I
January	40 3	33 1	54 5	4 0	121 3	156 4	5 0	54 4	36 4	1 0
February	29 2	24 2	63 1	5 1	127 6	149 7	8 1	65 1	24 3	2 0
March	43 0	23 0	89 2	6 2	171 2	189 2	10 0	85 2	48 2	0 0
April	37 5	29 0	42 2	1 2	147 3	155 3	7 2	57 4	37 3	0 0
May	31 2	23 0	60 6	6 1	188 1	208 3	4 1	65 4	30 2	1 0
June	29 1	21 0	50 2	3 1	156 1	177 3	6 0	50 1	26 1	0 0
July	30 0	24 1	56 4	5 0	121 2	149 3	8 0	53 0	26 4	0 0
August	37 1	22 1	63 1	2 1	132 3	167 4	5 0	64 3	20 0	0 0
September	17 3	18 1	35 3	1 0	95 4	95 0	4 1	50 7	16 3	1 0
October	26 4	31 1	35 3	6 1	169 3	185 4	3 0	51 6	28 2	0 0
November	26 2	14 1	37 2	0 0	115 0	116 1	2 0	52 3	22 1	0 0
December	18 1	22 1	34 0	2 0	132 3	144 2	2 0	37 2	25 1	0 0
TOTAL	363 24	284 9	618 31	41 9	1674 31	1890 36	64 5	683 37	338 26	5 0

* C = Complaints, I = Information

**TABLE 5
OFFICE OF THE OMBUDSMAN - 2017 AGENCY CONTACTS**

AGENCY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
Accountability & Disclosure	0	0	0	0	0	0	0	0	0	0	0	0	0
Administrative Services	1	1	1	1	2	1	3	0	1	3	0	1	15
Aging	0	0	0	0	0	0	0	0	0	0	0	0	0
Agriculture	1	0	0	0	0	0	0	0	0	0	0	0	1
Arts Council	0	0	0	0	0	0	0	0	0	0	0	0	0
Attorney General	0	1	0	0	0	1	0	0	0	2	0	0	4
Auditor	0	0	0	0	0	1	0	0	0	0	0	0	1
Banking	0	0	0	0	0	1	0	0	0	0	0	0	1
Brand Committee	0	0	0	0	0	0	0	0	0	0	0	0	0
Claims Board	0	0	0	0	0	0	0	0	0	0	0	0	0
Corrections	105	120	143	141	159	123	98	107	85	137	100	125	1443
County	8	0	2	0	2	3	3	2	1	2	1	3	27
Courts	13	15	19	8	6	18	15	20	7	11	3	9	144
Crime Commission	0	0	0	0	1	0	0	3	0	0	0	0	4
Economic Development	0	0	0	0	0	1	0	0	0	0	0	0	1
Ed. Lands & Funds	0	0	0	0	0	0	0	0	0	0	0	0	0
Education	0	0	1	0	1	1	2	1	0	0	2	1	9
Environmental Quality	0	0	0	0	0	0	0	0	0	0	1	0	1
Equal Opportunity	0	0	0	1	0	0	1	1	1	1	0	0	5
Ethanol Authority	0	0	0	0	0	0	0	0	0	0	0	0	0
Educational Television	0	0	0	0	0	0	0	0	0	0	0	0	0
Fair Board	0	0	0	0	0	0	0	0	0	0	0	0	0
Federal	1	0	5	3	2	6	2	3	0	0	3	0	25
Fire Marshal	0	0	0	0	0	0	0	0	0	0	0	0	0
Foster Care Rev Bd	0	0	0	0	0	0	0	0	0	0	0	0	0
Game and Parks	0	0	0	0	0	0	1	0	0	1	0	0	2

TABLE 5 Continued

Governmental Subdivision	0	0	0	1	2	0	0	1	0	1	0	0	5
Governor	0	1	0	0	0	0	0	0	0	0	0	0	1
Nebraska Commission for the Deaf and Hard of Hearing	0	0	0	0	0	0	0	0	0	0	0	0	0
Hearing Impaired	0	0	0	0	0	0	0	0	0	2	0	1	3
HHS Benefits	12	12	19	12	11	7	13	11	11	12	10	10	140
HHS BSDC	1	0	1	0	1	0	1	0	0	0	0	0	4
HHS Child Welfare	16	16	23	17	19	13	15	18	15	22	17	16	207
HHS Misc	3	7	12	4	19	3	6	14	13	4	7	6	98
HHS Regional Centers	6	9	10	18	5	4	3	7	7	10	6	3	88
HHS Regulation	4	0	4	1	3	1	3	1	0	1	2	0	20
HHS Vets Homes	0	0	0	0	0	0	0	1	0	0	0	0	1
HHS Visually Impaired	0	0	0	0	0	0	0	0	0	0	0	0	0
Historical Society	0	0	0	0	0	0	0	1	0	0	0	0	1
Indian Comm	0	0	0	0	0	0	0	0	0	0	0	0	0
Institutions	0	0	0	0	0	0	0	0	0	0	0	0	0
Insurance	1	0	0	0	0	1	0	0	0	1	1	0	4
Investment Council	0	0	0	0	0	0	0	0	0	0	0	0	0
Labor	2	2	3	4	2	3	1	0	0	1	2	1	21
Legislative	13	7	1	3	1	0	3	2	0	4	6	2	42
Library Comm	0	0	0	0	0	0	0	0	0	0	0	0	0
Liquor Control	0	0	0	0	0	0	0	1	0	0	0	0	1
Mexican Amer Comm	0	0	0	0	0	0	0	0	0	0	0	0	0
Motor Vehicles	1	5	1	3	2	0	3	2	3	2	0	2	24
Mtr Veh Dealers Lic Bd	0	0	0	0	0	0	0	0	0	0	0	1	1
Municipal	3	0	6	0	0	2	3	2	2	1	1	1	21
National Guard	0	0	0	0	0	0	0	0	0	0	0	0	0
Natural Resources	0	1	0	0	0	0	0	0	0	0	0	0	1
Pardons Board	0	0	1	0	0	0	1	0	0	0	0	0	2

TABLE 5 Continued

Parole Board	3	4	1	1	4	4	4	0	2	0	2	1	26
Patrol	1	1	1	1	0	0	2	3	0	1	0	2	12
Personnel	0	0	0	0	1	0	0	0	0	0	0	0	1
Private Matter	4	3	4	4	6	3	2	4	3	6	2	2	43
Probation Adm	1	0	1	1	0	1	0	0	1	0	0	0	5
Public Service Comm	0	0	0	0	0	0	0	0	0	0	0	0	0
Real Estate Comm	0	0	0	0	0	0	0	0	0	1	0	0	1
Retirement Systems	0	0	0	0	0	0	0	0	0	0	0	0	0
Revenue	2	1	0	2	0	2	0	0	1	1	0	0	9
Risk Management	0	0	0	0	0	0	0	0	0	0	0	0	0
Roads	2	0	0	1	0	0	1	2	0	0	0	0	6
Secretary of State	1	0	0	1	0	0	0	0	0	0	0	0	2
St. Board of Equalization	0	0	1	0	0	0	0	0	0	0	0	0	1
St. Surveyor	0	0	0	0	0	0	0	0	0	0	0	0	0
State Colleges	0	0	0	0	0	0	0	0	0	0	0	0	0
Status of Women	0	0	0	0	0	0	0	0	0	0	0	0	0
Electrical Division	2	0	0	0	0	0	0	0	0	0	0	0	2
Treasurer	0	1	2	0	0	0	0	1	0	0	0	0	4
University	1	0	0	1	0	1	1	0	0	1	2	0	7
Veterans Affairs	1	1	1	0	0	1	1	1	0	0	0	0	6
Commission for the Blind	0	0	0	0	0	0	0	0	0	0	0	0	0
Racing Commission	0	0	0	0	0	0	0	0	0	0	0	0	0
Capitol Commission	0	0	0	0	0	0	0	0	0	0	0	0	0
HHS-Juv Justice	1	0	1	1	0	0	0	0	0	0	0	1	4
HHS-Juv Justice - Geneva	1	0	0	1	0	0	2	4	1	1	0	0	10
HHS Juv Justice-Kearney	1	1	1	0	0	1	0	0	0	0	0	0	4
County Jail	47	38	33	25	38	33	40	42	18	33	26	22	395
Athletic Commission	0	0	0	0	0	0	0	0	0	0	0	0	0
Board of Public Accountancy	0	0	0	0	0	0	0	0	0	0	0	0	0

