

## LEGISLATIVE BILL 463

Approved by the Governor April 7, 1988

Introduced by Wesely, 26; Marsh, 29; Smith, 33;  
Higgins, 9

AN ACT relating to crimes and punishments; to amend sections 28-710 to 28-713, 28-715, 28-726, 71-2052, and 71-6039, Reissue Revised Statutes of Nebraska, 1943, and section 28-101, Revised Statutes Supplement, 1987; to adopt the Adult Protective Services Act; to provide penalties; to eliminate provisions relating to abuse of an incompetent or disabled person; to harmonize provisions; and to repeal the original sections, and also section 28-708, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. Sections 1 to 40 of this act shall be known and may be cited as the Adult Protective Services Act.

Sec. 2. The Legislature recognizes the need for the investigation and provision of services to certain persons who are substantially impaired and are unable to protect themselves from abuse. Often such persons cannot find others able or willing to render assistance. The Legislature intends through the Adult Protective Services Act to establish a program designed to fill this need and to assure the availability of the program to all eligible persons. It is also the intent of the Legislature to authorize the least restriction possible on the exercise of personal and civil rights consistent with the person's need for services.

Sec. 3. For purposes of the Adult Protective Services Act, unless the context otherwise requires, the definitions found in sections 4 to 24 of this act shall be used.

Sec. 4. Abuse shall mean any knowing, intentional, or negligent act or omission on the part of a caregiver, a vulnerable adult, or any other person which results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, exploitation, or denial of essential services to a vulnerable adult.

Sec. 5. Adult protective services shall mean those services provided by the department for the

prevention, correction, or discontinuance of abuse. Such services shall be those necessary and appropriate under the circumstances to protect an abused vulnerable adult, ensure that the least restrictive alternative is provided, prevent further abuse, and promote self-care and independent living. Such services shall include, but not be limited to: (1) Receiving and investigating reports of alleged abuse; (2) developing social service plans; (3) arranging for the provision of services such as medical care, mental health care, legal services, fiscal management, housing, or home health care; (4) arranging for the provision of items such as food, clothing, or shelter; and (5) arranging or coordinating services for caregivers.

Sec. 6. Caregiver shall mean any person or entity which has assumed the responsibility for the care of a vulnerable adult voluntarily, by express or implied contract, or by order of a court of competent jurisdiction.

Sec. 7. Cruel punishment shall mean punishment which intentionally causes physical injury to a vulnerable adult.

Sec. 8. Denial of essential services shall mean that essential services are denied or neglected to such an extent that there is actual physical injury to a vulnerable adult or imminent danger of the vulnerable adult suffering physical injury or death.

Sec. 9. Department shall mean the Department of Social Services.

Sec. 10. Essential services shall mean those services necessary to safeguard the person or property of a vulnerable adult. Such services shall include, but not be limited to, sufficient and appropriate food and clothing, temperate and sanitary shelter, treatment for physical needs, and proper supervision.

Sec. 11. Exploitation shall mean the taking of property of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, or extortion or by any unlawful means.

Sec. 12. Law enforcement agency shall mean the police department or the town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol.

Sec. 13. Least restrictive alternative shall mean adult protective services provided in a manner no more restrictive of a vulnerable adult's liberty and no more intrusive than necessary to achieve and ensure essential services.

Sec. 14. Living independently shall include,



but not be limited to, using the telephone, shopping, preparing food, housekeeping, and administering medications.

Sec. 15. Permit shall mean to allow a vulnerable adult over whom one has a proximate or direct degree of control to perform an act or acts or be in a situation which the controlling person could have prevented by the reasonable exercise of such control.

Sec. 16. Physical injury shall mean damage to bodily tissue caused by nontherapeutic conduct, including, but not limited to, fractures, bruises, lacerations, internal injuries, or dislocations, and shall include, but not be limited to, physical pain, illness, or impairment of physical function.

