

LEGISLATIVE BILL 1035

Approved by the Governor April 18, 1994

Introduced by Rasmussen, 20

AN ACT relating to crimes and punishments; to amend sections 28-716 and 28-717, Reissue Revised Statutes of Nebraska, 1943, sections 28-101, 28-710, and 28-726, Revised Statutes Supplement, 1992, and section 28-714, Revised Statutes Supplement, 1993; to require notice of the determination and results of cases relating to abused and neglected children; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 28-101, Revised Statutes Supplement, 1992, be amended to read as follows:

28-101. Sections 28-101 to 28-1348 and section 3 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. That section 28-710, Revised Statutes Supplement, 1992, be amended to read as follows:

28-710. For purposes of sections 28-710 to 28-727 and section 3 of this act, 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, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol; and

(3) Abuse or neglect shall mean knowingly, intentionally, or negligently causing or permitting a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health;

(b) ~~erueilly~~ Cruelly confined or cruelly punished;

(c) ~~deprived~~ Deprived of necessary food, clothing, shelter, or care;

(d) ~~left~~ Left unattended in a motor vehicle if such minor child is six years of age or younger;

(e) ~~sexually~~ Sexually abused; or

(f) ~~sexually~~ 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. 3. Upon completion of the investigation pursuant to section 28-713, the subject of the report shall be given written notice of the determination of the case and whether he or she will be entered into the central register pursuant to subdivision (1), (2), or (3) of section 28-720. Such notice shall be sent by certified mail to the subject's last-known address and shall include:

(1) The nature of the report;

(2) The classification of the report; and

(3) Notification of the subject's right to a hearing and appeal in accordance with section 28-723.

Sec. 4. That section 28-714, Revised Statutes Supplement, 1993, be amended to read as follows:

28-714. The privileged communication between patient and physician, between client and professional counselor, and between husband and wife shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to sections 28-710 to 28-717 and section 3 of this act.

Sec. 5. That section 28-716, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-716. Any person participating in an investigation or the making of a report pursuant to the provisions of sections 28-710 to 28-717 and section 3 of this act or participating in a judicial proceeding resulting therefrom shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed, except for maliciously false statements.

Sec. 6. That section 28-717, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-717. Any person who willfully fails to make any report required by the provisions of sections 28-710 to 28-717 and section 3 of this act, or knowingly releases confidential information other than as provided by sections 28-710 to 28-717 and section 3 of this act, shall be guilty of a Class III misdemeanor.

Sec. 7. That section 28-726, Revised Statutes Supplement, 1992, 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 sections 28-710 to 28-727 and section 3 of this act. 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 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 or a parent, a guardian, or other person responsible for the abused or neglected child's welfare who is the subject of a report;

(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;

(6) The State Foster Care Review Board when the records relate to a child in a foster care placement as defined in section 43-1301. The records provided to the state board shall not include the name or identity of any person making a report of suspected child abuse or neglect; and

(7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000, as amended, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as amended, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness.

Sec. 8. That original sections 28-716 and 28-717, Reissue Revised Statutes of Nebraska, 1943, sections 28-101, 28-710, and 28-726, Revised Statutes Supplement, 1992, and section 28-714, Revised Statutes Supplement, 1993, are repealed.

Sec. 9. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.