TABLE 5 Continued

Energy Office, Nebraska - Agency 71	0	0	0	0	0	0	0	0	0	0	0	0	0
Inspector General	10	20	30	10	12	10	1	0	0	0	0	0	93
HHS Developmental Disabilities	3	2	2	0	4	2	5	1	3	2	1	2	27
HHS Behavioral Health	0	0	0	0	0	1	0	0	0	1	0	0	2
Parole Adm	2	0	1	0	0	1	3	0	0	0	1	1	9
Inspector General for Corrections	2	4	3	1	4	9	14	14	13	27	12	11	114

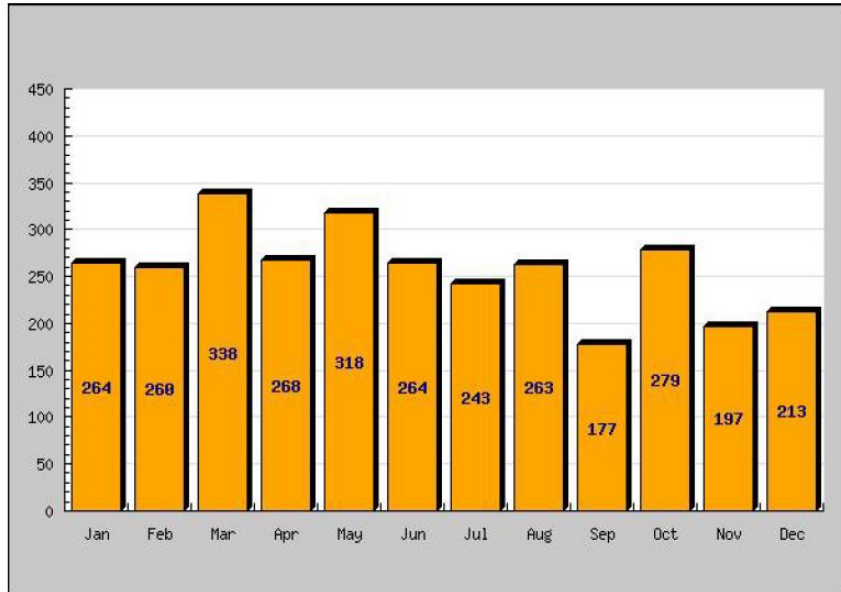
TOTALS CASES	0	0	0	0	0	0	0	0	0	0	292	208	224	724
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(NOTE: Case totals in this table are greater than the sum of all cases because a single case may involve in multiple agencies.)

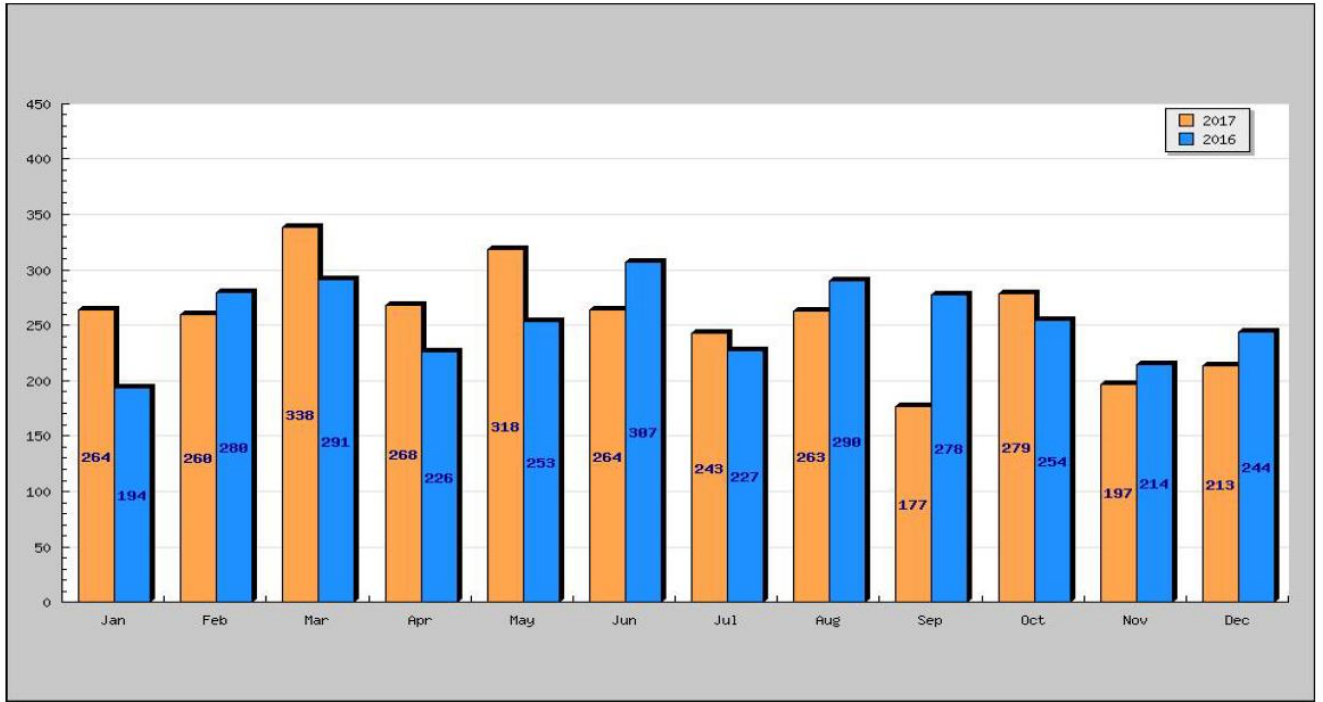
TABLE 6 CASE DURATION

Days Open	Record Count	% of Total
1	170	6%
2	50	2%
3	45	2%
4	41	1%
5	47	2%
6	55	2%
7	54	2%
8	51	2%
9	25	1%
10	28	1%
11	28	1%
12	34	1%
13	31	1%
14	35	1%
15	33	1%
16	30	1%
17	23	1%
18	21	1%
19	31	1%
20	47	2%
21 to 30	260	9%
31 to 60	481	16%
Over 60	1368	46%
TOTAL COUNT	2989	100%