Sec. 17. Proper supervision shall mean care and control of a vulnerable adult which a reasonable and prudent person would exercise under similar facts and circumstances.

Sec. 18. Registry shall mean the Adult Protective Services Central Registry established by section 29 of this act.

Sec. 19. Self-care shall include, but not be limited to, personal hygiene, eating, and dressing.

Sec. 20. Sexual abuse shall include sexual assault as described in section 28-319 or 28-320 and incest as described in section 28-703.

Sec. 21. Substantial functional impairment shall mean a substantial incapability, because of physical limitations, of living independently or providing self-care as determined through observation, diagnosis, investigation, or evaluation.

Sec. 22. Substantial mental impairment shall mean a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or ability to live independently or provide self-care as revealed by observation, diagnosis, investigation, or evaluation.

Sec. 23. Unreasonable confinement shall mean confinement which intentionally causes physical injury to a vulnerable adult.

Sec. 24. Vulnerable adult shall mean any person eighteen years of age or older who has a substantial mental or functional impairment or for whom a guardian has been appointed under the Nebraska Probate Code.

Sec. 25. (1) When any physician, psychologist, physician assistant, nurse, nursing assistant, other medical, developmental disability, or mental health professional, law enforcement personnel,

caregiver or employee of a caregiver, operator or employee of a sheltered workshop, owner, operator, or employee of any facility licensed by the Department of Health, or human services professional or paraprofessional not including a member of the clergy has reasonable cause to believe that a vulnerable adult has been subjected to abuse or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, he or she shall report the incident or cause a report to be made to the appropriate law enforcement agency or to the department. Any other person may report abuse if such person has reasonable cause to believe that a vulnerable adult has been subjected to abuse or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse.

(2) Such report may be made by telephone, with the caller giving his or her name and address, and, if requested by the department, shall be followed by a written report within forty-eight hours. To the extent available the report shall contain: (a) The name, address, and age of the vulnerable adult; (b) the address of the caregiver or caregivers of the vulnerable adult; (c) the nature and extent of the alleged abuse or the conditions and circumstances which would reasonably be expected to result in such abuse; (d) any evidence of previous abuse including the nature and extent of the abuse; and (e) any other information which in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse and the identity of the perpetrator or perpetrators.

(3) Any law enforcement agency receiving a report of abuse shall notify the department no later than the next working day by telephone or mail.

(4) A report of abuse made to the department which was not previously made to or by a law enforcement agency shall be communicated to the appropriate law enforcement agency by the department no later than the next working day by telephone or mail.

(5) The department shall establish a statewide toll-free number to be used by any person any hour of the day or night and any day of the week to make reports of abuse.

Sec. 26. (1) Upon the receipt of a report concerning abuse pursuant to section 25 of this act, it shall be the duty of the law enforcement agency (a) to make an investigation if deemed warranted because of alleged violations of section 39 of this act, (b) to take immediate steps, if necessary, to protect the



vulnerable adult, and (c) to institute legal proceedings if appropriate. The law enforcement agency shall notify the department if an investigation is undertaken. Such notification shall be made no later than the next working day following receipt of the report.

(2) The law enforcement agency shall make a written report or a case summary to the department of all investigated cases of abuse and action taken with respect to all such cases.

Sec. 27. (1) The department shall investigate each case of alleged abuse and shall provide such adult protective services as are necessary and appropriate under the circumstances.

(2) In each case of alleged abuse, the department may make a request for further assistance from the appropriate law enforcement agency or initiate such action as may be appropriate under the circumstances.

(3) The department shall make a written report or case summary to the appropriate law enforcement agency and to the registry of all reported cases of abuse and action taken.

(4) The department shall deliver a written report or case summary to the appropriate county attorney if the investigation indicates a reasonable cause to believe that a violation of section 39 of this act has occurred.

