

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 954

FINAL READING

Introduced by Krist, 10.

Read first time January 14, 2016

Committee: Executive Board

- 1 A BILL FOR AN ACT relating to the Office of Inspector General of Nebraska
- 2 Child Welfare Act; to amend sections 43-2,108, 43-2,108.05, 43-4318,
- 3 43-4319, 43-4321, 43-4324, and 43-4326, Revised Statutes Supplement,
- 4 2015; to change provisions relating to access to records; to change
- 5 provisions relating to investigations by the Inspector General; to
- 6 harmonize provisions; to repeal the original sections; and to
- 7 declare an emergency.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-2,108, Revised Statutes Supplement, 2015, is
2 amended to read:

3 43-2,108 (1) The juvenile court judge shall keep a minute book in
4 which he or she shall enter minutes of all proceedings of the court in
5 each case, including appearances, findings, orders, decrees, and
6 judgments, and any evidence which he or she feels it is necessary and
7 proper to record. Juvenile court legal records shall be deposited in
8 files and shall include the petition, summons, notice, certificates or
9 receipts of mailing, minutes of the court, findings, orders, decrees,
10 judgments, and motions.

11 (2) Except as provided in subsections (3) and ~~(4)~~, ~~and~~ ~~(5)~~ of this
12 section, the medical, psychological, psychiatric, and social welfare
13 reports and the records of juvenile probation officers as they relate to
14 individual proceedings in the juvenile court shall not be open to
15 inspection, without order of the court. Such records shall be made
16 available to a district court of this state or the District Court of the
17 United States on the order of a judge thereof for the confidential use of
18 such judge or his or her probation officer as to matters pending before
19 such court but shall not be made available to parties or their counsel;
20 and such district court records shall be made available to a county court
21 or separate juvenile court upon request of the county judge or separate
22 juvenile judge for the confidential use of such judge and his or her
23 probation officer as to matters pending before such court, but shall not
24 be made available by such judge to the parties or their counsel.

25 (3) As used in this section, confidential record information means
26 all docket records, other than the pleadings, orders, decrees, and
27 judgments; case files and records; reports and records of probation
28 officers; and information supplied to the court of jurisdiction in such
29 cases by any individual or any public or private institution, agency,
30 facility, or clinic, which is compiled by, produced by, and in the
31 possession of any court. In all cases under subdivision (3)(a) of section

1 43-247, access to all confidential record information in such cases shall
2 be granted only as follows: (a) The court of jurisdiction may, subject to
3 applicable federal and state regulations, disseminate such confidential
4 record information to any individual, or public or private agency,
5 institution, facility, or clinic which is providing services directly to
6 the juvenile and such juvenile's parents or guardian and his or her
7 immediate family who are the subject of such record information; (b) the
8 court of jurisdiction may disseminate such confidential record
9 information, with the consent of persons who are subjects of such
10 information, or by order of such court after showing of good cause, to
11 any law enforcement agency upon such agency's specific request for such
12 agency's exclusive use in the investigation of any protective service
13 case or investigation of allegations under subdivision (3)(a) of section
14 43-247, regarding the juvenile or such juvenile's immediate family, who
15 are the subject of such investigation; and (c) the court of jurisdiction
16 may disseminate such confidential record information to any court, which
17 has jurisdiction of the juvenile who is the subject of such information
18 upon such court's request.

19 (4) The court shall provide copies of predispositional reports and
20 evaluations of the juvenile to the juvenile's attorney and the county
21 attorney or city attorney prior to any hearing in which the report or
22 evaluation will be relied upon.

23 (5) In all cases under sections 43-246.01 and 43-247, ~~the court or~~
24 ~~the probation officer shall disseminate confidential record information~~
25 ~~to~~ (a) the office of Inspector General of Nebraska Child Welfare may
26 submit a written request to the probation administrator for access to the
27 records of juvenile probation officers in a specific case. Upon a
28 juvenile court order, the records shall be provided to the Inspector
29 General within five days upon request for the exclusive use in an
30 investigation pursuant to the Office of Inspector General of Nebraska
31 Child Welfare Act and (b) ~~the Foster Care Review Office pursuant to the~~

1 ~~Foster Care Review Act~~. Nothing in this subsection shall prevent the
2 notification of death or serious injury of a juvenile to the Inspector
3 General of Nebraska Child Welfare pursuant to section 43-4318 as soon as
4 reasonably possible after the Office of Probation Administration learns
5 of such death or serious injury.