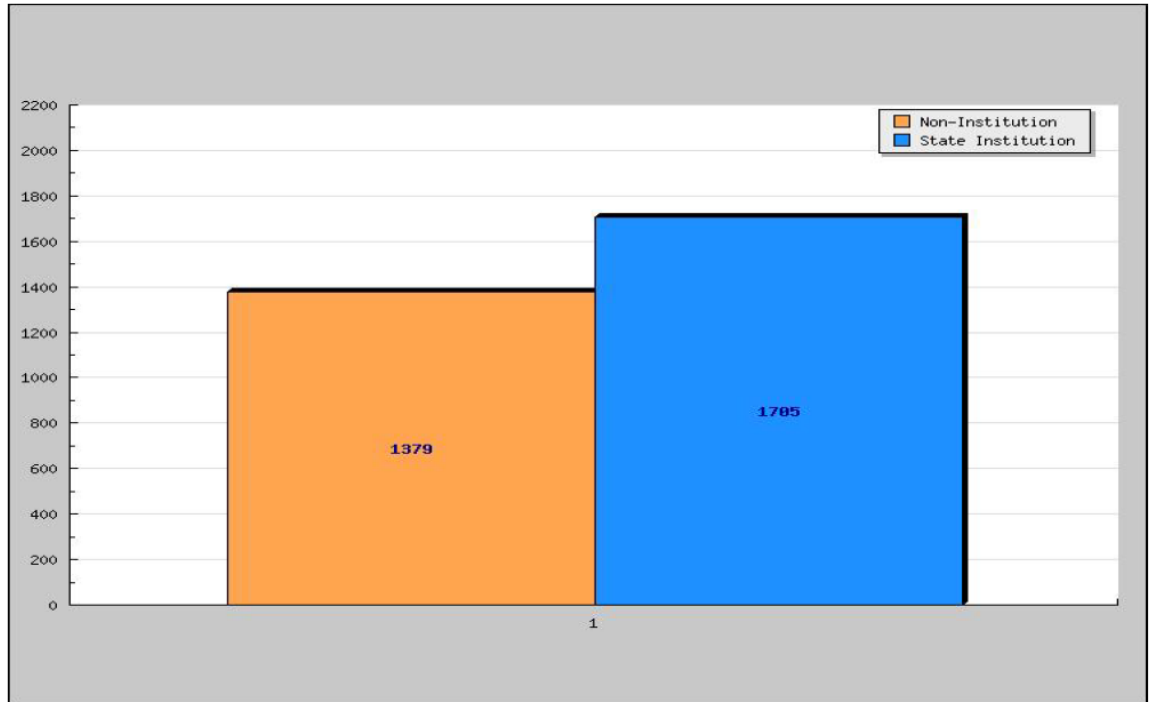
TOTAL NEW CASES BY MONTH - 2017



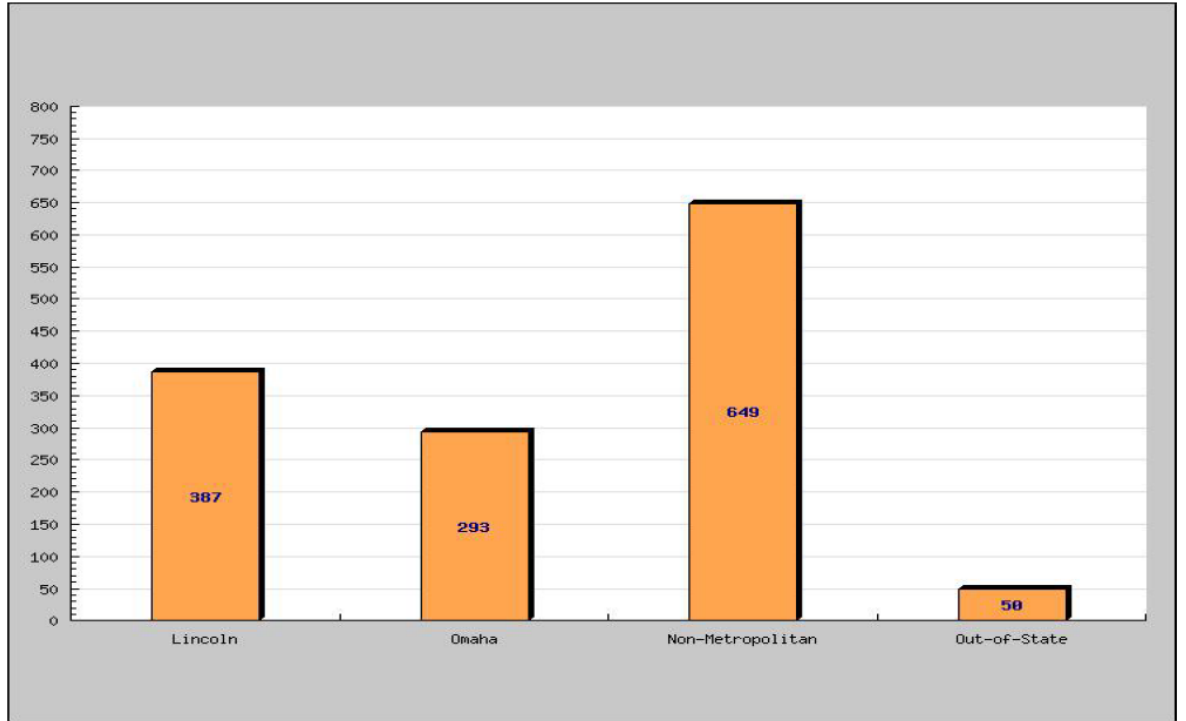
TOTAL NEW CASES
Monthly Comparisons for - 2016 and 2017



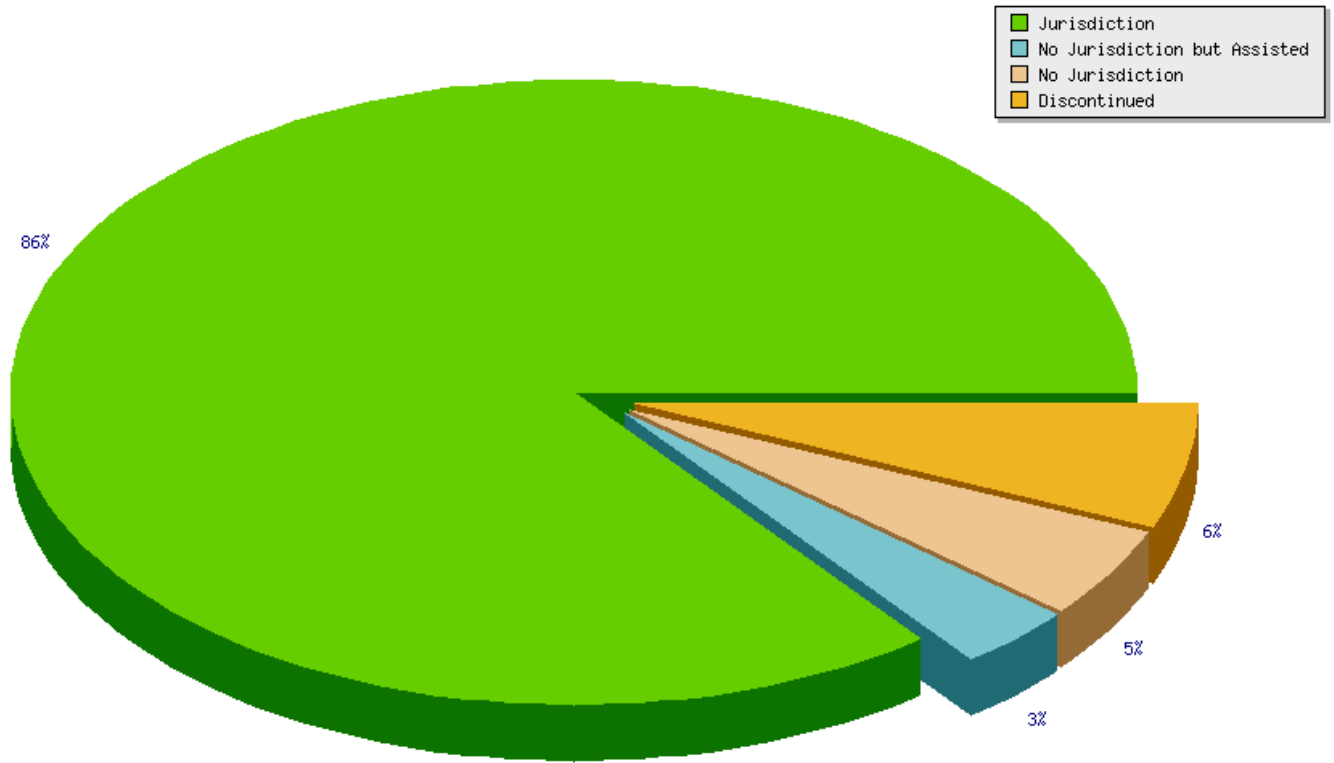
Non-Institution VS. State Institution Cases -2017