Sec. 28. Any person participating in an investigation or the making of a report pursuant to the Adult Protective Services Act or participating in a judicial proceeding resulting therefrom shall be immune from any liability except (1) as otherwise provided in the Adult Protective Services Act, (2) for malfeasance in office or willful or wanton neglect of duty, or (3) for false statements of fact made with malicious intent.

Sec. 29. (1) The department shall establish and maintain an Adult Protective Services Central Registry for recording each report of alleged abuse.

(2) Upon request, a vulnerable adult who is the subject of a report or, if the vulnerable adult is legally incapacitated, the guardian or guardian ad litem of the vulnerable adult shall be entitled to receive a copy of all information contained in the registry pertaining to his or her case. The department shall not release data that would be harmful or detrimental to the vulnerable adult or that would identify or locate a person who, in good faith, made a report or cooperated in a subsequent investigation unless ordered to do so by a court of competent jurisdiction.

(3) The department shall establish classifications for all cases in the registry. All cases determined to be unfounded shall be expunged from the registry.

Sec. 30. Except as otherwise provided in sections 29 to 33 of this act, no person, official, or agency shall have access to the records relating to abuse unless in furtherance of purposes directly connected with the administration of the Adult Protective Services Act and section 28-726. Persons, officials, and agencies having access to such records shall include, but not be limited to:

(1) A law enforcement agency investigating a report of known or suspected abuse;

(2) A county attorney in preparation of an abuse petition;

(3) A physician who has before him or her a person whom he or she reasonably suspects may be abused;

(4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused vulnerable adult or to investigate allegations of abuse;

(5) Defense counsel in preparation of the defense of a person charged with abuse; and

(6) Any person engaged in bona fide research or auditing, except that no information identifying the subjects of the report shall be made available to the researcher or auditor. The researcher shall be charged for any costs of such research incurred by the department at a rate established by rules and regulations adopted and promulgated by the department.

Sec. 31. The department or appropriate law enforcement agency shall provide requested information to any person legally authorized by sections 29 to 33 of this act to have access to records relating to abuse when ordered by a court of competent jurisdiction or upon compliance by such person with identification requirements established by rules and regulations of the department or law enforcement agency. Such information shall not include the name and address of the person making the report, except that the county attorney's office may request and receive the name and address of the person making the report with such person's written consent. The name and other identifying data of any person requesting or receiving information from the registry and the dates and the circumstances under which requests are made or information is released shall be entered in the registry.

Sec. 32. Upon request, a physician or the



person in charge of an institution, facility, or agency making a legally mandated report shall receive a summary of the findings of and actions taken by the department in response to such report. The amount of detail such summary contains and the purposes for which it may be used shall depend on the source of the report and shall be established by rules and regulations adopted and promulgated by the department.

Sec. 33. At any time subsequent to the completion of the department's investigation, if a vulnerable adult, the guardian of a vulnerable adult, or a person who allegedly abused a vulnerable adult and who is mentioned in a report believes the information in the report is inaccurate or being maintained in a manner inconsistent with the Adult Protective Services Act, such person may request the department to amend or expunge identifying information from the report or remove the record of such report from the registry. If the department refuses to do so or does not act within thirty days, the vulnerable adult or person who allegedly abused a vulnerable adult shall have the right to a hearing to determine whether the record of the report should be amended, expunged, or removed on the grounds that it is inaccurate or that it is being maintained in a manner inconsistent with such act. Such hearing shall be held within a reasonable time after a request is made and at a reasonable place and hour. At the hearing the burden of proving the accuracy and consistency of the record shall be on the department. The hearing shall be conducted by the Director of Social Services or his or her designated representative, who is hereby authorized and empowered to order the amendment, expunction, or removal of the record to make such record accurate or consistent with the requirements of the Adult Protective Services Act. The decision shall be made in writing within thirty days of the close of the hearing and shall state the reasons upon which it is based. Decisions of the department may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 34. At any time, the department may amend, expunge, or remove from the registry any record upon good cause. Upon request, written notice of any amendment, expunction, or removal of any record made pursuant to the Adult Protective Services Act shall be served upon the vulnerable adult who is the subject of the report or the person who allegedly abused the vulnerable adult. The department shall advise any other individuals or agencies who received a copy of the

record pursuant to the Adult Protective Services Act to amend, expunge, or destroy such record. All information identifying the subjects of unsubstantiated reports shall be expunged from the registry.