6 (6) In all cases under sections 43-246.01 and 43-247, the juvenile
7 court shall disseminate confidential record information to the Foster
8 Care Review Office pursuant to the Foster Care Review Act.

9 (7) (6) Nothing in subsections (3), ~~and~~ (5), and (6) of this section
10 shall be construed to restrict the dissemination of confidential record
11 information between any individual or public or private agency,
12 institute, facility, or clinic, except any such confidential record
13 information disseminated by the court of jurisdiction pursuant to this
14 section shall be for the exclusive and private use of those to whom it
15 was released and shall not be disseminated further without order of such
16 court.

17 (8)(a) (7)(a) Any records concerning a juvenile court petition filed
18 pursuant to subdivision (3)(c) of section 43-247 shall remain
19 confidential except as may be provided otherwise by law. Such records
20 shall be accessible to (i) the juvenile except as provided in subdivision
21 (b) of this subsection, (ii) the juvenile's counsel, (iii) the juvenile's
22 parent or guardian, and (iv) persons authorized by an order of a judge or
23 court.

24 (b) Upon application by the county attorney or by the director of
25 the facility where the juvenile is placed and upon a showing of good
26 cause therefor, a judge of the juvenile court having jurisdiction over
27 the juvenile or of the county where the facility is located may order
28 that the records shall not be made available to the juvenile if, in the
29 judgment of the court, the availability of such records to the juvenile
30 will adversely affect the juvenile's mental state and the treatment
31 thereof.

1 Sec. 2. Section 43-2,108.05, Revised Statutes Supplement, 2015, is
2 amended to read:

3 43-2,108.05 (1) If the court orders the record of a juvenile sealed
4 pursuant to section 43-2,108.04, the court shall:

5 (a) Order that all records, including any information or other data
6 concerning any proceedings relating to the offense, including the arrest,
7 taking into custody, petition, complaint, indictment, information, trial,
8 hearing, adjudication, correctional supervision, dismissal, or other
9 disposition or sentence, be deemed never to have occurred;

10 (b) Send notice of the order to seal the record (i) to the Nebraska
11 Commission on Law Enforcement and Criminal Justice, (ii) if the record
12 includes impoundment or prohibition to obtain a license or permit
13 pursuant to section 43-287, to the Department of Motor Vehicles, (iii) if
14 the juvenile whose record has been ordered sealed was a ward of the state
15 at the time the proceeding was initiated or if the Department of Health
16 and Human Services was a party in the proceeding, to such department, and
17 (iv) to law enforcement agencies, county attorneys, and city attorneys
18 referenced in the court record;

19 (c) Order all notified under subdivision (1)(b) of this section to
20 seal all records pertaining to the offense;

21 (d) If the case was transferred from district court to juvenile
22 court or was transferred under section 43-282, send notice of the order
23 to seal the record to the transferring court; and

24 (e) Explain to the juvenile what sealing the record means verbally
25 if the juvenile is present in the court at the time the court issues the
26 sealing order or by written notice sent by regular mail to the juvenile's
27 last-known address if the juvenile is not present in the court at the
28 time the court issues the sealing order.

29 (2) The effect of having a record sealed under section 43-2,108.04
30 is that thereafter no person is allowed to release any information
31 concerning such record, except as provided by this section. After a

1 record is sealed, the person whose record was sealed can respond to any
2 public inquiry as if the offense resulting in such record never occurred.
3 A government agency and any other public office or agency shall reply to
4 any public inquiry that no information exists regarding a sealed record.
5 Except as provided in subsection (3) of this section, an order to seal
6 the record applies to every government agency and any other public office
7 or agency that has a record relating to the offense, regardless of
8 whether it receives notice of the hearing on the sealing of the record or
9 a copy of the order. Upon the written request of a person whose record
10 has been sealed and the presentation of a copy of such order, a
11 government agency or any other public office or agency shall seal all
12 records pertaining to the offense.