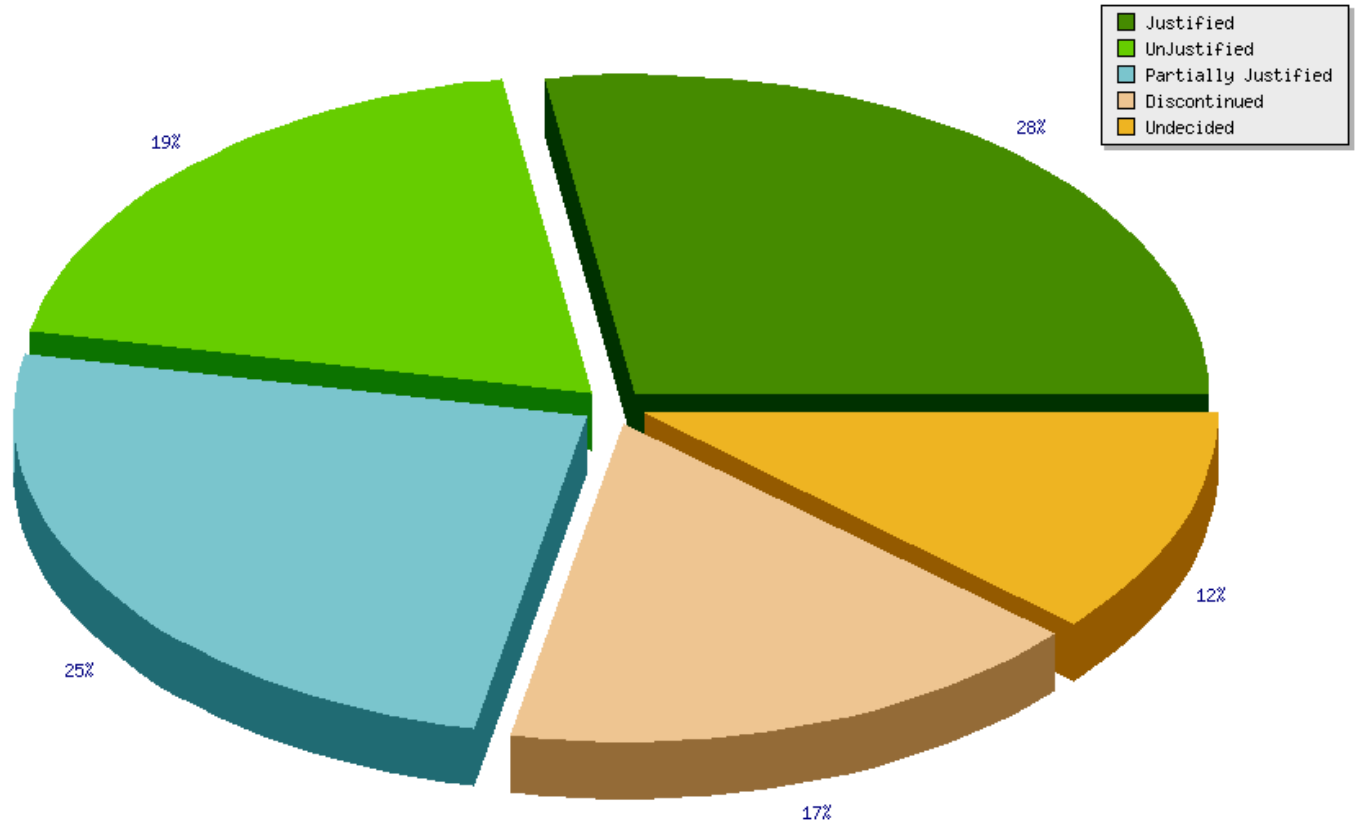
Non-Institution Cases By Location -2017



COMPLAINTS - ANALYSIS OF JURISDICTION 2017



COMPLAINTS - ANALYSIS OF JURISDICTION 2017



APPENDIX A - PUBLIC COUNSEL ACT

81-8,240. Terms, defined.

As used in sections 81-8,240 to 81-8,254, unless the context otherwise requires:

- (1) Administrative agency shall mean any department, board, commission, or other governmental unit, any official, or any employee of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska, or any corporation, partnership, business, firm, governmental entity, or person who is providing health and human services to individuals under contract with the State of Nebraska and who is subject to the jurisdiction of the office of the Public Counsel as required by section 73-401, any regional behavioral health authority, any community-based behavioral health services provider that contracts with a regional behavioral health authority, and any county or municipal correctional or jail facility and employee thereof acting or purporting to act by reason of connection with the county or municipal correctional or jail facility; but shall not include (a) any court, (b) any member or employee of the Legislature or the Legislative Council, (c) the Governor or his personal staff, (d) any political subdivision or entity thereof, (e) any instrumentality formed pursuant to an interstate compact and answerable to more than one state, or (f) any entity of the federal government; and
- (2) Administrative act shall include every action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an administrative agency.

Source: Laws 1969, c. 762, § 1, p. 2879; Laws 1997, LB 622, § 121; Laws 2008, LB467, § 1; Laws 2012, LB821, § 41.

81-8,241. Public Counsel; established; powers and duties; appointment.

The office of Public Counsel is hereby established to exercise the authority and perform the duties provided by sections 81-8,240 to 81-8,254. The Public Counsel shall be appointed by the Legislature, with the vote of two-thirds of the members

required for approval of such appointment from nominations submitted by the Executive Board of the Legislative Council.

Source: Laws 1969, c. 762, § 2, p. 2879; Laws 2012, LB821, § 42; Laws 2015, LB598, § 19.

Cross References

Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

Office of Inspector General of the Nebraska Correctional System Act, see section 47-901.

81-8,242. Public Counsel; qualifications.

The Public Counsel shall be a person well equipped to analyze problems of law, administration, and public policy, and during 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 he served as a member of the Legislature, or while he is a candidate for or holds any other state office, or while he is engaged in any other occupation for reward or profit.

Source: Laws 1969, c. 762, § 3, p. 2879.

81-8,243. Public Counsel; term; removal; vacancy; salary.

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 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.

Source: Laws 1969, c. 762, § 4, p. 2880.

81-8,244. Public Counsel; personnel; appointment; compensation; authority; appoint Inspector General of Nebraska Child Welfare; appoint Inspector General of the Nebraska Correctional System.