Sec. 35. (1) No rule of evidence or other provision of law concerning confidential communications shall apply to prevent reports made pursuant to the Adult Protective Services Act unless otherwise specifically mentioned in the act.

(2) Evidence shall not be excluded from any judicial proceeding resulting from a report made pursuant to the Adult Protective Services Act on the ground that it is a confidential communication protected by the privilege granted to husband and wife or patient and physician.

Sec. 36. No person shall be considered to be abused for the sole reason that such person relies upon spiritual means alone for treatment in accordance with the tenets and practices of a recognized church or religious denomination in lieu of medical treatment.

Sec. 37. Any person who willfully fails to make any report required by the Adult Protective Services Act shall be guilty of a Class III misdemeanor.

Sec. 38. Any person who knowingly releases information required to be kept confidential by the Adult Protective Services Act, except as provided in the act, shall be guilty of a Class III misdemeanor.

Sec. 39. (1) A person commits knowing and intentional abuse of a vulnerable adult if he or she through a knowing and intentional act causes or permits a vulnerable adult to be:

- (a) Physically injured;
- (b) Unreasonably confined;
- (c) Sexually abused;
- (d) Exploited;
- (e) Cruelly punished; or
- (f) Denied essential services.

(2) Knowing and intentional abuse of a vulnerable adult is a Class IV felony.

Sec. 40. (1) A county court may issue an ex parte order authorizing the provision of short-term involuntary adult protective services or temporary placement for a vulnerable adult for up to forty-eight hours, excluding nonjudicial days, pending the hearing for a need for continuing services, after finding on the record that:

- (a) The person is a vulnerable adult;
- (b) An emergency exists; and
- (c) There are compelling reasons for ordering



protective services or temporary placement.

(2) An ex parte order shall be issued only if other protective custody services are unavailable or other services provide insufficient protection.

(3) The department shall contact the appropriate county attorney to file an application for short-term involuntary adult protective services or temporary placement if an investigation indicates probable cause to believe that an emergency exists for a vulnerable adult. The department shall not be given legal custody nor be made guardian of such vulnerable adult. A vulnerable adult shall be responsible for the costs of services provided either through his or her own income or other programs for which he or she may be eligible.

(4) A law enforcement officer accompanied by a representative of the department may enter the premises where the vulnerable adult is located after obtaining the court order and announcing his or her authority and purpose. Forcible entry may be made only after the court order has been obtained unless there is probable cause to believe that the delay of such entry would cause the vulnerable adult to be in imminent danger of life-threatening physical injury or the denial of essential services.

(5) When, from the personal observations of a representative of the department and a law enforcement officer, it appears probable that the vulnerable adult is likely to be in imminent danger of life-threatening physical injury or the denial of essential services if he or she is not immediately removed from the premises, the law enforcement agency shall, when authorized by the court order, take into custody and transport the vulnerable adult to an appropriate medical or protective placement facility.

(6) When action is taken under this section, a hearing shall be held within forty-eight hours of the signing of the court order, excluding nonjudicial days, to establish probable cause for short-term involuntary adult protective services or for protective placement. Unless the vulnerable adult has counsel of his or her own choice or has indicated a desire for an attorney of his or her own choice, the court shall appoint an attorney to represent him or her in the proceeding, who shall have the powers and duties of a guardian ad litem.

(7) Notice of the hearing shall be served personally on the vulnerable adult. Waiver of notice by the vulnerable adult shall not be effective unless he or she attends the hearing or such notice is waived by the

guardian ad litem. Notice of the hearing shall be given to the following parties whose whereabouts can be readily ascertained: (a) The spouse of the vulnerable adult; (b) children of the vulnerable adult; and (c) any other party specified by the court.