13 (3) A sealed record is accessible to law enforcement officers,
14 county attorneys, and city attorneys in the investigation, prosecution,
15 and sentencing of crimes, to the sentencing judge in the sentencing of
16 criminal defendants, to a judge making a determination whether to
17 transfer a case to or from juvenile court, ~~and~~ to any attorney
18 representing the subject of the sealed record, and to the Inspector
19 General of Nebraska Child Welfare pursuant to an investigation conducted
20 under the Office of Inspector General of Nebraska Child Welfare Act.
21 Inspection of records that have been ordered sealed under section
22 43-2,108.04 may be made by the following persons or for the following
23 purposes:

24 (a) By the court or by any person allowed to inspect such records by
25 an order of the court for good cause shown;

26 (b) By the court, city attorney, or county attorney for purposes of
27 collection of any remaining parental support or obligation balances under
28 section 43-290;

29 (c) By the Nebraska Probation System for purposes of juvenile intake
30 services, for presentence and other probation investigations, and for the
31 direct supervision of persons placed on probation and by the Department

1 of Correctional Services, the Office of Juvenile Services, a juvenile
2 assessment center, a criminal detention facility, a juvenile detention
3 facility, or a staff secure juvenile facility, for an individual
4 committed to it, placed with it, or under its care;

5 (d) By the Department of Health and Human Services for purposes of
6 juvenile intake services, the preparation of case plans and reports, the
7 preparation of evaluations, compliance with federal reporting
8 requirements, or the supervision and protection of persons placed with
9 the department or for licensing or certification purposes under sections
10 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's
11 Residential Facilities and Placing Licensure Act;

12 (e) Upon application, by the person who is the subject of the sealed
13 record and by persons authorized by the person who is the subject of the
14 sealed record who are named in that application;

15 (f) At the request of a party in a civil action that is based on a
16 case that has a sealed record, as needed for the civil action. The party
17 also may copy the sealed record as needed for the civil action. The
18 sealed record shall be used solely in the civil action and is otherwise
19 confidential and subject to this section;

20 (g) By persons engaged in bona fide research, with the permission of
21 the court, only if the research results in no disclosure of the person's
22 identity and protects the confidentiality of the sealed record; or

23 (h) By a law enforcement agency if a person whose record has been
24 sealed applies for employment with the law enforcement agency.

25 (4) Nothing in this section prohibits the Department of Health and
26 Human Services from releasing information from sealed records in the
27 performance of its duties with respect to the supervision and protection
28 of persons served by the department.

29 (5) In any application for employment, bonding, license, education,
30 or other right or privilege, any appearance as a witness, or any other
31 public inquiry, a person cannot be questioned with respect to any offense

1 for which the record is sealed. If an inquiry is made in violation of
2 this subsection, the person may respond as if the offense never occurred.
3 Applications for employment shall contain specific language that states
4 that the applicant is not obligated to disclose a sealed record.
5 Employers shall not ask if an applicant has had a record sealed. The
6 Department of Labor shall develop a link on the department's web site to
7 inform employers that employers cannot ask if an applicant had a record
8 sealed and that an application for employment shall contain specific
9 language that states that the applicant is not obligated to disclose a
10 sealed record.

11 (6) Any person who violates this section may be held in contempt of
12 court.

13 Sec. 3. Section 43-4318, Revised Statutes Supplement, 2015, is
14 amended to read:

15 43-4318 (1) The office shall investigate:

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

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

23 (ii) Subject to subsection (2) of this section, the ~~The~~ juvenile
24 services division by an employee of or person under contract with the
25 juvenile services division, a private agency, a licensed facility, a
26 foster parent, or any other provider of juvenile justice services;

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

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

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

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

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

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

29 (3 2) Any investigation conducted by the Inspector General shall be
30 independent of and separate from an investigation pursuant to the Child
31 Protection and Family Safety Act. The Inspector General and his or her

1 staff are subject to the reporting requirements of the Child Protection
2 and Family Safety Act.