The Public Counsel may select, appoint, and compensate as he or she sees fit, within the amount available by appropriation, such assistants and employees as he or she deems necessary to discharge the responsibilities under sections 81-8,240 to 818,254. He or she shall appoint and designate one assistant to be a deputy public counsel, one assistant to be a deputy public counsel for corrections, one assistant to be a deputy public counsel for institutions, and one assistant to be a deputy public counsel for welfare services. Such deputy public counsels shall be subject to the control and supervision of the Public Counsel. The authority of the deputy public counsel for corrections shall extend to all facilities and parts of facilities, offices, houses of confinement, and institutions which are operated by the Department of Correctional Services and all county or municipal correctional or jail facilities. The authority of the deputy public counsel for institutions shall extend to all mental health and veterans institutions and facilities operated by the Department of Health and Human Services and to all regional behavioral health authorities that provide services and all community-based behavioral health services providers that contract with a regional behavioral health authority to provide services, for any individual who was a patient within the prior twelve months of a state-owned and state-operated regional center, and to all complaints pertaining to administrative acts of the department, authority, or provider when those acts are concerned with the rights and interests of individuals placed within those institutions and facilities or receiving community-based behavioral health services. The authority of the deputy public counsel for welfare services shall extend to all complaints pertaining to administrative acts of administrative agencies when those acts are concerned with the rights and interests of individuals involved in the welfare services system of the State of Nebraska. The Public Counsel may delegate to members of the staff any authority or duty under sections 81-8,240 to 81-8,254 except the power of delegation and the duty of formally making recommendations to administrative agencies or reports to the Governor or the Legislature.

Source: Laws 1969, c. 762, § 5, p. 2880; Laws 1976, LB 687, § 1; Laws 1994, LB 1224, § 87; Laws 2008, LB467, § 2; Laws 2012, LB821, § 43; Laws 2015, LB598, § 20.

Cross References

Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.
Office of Inspector General of the Nebraska Correctional System Act, see section 47-901.

81-8,245. Public Counsel; powers; enumerated.

The Public Counsel shall have the power to:

(1) Investigate, on complaint or on his or her own motion, any administrative act of any administrative agency;

(2) Prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made; and, subject to the requirements of sections 81-8,240 to 81-8,254, determine the form, frequency, and distribution of his or her conclusions, recommendations, and proposals;

(3) Conduct inspections of the premises, or any parts thereof, of any administrative agency or any property owned, leased, or operated by any administrative agency as frequently as is necessary, in his or her opinion, to carry out duties prescribed under sections 81-8,240 to 81-8,254;

(4) Request and receive from each administrative agency, and such agency shall provide, the assistance and information the counsel deems necessary for the discharge of his or her responsibilities; inspect and examine the records and documents of all administrative agencies notwithstanding any other provision of law; and enter and inspect premises within any administrative agency's control;

(5) Issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state and shall also be entitled to have counsel present while being questioned;

(6) Undertake, participate in, or cooperate with general studies or inquiries, whether or not related to any particular administrative agency or any particular administrative act, if he or she believes that they may enhance knowledge about or lead to improvements in the functioning of administrative agencies;

(7) Make investigations, reports, and recommendations necessary to carry out his or her duties under the State Government Effectiveness Act;

(8) Carry out his or her duties under the Office of Inspector General of Nebraska Child Welfare Act. If any of the provisions of sections 81-8,240 to 81-8,254 conflict with provisions of the Office of Inspector General of Nebraska Child Welfare Act, the provisions of such act shall control;

(9) Carry out his or her duties under the Office of Inspector General of the Nebraska Correctional System Act. If any of the provisions of sections 81-8,240 to 81-8,254 conflict with the provisions of the Office of Inspector General of the Nebraska Correctional System Act, the provisions of such act shall control;

(10) Investigate allegations of violation of subsection (2) of section 84-908 by an administrative agency pursuant to a complaint made to his or her office and make a determination as to whether such administrative agency has violated such subsection. The Public Counsel shall report his or her determination in writing to the Governor, the Secretary of State, the Attorney General, the Executive Board of the Legislative Council, and the director or chief executive officer of the agency. The report to the executive board shall be submitted electronically; and

(11) Investigate and address the complaint and case of:

(a) Any juvenile committed to the custody of a youth rehabilitation and treatment center; and

(b) Any juvenile released from a youth rehabilitation and treatment center for reentry into the community, while that juvenile is subject to the Community and Family Reentry Process and a service or treatment program in which the juvenile may be involved after his or her release from a youth rehabilitation and treatment center, whether that service or program is administrated by the Office of Juvenile Services or a private provider in the community. The Office of Juvenile Services and private providers in the community shall cooperate with any investigation conducted by the Public Counsel pursuant to this subdivision and provide all documentation and information requested by the Public Counsel in connection with such an investigation.

Source: Laws 1969, c. 762, § 6, p. 2880; Laws 1976, LB 687, § 2; Laws 1993, LB 44, § 11; Laws 2012, LB821, § 44; Laws 2013, LB242, § 1; Laws 2013, LB561, § 62; Laws 2015, LB598, § 21.

Cross References

Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.
Office of Inspector General of the Nebraska Correctional System Act, see section 47-901.
State Government Effectiveness Act, see section 81-2701.

81-8,246. Public Counsel; particular administrative acts addressed.

In selecting matters for his attention, the Public Counsel shall address himself particularly 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 with strengthening procedures and practices which lessen the risk that objectionable administrative acts will occur.

Source: Laws 1969, c. 762, § 7, p. 2881.

81-8,247. Public Counsel; complaint; investigation; decision; notify complainant.

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

- (1) The complainant has available to him another remedy which he could reasonably be expected to use;
- (2) The grievance pertains to a matter outside 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) 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 him from proceeding on 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.

Source: Laws 1969, c. 762, § 8, p. 2882.

81-8,248. Public Counsel; complaint; conclusion or recommendation; consult with agency or person.

Before announcing a conclusion or recommendation that expressly or impliedly criticizes an administrative agency or any person, the Public Counsel shall consult with that agency or person.

Source: Laws 1969, c. 762, § 9, p. 2882.

81-8,249. Public Counsel; agency; information; recommendations.

(1) If, having considered a complaint and whatever material 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, he shall state his recommendations to the administrative agency. If the Public Counsel so requests, the agency shall, within the time he has specified, inform him about the action taken on 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, he shall bring to the Legislature's notice his views concerning desirable statutory change.

Source: Laws 1969, c. 762, § 10, p. 2882.

81-8,250. Public Counsel; conclusions; publish; inclusions.

The Public Counsel may 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 he shall include any statement the administrative agency may have made to him by way of explaining its past difficulties or its present rejection of the Public Counsel's proposals.

Source: Laws 1969, c. 762, § 11, p. 2883.

81-8,251. Public Counsel; report to Clerk of the Legislature; time; contents.

In addition to whatever reports he 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 functions during the preceding calendar year. 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 a copy of such report by making a request for it to the Public Counsel.

Source: Laws 1969, c. 762, § 12, p. 2883; Laws 1979, LB 322, § 45; Laws 2012, LB782, § 177.

81-8,252. Public Counsel; public officer or employee; acted to warrant criminal proceedings; refer to proper authorities.

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

Source: Laws 1969, c. 762, § 13, p. 2883.

81-8,253. Public Counsel; proceedings, opinion, expression; not reviewable by court; not subject to testify or produce evidence.

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

Source: Laws 1969, c. 762, § 14, p. 2883.

81-8,254. Violations; penalty; state employee; complaint; effect.

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 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 81-82,40 to 81-8,254, shall be subject to any penalties, sanctions, or restrictions in connection with his employment because of such complaint.

Source: Laws 1969, c. 762, § 15, p. 2883; Laws 1977, LB 39, § 301.

APPENDIX B - Inspector General of Nebraska Child Welfare Act

43-4301. Act, how cited.

Sections 43-4301 to 43-4332 shall be known and may be cited as the Office of Inspector General of Nebraska Child Welfare Act.

Source: Laws 2012, LB821, § 8; Laws 2015, LB347, § 4; Laws 2017, LB207, § 1.

43-4302. Legislative intent.

(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 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.

Source: Laws 2012, LB821, § 9; Laws 2013, LB39, § 1; Laws 2015, LB347, § 5.

43-4303. Definitions; where found.

For purposes of the Office of Inspector General of Nebraska Child Welfare Act, the definitions found in sections 43-4304 to 43-4316 apply.