(8) A judgment authorizing continuance of short-term involuntary adult protective services shall prescribe those specific adult protective services which are to be provided, the duration of the services which shall not exceed sixty days, and the person or persons who are authorized or ordered to provide them.

Sec. 41. That section 28-101, Revised Statutes Supplement, 1987, be amended to read as follows:

28-101. Sections 28-101 to 28-1348 and sections 1 to 40 of this act shall be known as the Nebraska Criminal Code.

Sec. 42. That section 28-710, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-710. As used in sections 28-710 to 28-727, unless the context otherwise requires:

(1) Department shall mean the Department of Social Services;

(2) Law enforcement agency shall mean the police department or town marshal in incorporated municipalities and the office of the sheriff in unincorporated areas; and

(3) Abuse or neglect shall mean knowingly, intentionally, or negligently causing or permitting a minor child ~~or an incompetent or disabled person~~ to be: (a) Placed in a situation that endangers his or her life or physical or mental health; (b) cruelly confined or cruelly punished; (c) deprived of necessary food, clothing, shelter, or care; (d) left unattended in a motor vehicle, if such minor child is six years of age or younger; (e) sexually abused; or (f) sexually exploited by allowing, encouraging, or forcing such person to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions.

Sec. 43. That section 28-711, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-711. (1) When any physician, medical institution, nurse, school employee, social worker, or ~~any other person~~ has reasonable cause to believe that a child ~~or an incompetent or disabled person~~ has been subjected to abuse or neglect, or observes such child



person being subjected to conditions or circumstances which reasonably would result in abuse or neglect, he or she shall report such incident or cause a report to be made to the proper law enforcement agency or to the department on the toll-free number established by subsection (2) of this section. Such report may be made orally by telephone, with the caller giving his or her name and address, and shall be followed by a written report, and to the extent available shall contain the address and age of the abused or neglected person child, the address of the person or persons having custody of the abused or neglected person child, the nature and extent of the abuse or neglect, or the conditions and circumstances which would reasonably result in such abuse or neglect, any evidence of previous abuse or neglect including the nature and extent, and any other information which in the opinion of the person may be helpful in establishing the cause of such abuse or neglect and the identity of the perpetrator or perpetrators. Law enforcement agencies receiving any reports of abuse or neglect under this subsection shall notify the state central registry on the next working day by phone or mail.

(2) ~~The department~~ There shall be established ~~establish~~ a single, statewide toll-free number ~~within the department~~ to be used by any person any hour of the day or night, any day of the week, to make reports of abuse or neglect, ~~to the department~~. Reports of abuse or neglect not previously made to or by a law enforcement agency shall be made immediately to such agency by the department.

Sec. 44. That section 28-712, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-712. Upon the receipt of a report concerning abuse or neglect as required by section 28-711, it shall be the duty of the law enforcement agency to make a determination as to whether or not an investigation should be made and, if an investigation is deemed warranted because of alleged violations of section sections 28-707, and 28-708 to cause an investigation of the alleged abuse or neglect to be made, to take immediate steps to protect the abused or neglected person child, and to institute legal proceedings if appropriate. The law enforcement agency shall notify the department if an investigation is undertaken. Such notification shall be made on the next business day following receipt of the report.

Sec. 45. That section 28-713, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

28-713. (1) The department shall investigate each case of alleged abuse or neglect and shall provide such social services as are necessary and appropriate under the circumstances to protect the abused or neglected child person and preserve the family.

(2) The department may make a request for further assistance from the law enforcement agency or take such legal action as may be appropriate under the circumstances.

(3) The department shall make a written report or a case summary to the proper law enforcement agency in the county and to the state Abused and Neglected Child, ~~incompetent and Disabled Person~~ Registry of all reported cases of abuse or neglect and action taken with respect to all such cases on forms provided by the department.