3 (4 3) Notwithstanding the fact that a criminal investigation, a
4 criminal prosecution, or both are in progress, all law enforcement
5 agencies and prosecuting attorneys shall cooperate with any investigation
6 conducted by the Inspector General and shall, immediately upon request by
7 the Inspector General, provide the Inspector General with copies of all
8 law enforcement reports which are relevant to the Inspector General's
9 investigation. All law enforcement reports which have been provided to
10 the Inspector General pursuant to this section are not public records for
11 purposes of sections 84-712 to 84-712.09 and shall not be subject to
12 discovery by any other person or entity. Except to the extent that
13 disclosure of information is otherwise provided for in the Office of
14 Inspector General of Nebraska Child Welfare Act, the Inspector General
15 shall maintain the confidentiality of all law enforcement reports
16 received pursuant to its request under this section. Law enforcement
17 agencies and prosecuting attorneys shall, when requested by the Inspector
18 General, collaborate with the Inspector General regarding all other
19 information relevant to the Inspector General's investigation. If the
20 Inspector General in conjunction with the Public Counsel determines it
21 appropriate, the Inspector General may, when requested to do so by a law
22 enforcement agency or prosecuting attorney, suspend an investigation by
23 the office until a criminal investigation or prosecution is completed or
24 has proceeded to a point that, in the judgment of the Inspector General,
25 reinstatement of the Inspector General's investigation will not impede or
26 infringe upon the criminal investigation or prosecution. Under no
27 circumstance shall the Inspector General interview any minor who has
28 already been interviewed by a law enforcement agency, personnel of the
29 Division of Children and Family Services of the department, or staff of a
30 child advocacy center in connection with a relevant ongoing investigation
31 of a law enforcement agency.

1 Sec. 4. Section 43-4319, Revised Statutes Supplement, 2015, is
2 amended to read:

3 43-4319 (1) The office shall have access to all information and
4 personnel necessary to perform the duties of the office.

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

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

14 Sec. 5. Section 43-4321, Revised Statutes Supplement, 2015, is
15 amended to read:

16 43-4321 All employees of the department, the juvenile services
17 division as directed by the juvenile court or the Office of Probation
18 Administration, or the commission, all foster parents, and all owners,
19 operators, managers, supervisors, and employees of private agencies,
20 licensed child care facilities, juvenile detention facilities, staff
21 secure juvenile facilities, and other providers of child welfare services
22 or juvenile justice services shall cooperate with the office. Cooperation
23 includes, but is not limited to, the following:

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

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

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

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

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

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

11 (7) Not willfully interfering with or obstructing the investigation.
12 Sec. 6. Section 43-4324, Revised Statutes Supplement, 2015, is
13 amended to read:

14 43-4324 (1) In conducting investigations, the office shall access
15 all relevant records through subpoena, compliance with a request of the
16 office, and voluntary production. The office may request or subpoena any
17 record necessary for the investigation from the department, the juvenile
18 services division as permitted by law, the commission, a foster parent, a
19 licensed child care facility, a juvenile detention facility, a staff
20 secure juvenile facility, or a private agency that is pertinent to an
21 investigation. All case files, licensing files, medical records,
22 financial and administrative records, and records required to be
23 maintained pursuant to applicable licensing rules shall be produced for
24 review by the office in the course of an investigation.

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

26 (a) Production of all records requested;

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

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

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

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

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

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

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

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

30 (d) Whether, to the best of the knowledge of the responsible
31 individual or the administrator, any records were removed from or added

1 to the record since it was secured.

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

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

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

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

21 Sec. 7. Section 43-4326, Revised Statutes Supplement, 2015, is
22 amended to read:

23 43-4326 (1) The department shall provide the Public Counsel and the
24 Inspector General with direct computer access to all computerized
25 records, reports, and documents maintained by the department in
26 connection with administration of the Nebraska child welfare system.

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

31 (3) The juvenile services division, as directed by the juvenile

1 court or the Office of Probation Administration, shall provide the
2 Inspector General with direct computer access to all computerized
3 records, reports, and documents maintained by the juvenile services
4 division in connection with a specific case under investigation.

5 Sec. 8. Original sections 43-2,108, 43-2,108.05, 43-4318, 43-4319,
6 43-4321, 43-4324, and 43-4326, Revised Statutes Supplement, 2015, are
7 repealed.

8 Sec. 9. Since an emergency exists, this act takes effect when
9 passed and approved according to law.