Source: Laws 2012, LB821, § 10; Laws 2015, LB347, § 6.

43-4304. Administrator, defined.

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.

Source: Laws 2012, LB821, § 11; Laws 2015, LB347, § 7.

43-4304.01. Child welfare system, defined.

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

Source: Laws 2015, LB347, § 8.

43-4304.02. Commission, defined.

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

Source: Laws 2015, LB347, § 9.

43-4305. Department, defined.

Department means the Department of Health and Human Services.

Source: Laws 2012, LB821, § 12.

43-4306. Director, defined.

Director means the chief executive officer of the department.

Source: Laws 2012, LB821, § 13.

43-4306.01. Executive director, defined.

Executive director means the executive director of the commission.

Source: Laws 2015, LB347, § 10.

43-4307. Inspector General, defined.

Inspector General means the Inspector General of Nebraska Child Welfare appointed under section 43-4317.

Source: Laws 2012, LB821, § 14.

43-4307.01. Juvenile services division, defined.

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

Source: Laws 2015, LB347, § 11.

43-4308. Licensed child care facility, defined.

Licensed child care facility means a facility or program licensed under the Child Care Licensing Act, the Children's Residential Facilities and Placing Licensure Act, or sections 71-1901 to 71-1906.01.

Source: Laws 2012, LB821, § 15; Laws 2013, LB265, § 36.

Cross References

Child Care Licensing Act, see section 71-1908.

Children's Residential Facilities and Placing Licensure Act, see section 71-1924.

43-4309. Malfeasance, defined.

Malfeasance means a wrongful act that the actor has no legal right to do or any wrongful conduct that affects, interrupts, or interferes with performance of an official duty.

Source: Laws 2012, LB821, § 16.

43-4310. Management, defined.

Management means supervision of subordinate employees.

Source: Laws 2012, LB821, § 17.

43-4311. Misfeasance, defined.

Misfeasance means the improper performance of some act that a person may lawfully do.

Source: Laws 2012, LB821, § 18.

43-4312. Obstruction, defined.

Obstruction means hindering an investigation, preventing an investigation from progressing, stopping or delaying the progress of an investigation, or making the progress of an investigation difficult or slow.

Source: Laws 2012, LB821, § 19.

43-4313. Office, defined.

Office means the office of Inspector General of Nebraska Child Welfare and includes the Inspector General and other employees of the office.

Source: Laws 2012, LB821, § 20.

43-4314. Private agency, defined.

Private agency means a child welfare agency that contracts with the department or the Office of Probation Administration or contracts to provide services to another child welfare agency that contracts with the department or the Office of Probation Administration.

Source: Laws 2012, LB821, § 21; Laws 2013, LB561, § 57.

43-4315. Record, defined.

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

Source: Laws 2012, LB821, § 22.

43-4316. Responsible individual, defined.

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.

Source: Laws 2012, LB821, § 23; Laws 2015, LB347, § 12.

43-4317. Office of Inspector General of Nebraska Child Welfare; created; purpose; Inspector General; appointment; term; certification; employees; removal.

(1) The office of Inspector General of Nebraska Child Welfare is created within the office of Public Counsel for the purpose of conducting investigations, audits, inspections, and other reviews of the Nebraska child welfare system. The Inspector General shall be appointed by the Public Counsel with approval from the chairperson of the Executive Board of the Legislative Council and the chairperson of the Health and Human Services Committee of the Legislature.

(2) The Inspector General shall be appointed for a term of five years and may be reappointed. The Inspector General shall be selected without regard to political affiliation and on the basis of integrity, capability for strong leadership, and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigation, or criminal justice administration or other closely related fields. No former or current executive or manager of the department may be appointed Inspector General within five years after such former or current executive's or manager's period of service with the department. Not later than two years after the date of appointment, the Inspector General shall obtain certification as a Certified Inspector General by the Association of Inspectors General, its successor, or another nationally recognized organization that provides and sponsors educational programs and establishes professional qualifications, certifications, and licensing for inspectors general. During his or her employment, the Inspector General shall not be actively involved in partisan affairs.

(3) The Inspector General shall employ such investigators and support staff as he or she deems necessary to carry out the duties of the office within the amount available by appropriation through the office of Public Counsel for the office of Inspector General of Nebraska Child

Welfare. The Inspector General shall be subject to the control and supervision of the Public Counsel, except that removal of the Inspector General shall require approval of the chairperson of the Executive Board of the Legislative Council and the chairperson of the Health and Human Services Committee of the Legislature.

Source: Laws 2012, LB821, § 24.

43-4318. Office; duties; reports of death, serious injury, or allegations of sexual abuse; when required; law enforcement agencies and prosecuting attorneys; cooperation; confidentiality.

(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 (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) 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.

(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.

(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.

Source: Laws 2012, LB821, § 25; Laws 2013, LB561, § 58; Laws 2014, LB853, § 28; Laws 2015, LB347, § 13; Laws 2016, LB954, § 3; Laws 2017, LB207, § 2; Laws 2018, LB1078, § 4.

Effective Date: July 19, 2018

Cross References

Child Protection and Family Safety Act, see section 28-710.

Nebraska County Juvenile Services Plan Act, see section 43-3501.

Uniform Credentialing Act, see section 38-101.

43-4319. Office; access to information and personnel; investigation; procedure.

(1) The office shall have access to all information and personnel necessary to perform the duties of the office.

(2) A full investigation conducted by the office shall consist of retrieval of relevant records through subpoena, request, or voluntary production, review of all relevant records, and interviews of all relevant persons.

(3) For a request for confidential record information pursuant to subsection (5) of section 43-2,108 involving death or serious injury, the office may submit a written request to the probation administrator. The record information shall be provided to the office within five days after approval of the request by the Supreme Court.

Source: Laws 2012, LB821, § 26; Laws 2015, LB347, § 14.

43-4320. Complaints to office; form; full investigation; when; notice.

(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. 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, or violation of a statute or of rules and regulations pursuant to section 43-4318;

(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.

Source: Laws 2012, LB821, § 27; Laws 2013, LB561, § 59; Laws 2015, LB347, § 15.

Cross References

Uniform Credentialing Act, see section 38-101.

43-4321. Cooperation with office; when required.

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.

Source: Laws 2012, LB821, § 28; Laws 2013, LB561, § 60; Laws 2015, LB347, § 16.

43-4322. Failure to cooperate; effect.

Failure to cooperate with an investigation by the office may result in discipline or other sanctions.

Source: Laws 2012, LB821, § 29.

43-4323. Inspector General; powers; rights of person required to provide information.

The Inspector General may issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state and shall also be entitled to have counsel present while being questioned. Any fees associated with counsel present under this section shall not be the responsibility of the office of Inspector General of Nebraska Child Welfare.

Source: Laws 2012, LB821, § 30; Laws 2017, LB207, § 3.

43-4324. Office; access to records; subpoena; records; statement of record integrity and security; contents; treatment of records.

(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.

Source: Laws 2012, LB821, § 31; Laws 2013, LB561, § 61; Laws 2015, LB347, § 17.

43-4325. Reports of investigations; distribution; redact confidential information; powers of office; summarized final report; release.

(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)(a) A summarized final report based on an investigation may be publicly released in order to bring awareness to systemic issues.
- (b) Such report shall be released only:
- (i) After a disclosure is made to the appropriate chairperson or chairpersons pursuant to subsection (2) of this section; and
 - (ii) If a determination is made by the Inspector General with the appropriate chairperson that doing so would be in the best interest of the public.
- (c) If there is disagreement about whether releasing the report would be in the best interest of the public, the chairperson of the Executive Board of the Legislative Council may be asked to make the final decision.
- (4) 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.
- (5) 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.