Sec. 46. That section 28-715, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-715. The ~~department~~ Department of Social Services shall file each report of suspected abuse or neglect in a special state Abused or Neglected Child, ~~incompetent and Disabled Person~~ Registry to be maintained in such the department.

Sec. 47. That section 28-726, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-726. Except as provided in this section and section 28-722, no person, official, or agency shall have access to such records unless in furtherance of purposes directly connected with the administration of ~~this act sections 28-710 to 28-727~~. Such persons, officials, and agencies having access to such records shall include, but not be limited to:

(1) A law enforcement agency investigating a report of known or suspected abuse or neglect;

(2) A county attorney in preparation of an abuse, neglect, or termination petition;

(3) A physician who has before him or her a person child whom he or she reasonably suspects may be abused or neglected;

(4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused or neglected child, ~~incompetent, or disabled person, or a parent, guardian, or other person responsible for the abused or neglected child, incompetent, or disabled person's~~ child's welfare who is



the subject of a report; and

(5) Any person engaged in bona fide research or auditing. No information identifying the subjects of the report shall be made available to the researcher or auditor.

Sec. 48. That section 71-2052, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-2052. (1) No person shall act as a care staff member, unless such person:

(a) Is at least eighteen years of age and has not been convicted of a crime involving moral turpitude; and

(b) Has successfully completed a current course of training approved by the department for care staff members.

(2) The department may prescribe a curriculum for training care staff members and may adopt and promulgate rules and regulations for such courses of training. The department may also approve courses of training developed by associations, educational institutions, hospitals, or other entities so long as such courses of training meet the criteria set out in the rules and regulations adopted and promulgated by the Department of Health department. The courses of training shall include instruction on the responsibility of each care staff member to report suspected abuse or neglect pursuant to section 28-711 and section 25 of this act. Such rules and regulations shall include procedures for hospitals to carry out approved courses of training within the rehabilitation or long-term care facility. The rules and regulations shall provide that the prescribed training be administered by a registered nurse. The courses of instruction shall be no less than ninety hours in duration and shall include at least fifteen hours of basic personal care training and five hours of basic therapeutic and emergency procedure training. This section shall not prohibit any hospital from exceeding the minimum hourly or training requirements.

Sec. 49. That section 71-6039, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-6039. No person shall act as a nursing assistant in a nursing home, unless such person:

(1) Is at least sixteen years of age and has not been convicted of a crime involving moral turpitude;

(2) Is able to speak and understand the English language or a language understood by a

substantial portion of the nursing home's home residents; and

(3) Has successfully completed a course of training approved by the department for nursing assistants ~~not later than January 1, 1984, or~~ within one hundred twenty days of initial employment in the capacity of a nursing assistant at any nursing home if employment begins after January 1, 1984. The department may prescribe a curriculum for training nursing assistants and may adopt and promulgate rules and regulations for such courses of training. The department may also approve courses of training developed by associations, educational institutions, health care facilities, or other entities so long as such courses of training meet the criteria set out in the rules and regulations adopted and promulgated by the Department of Health department. Such courses of training shall include instruction on the responsibility of each nursing assistant to report suspected abuse or neglect pursuant to section 28-711 and section 25 of this act. Such rules and regulations shall include procedures for nursing homes to carry out approved courses of training within the nursing home. Such rules and regulations shall provide that the prescribed training be administered by a registered nurse. Such courses of instruction shall be no less than twenty hours in duration and shall include at least fifteen hours of basic personal care training and five hours of basic therapeutic and emergency procedure training. This section shall not prohibit any facility from exceeding the minimum hourly or training requirements.

Sec. 50. That original sections 28-710 to 28-713, 28-715, 28-726, 71-2052, and 71-6039, Reissue Revised Statutes of Nebraska, 1943, and section 28-101, Revised Statutes Supplement, 1987, and also section 28-708, Reissue Revised Statutes of Nebraska, 1943, are repealed.