Source: Laws 2012, LB821, § 32; Laws 2015, LB347, § 18; Laws 2017, LB207, § 4.

43-4326. Department; commission; juvenile services division; provide direct computer access.

- (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 commission shall provide the Inspector General with direct computer access to all computerized records, reports, and documents maintained in connection with administration of juvenile justice services.
- (3) The juvenile services division, as directed by the juvenile court or the Office of Probation Administration, 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 a specific case under investigation.

Source: Laws 2012, LB821, § 33; Laws 2015, LB347, § 19; Laws 2016, LB954,

43-4327. Inspector General's report of investigation; contents; distribution.

- (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 beyond the entity that is the subject of 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, 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.

Source: Laws 2012, LB821, § 34; Laws 2015, LB347, § 20; Laws 2017, LB207, § 5.

43-4328. Report; director, probation administrator, or executive director; accept, reject, or request modification; when final; written response; corrected report; credentialing issue; how treated.

(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 written response may include corrections of factual errors. 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) After the recommendations have been accepted, rejected, or modified, 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 thirty 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

and 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, 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.

Source: Laws 2012, LB821, § 35; Laws 2015, LB347, § 21; Laws 2017, LB207, § 6.

Cross References

Uniform Credentialing Act, see section 38-101.

43-4329. Report or work product; no court review.

No report or other work product of an investigation by the Inspector General shall be reviewable in any court. Neither the Inspector General nor any member of his or her staff shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters within his or her official cognizance except in a proceeding brought to enforce the Office of Inspector General of Nebraska Child Welfare Act.

Source: Laws 2012, LB821, § 36.

43-4330. Inspector General; investigation of complaints; priority and selection.

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.

Source: Laws 2012, LB821, § 37; Laws 2015, LB347, § 22.

43-4331. Summary of reports and investigations; contents.

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 committees shall be provided electronically. The summaries shall detail recommendations and the status of implementation of recommendations and may also include recommendations to the committees 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.

Source: Laws 2012, LB821, § 38; Laws 2013, LB222, § 12; Laws 2014, LB853, § 29; Laws 2015, LB347, § 23.

43-4332. Disclosure of information by employee; personnel actions prohibited.

Any person who has authority to recommend, approve, direct, or otherwise take or affect personnel action shall not, with respect to such authority:

- (1) Take personnel action against an employee because of the disclosure of information by the employee to the office which the employee reasonably believes evidences wrongdoing under the Office of Inspector General of Nebraska Child Welfare Act;
- (2) Take personnel action against an employee as a reprisal for the submission of an allegation of wrongdoing under the act to the office by such employee; or
- (3) Take personnel action against an employee as a reprisal for providing information or testimony pursuant to an investigation by the office.

Source: Laws 2017, LB207, § 7.

43-3001. Child in state custody; court records and information; court order authorized; information confidential; immunity from liability; school records as evidence; violation; penalty.

- (1) Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, as amended, juvenile court records and any

other pertinent information that may be in the possession of school districts, school personnel, county attorneys, the Attorney General, law enforcement agencies, child advocacy centers, state probation personnel, state parole personnel, youth detention facilities, medical personnel, treatment or placement programs, the Department of Health and Human Services, the Department of Correctional Services, the Foster Care Review Office, local foster care review boards, child abuse and neglect investigation teams, child abuse and neglect treatment teams, or other multidisciplinary teams for abuse, neglect, or delinquency concerning a child who is in the custody of the state may be shared with individuals and agencies who have been identified in a court order authorized by this section.

(2) In any judicial proceeding concerning a child who is currently, or who may become at the conclusion of the proceeding, a ward of the court or state or under the supervision of the court, an order may be issued which identifies individuals and agencies who shall be allowed to receive otherwise confidential information concerning the child for legitimate and official purposes. The individuals and agencies who may be identified in the court order are the child's attorney or guardian ad litem, the parents' attorney, foster parents, appropriate school personnel, county attorneys, the Attorney General, authorized court personnel, law enforcement agencies, state probation personnel, state parole personnel, youth detention facilities, medical personnel, court appointed special advocate volunteers, treatment or placement programs, the Department of Health and Human Services, the Office of Juvenile Services, the Department of Correctional Services, the Foster Care Review Office, local foster care review boards, the office of Inspector General of Nebraska Child Welfare, child abuse and neglect investigation teams, child abuse and neglect treatment teams, other multidisciplinary teams for abuse, neglect, or delinquency, and other individuals and agencies for which the court specifically finds, in writing, that it would be in the best interest of the juvenile to receive such information. Unless the order otherwise states, the order shall be effective until the child leaves the custody of the state or supervision of the court or until a new order is issued.

(3) All information acquired by an individual or agency pursuant to this section shall be confidential and shall not be disclosed except to other persons who have a legitimate and official interest in the information and are identified in the court order issued pursuant to this section with respect to the child in question. A person who receives such information or who cooperates in good faith with other individuals and agencies identified in the appropriate court order by providing information or records about a child shall be immune from any civil or criminal liability. The provisions of this section granting immunity from liability shall not be extended to any person alleged to have committed an act of child abuse or neglect.

(4) In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

(5) Except as provided in subsection (4) of this section, any person who publicly discloses information received pursuant to this section shall be guilty of a Class III misdemeanor.

Source: Laws 1993, LB 719, § 1; Laws 1994, LB 988, § 27; Laws 1996, LB 1044, § 233; Laws 2006, LB 1113, § 42; Laws 2008, LB1014, § 67; Laws 2009, LB35, § 29; Laws 2012, LB998, § 17; Laws 2015, LB347, § 3.

APPENDIX C - Inspector General of the Nebraska Correctional System Act

47-901. Act, how cited.

Sections 47-901 to 47-919 shall be known and may be cited as the Office of Inspector General of the Nebraska Correctional System Act.

Source: Laws 2015, LB598, § 1; Laws 2016, LB1094, § 28.

47-902. Legislative intent.

(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 correctional system;

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

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

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

(2) It is not the intent of the Legislature in enacting the Office of Inspector General of the Nebraska Correctional System 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.

Source: Laws 2015, LB598, § 2.

47-903. Terms, defined.

For purposes of the Office of Inspector General of the Nebraska Correctional System Act, the following definitions apply:

- (1) Administrator means a person charged with administration of a program, an office, or a division of the department or administration of a private agency;
- (2) Department means the Department of Correctional Services;
- (3) Director means the Director of Correctional Services;
- (4) Inspector General means the Inspector General of the Nebraska Correctional System appointed under section 47-904;
- (5) Malfeasance means a wrongful act that the actor has no legal right to do or any wrongful conduct that affects, interrupts, or interferes with performance of an official duty;
- (6) Management means supervision of subordinate employees;
- (7) Misfeasance means the improper performance of some act that a person may lawfully do;
- (8) Obstruction means hindering an investigation, preventing an investigation from progressing, stopping or delaying the progress of an investigation, or making the progress of an investigation difficult or slow;
- (9) Office means the office of Inspector General of the Nebraska Correctional System and includes the Inspector General and other employees of the office;
- (10) Office of Parole Administration means the office created pursuant to section 83-1,100;
- (11) Private agency means an entity that contracts with the department or contracts to provide services to another entity that contracts with the department; and

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

Source: Laws 2015, LB598, § 3; Laws 2016, LB1094, § 29.

Effective Date: April 20, 2016

47-904. Office of Inspector General of the Nebraska Correctional System; created; Inspector General; appointment; term; qualifications; employees; removal.

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

(2) The Inspector General shall be appointed for a term of five years and may be reappointed. The Inspector General shall be selected without regard to political affiliation and on the basis of integrity, capability for strong leadership, and demonstrated ability in accounting, auditing, financial analysis, law, management, public administration, investigation, or criminal justice administration or other closely related fields. No former or current executive or manager of the department shall be appointed Inspector General within five years after such former or current executive's or manager's period of service with the department. Not later than two years after the date of appointment, the Inspector General shall obtain certification as a Certified Inspector General by the Association of Inspectors General, its successor, or another nationally recognized organization that provides and sponsors educational programs and establishes professional qualifications, certifications, and licensing for inspectors general. During his or her employment, the Inspector General shall not be actively involved in partisan affairs.

(3) The Inspector General shall employ such investigators and support staff as he or she deems necessary to carry out the duties of the office within the amount available by appropriation through the office of Public Counsel for the office of Inspector General of the Nebraska Correctional System. The Inspector General shall be subject to the control and supervision of the Public Counsel, except that removal

of the Inspector General shall require approval of the chairperson of the Executive Board of the Legislative Council and the chairperson of the Judiciary Committee of the Legislature.

Source: Laws 2015, LB598, § 4.

47-905. Office; duties; law enforcement agencies and prosecuting attorneys; cooperation; confidentiality.

(1) The office shall investigate:

(a) Allegations or incidents of possible misconduct, misfeasance, malfeasance, or violations of statutes or of rules or regulations of the department by an employee of or a person under contract with the department or a private agency; and

(b) Death or serious injury in private agencies, department correctional facilities, and other programs and facilities licensed by or under contract with the department. The department shall report all cases of death or serious injury of a person in a private agency, department correctional facility or program, or other program or facility licensed by the department to the Inspector General as soon as reasonably possible after the department learns of such death or serious injury. For purposes of this subdivision, serious injury means an injury or illness caused by malfeasance or misfeasance which leaves a person in critical or serious condition.

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

(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 the Nebraska Correctional System 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 person who has already been interviewed by a law enforcement agency in connection with a relevant ongoing investigation of a law enforcement agency.

Source: Laws 2015, LB598, § 5.

47-906. Office; access to information and personnel; investigation.

- (1) The office shall have access to all information and personnel necessary to perform the duties of the office.
- (2) A full investigation conducted by the office shall consist of retrieval of relevant records through subpoena, request, or voluntary production, review of all relevant records, and interviews of all relevant persons.

Source: Laws 2015, LB598, § 6.

47-907. Complaints to office; form; full investigation; when; notice.

- (1) Complaints to the office may be made in writing. A complaint shall be evaluated to determine if it alleges possible misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations of the department by an employee of or a person under contract with the department or a private agency. 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, or violation of a statute or of rules and regulations of the department;
 - (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 the office will conduct a full investigation.

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

Source: Laws 2015, LB598, § 7.

47-908. Cooperation with office; when required.

All employees of the department, all employees of the Office of Parole Administration, and all owners, operators, managers, supervisors, and employees of private agencies 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 statute, rule, or regulation if done in good faith for purposes of an investigation under the Office of Inspector General of the Nebraska Correctional System 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.

Source: Laws 2015, LB598, § 8; Laws 2016, LB1094, § 30.

Effective Date: April 20, 2016

47-909. Failure to cooperate; effect.

Failure to cooperate with an investigation by the office may result in discipline or other sanctions.

Source: Laws 2015, LB598, § 9.

47-910. Inspector General; powers; rights of person required to provide information.

The Inspector General may issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state and shall also be entitled to have counsel present while being questioned.

Source: Laws 2015, LB598, § 10.

47-911. Office; access to records; subpoena; records; statement of record integrity and security; contents; treatment of records.

(1) In conducting investigations, the office shall access all relevant records through subpoena, compliance with a request by the office, and voluntary production. The office may request or subpoena any record necessary for the investigation from the department 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 department programs or services. When advance notice to an administrator or his or her designee is not provided, the office investigator shall, upon arrival at the departmental office, bureau, or division or private agency, 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 departmental office, bureau, or division, a department correctional facility, or a private agency 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, or department correctional facility 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, or a department correctional facility 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, or department correctional facility 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.

Source: Laws 2015, LB598, § 11.

47-912. Reports of investigations; distribution; redact confidential information; powers of office.

(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) The office shall redact confidential information before distributing a report of an investigation. The office may disclose confidential information to 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 correctional 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 the Nebraska Correctional System Act.

Source: Laws 2015, LB598, § 12.

47-913. Department; provide direct computer access.

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 correctional system, except that the Public Counsel's and Inspector General's access to an inmate's medical or mental health records shall be subject to the inmate's consent.

Source: Laws 2015, LB598, § 13.

47-914. Inspector General's report of investigation; contents; distribution.

(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 private agency. 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 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 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, violation of statute, or violation of rules and regulations by an employee of the department or a private agency 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.

Source: Laws 2015, LB598, § 14.

47-915. Report; director; accept, reject, or request modification; when final; written response; corrected report; appended material.

(1) Within fifteen days after a report is presented to the director under section 47-914, 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 request for modifications but is not obligated to accept such request. Such report shall become final upon the decision of the director to accept or reject the recommendations in the report or, if the 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 report shall be presented to the private agency or other provider of correctional 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 private agency 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 private agency or other provider may request that its written response, or portions of the response, be appended to the report or corrected report.

Source: Laws 2015, LB598, § 15.

47-916. Report or work product; no court review.

No report or other work product of an investigation by the Inspector General shall be reviewable in any court. Neither the Inspector General nor any member of his or her staff shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters within his or her official cognizance except in a proceeding brought to enforce the Office of Inspector General of the Nebraska Correctional System Act.

Source: Laws 2015, LB598, § 16.

47-917. Inspector General; investigation of complaints; priority and selection.

The Office of Inspector General of the Nebraska Correctional System 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 correctional 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.

Source: Laws 2015, LB598, § 17.

47-918. Summary of reports and investigations; contents.

On or before September 15 of each year, the Inspector General shall provide to each member of the Judiciary Committee of the Legislature, the Governor, and the Clerk of the Legislature a summary of reports and investigations made under the Office of Inspector General of the Nebraska Correctional System Act for the preceding year. The summary provided to the Clerk of the Legislature shall be provided electronically. The summaries shall include recommendations and an update on the status of recommendations made in prior summaries, if any. The recommendations may address issues discovered through investigations, audits, inspections, and reviews by the office that will (1) increase accountability and legislative oversight of the Nebraska correctional system, (2) improve operations of the department and the Nebraska correctional system, (3) deter and identify fraud, abuse, and illegal acts, and (4) identify inconsistencies between statutory requirements and requirements for accreditation. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.

Source: Laws 2015, LB598, § 18.

47-919. Office of Parole Administration; provide access to records, reports, and documents.

The Office of Parole Administration shall provide the Public Counsel and the Inspector General with direct computer access to all computerized records, reports, and documents maintained by the office in connection with administration of the

Nebraska parole system, except that access for the Public Counsel and the Inspector General to a parolee's medical or mental health records shall be subject to the parolee's consent.

Source: Laws 2016, LB1094, § 31.

Effective Date: April 20, 2016

Bibliography

Anyone interested in learning more about the ombudsman concept as that concept has been implemented through the Nebraska Office of the Public Counsel is invited to read the following materials:

Bernard Frank, *The Nebraska Public Counsel - The Ombudsman*, 5 CumberlandSamford L. Rev. 30 (1974).

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Miewald and Comer, "Complaining As Participation: The Case of the Ombudsman." *Administration and Society* 17 (February 1986): 481-499.

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Wyner, *Complaint Resolution in Nebraska: Citizens, Bureaucrats and the Ombudsman*, 54 Neb. L. Rev. 1 (1975).

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