

## LEGISLATIVE BILL 116

Approved by the Governor June 3, 2005

Introduced by Friend, 10; Cornett, 45

AN ACT relating to children; to amend sections 28-714 to 28-724, 28-727, 43-1724, 43-3342.03, 43-3709, and 71-6906, Reissue Revised Statutes of Nebraska, and sections 28-710, 28-711, 28-713, 28-713.01, 28-725, and 28-726, Revised Statutes Supplement, 2004; to name an act; to change provisions relating to child abuse and neglect reports and the central register of child protection cases; to provide for a tracking system of child protection cases; to eliminate a registry; to provide a penalty for failure to withhold income for child support obligations as prescribed; to change provisions relating to the State Disbursement Unit; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 28-710, Revised Statutes Supplement, 2004, is amended to read:

28-710. (1) Sections 28-710 to 28-727 and section 12 of this act shall be known and may be cited as the Child Protection Act.

(2) For purposes of ~~sections 28-710 to 28-727, unless the context otherwise requires~~ the Child Protection Act:

~~(1) Abuse~~ (a) Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:

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

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

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

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

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

~~(f)~~ (vi) 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;

~~(2)~~ (b) Department means the Department of Health and Human Services;

~~(3)~~ (c) Law enforcement agency means the police department or town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol; ~~and~~

~~(4)~~ (d) Out-of-home child abuse or neglect means child abuse or neglect occurring in day care homes, foster homes, day care centers, group homes, and other child care facilities or institutions; ~~and~~

(e) Subject of the report of child abuse or neglect means the person or persons identified in the report as responsible for the child abuse or neglect.

Sec. 2. Section 28-711, Revised Statutes Supplement, 2004, is amended to read:

28-711. (1) When any physician, medical institution, nurse, school employee, social worker, or other person has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, he or she shall report such incident or cause a report of child abuse or neglect 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, shall be followed by a written report, and to the extent available shall contain the address and age of the abused or neglected child, the address of the person or persons having custody of the abused or neglected child, the nature and extent of the child abuse or neglect or the conditions and circumstances which would reasonably result in such child abuse or neglect, any evidence of previous child 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 child abuse or neglect and the identity of the perpetrator or perpetrators. Law enforcement agencies receiving any reports of child abuse or neglect under this subsection shall notify the state central registry the department pursuant to section 28-718 on the next working day by telephone or mail.

(2) The department shall establish a statewide toll-free number to

be used by any person any hour of the day or night, any day of the week, to make reports of child abuse or neglect. Reports of child abuse or neglect not previously made to or by a law enforcement agency shall be made immediately to such agency by the department.

Sec. 3. Section 28-713, Revised Statutes Supplement, 2004, is amended to read:

28-713. Upon the receipt of a call reporting child abuse and neglect as required by section 28-711:

(1) It is the duty of the law enforcement agency to investigate the report, to take immediate steps to protect the child, and to institute legal proceedings if appropriate. In situations of alleged out-of-home child abuse or neglect if the person or persons to be notified have not already been notified and the person to be notified is not the subject of the report of child abuse or neglect, the law enforcement agency shall immediately notify the person or persons having custody of each child who has allegedly been abused or neglected that such report of alleged child abuse or neglect has been made and shall provide such person or persons with information of the nature of the alleged child abuse or neglect. The law enforcement agency may request assistance from the Department of Health and Human Services during the investigation and shall, by the next working day, notify either the hotline or the department of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency. A copy of all reports, whether or not an investigation is being undertaken, shall be provided to the department;

(2) In situations of alleged out-of-home child abuse or neglect if the person or persons to be notified have not already been notified and the person to be notified is not the subject of the report of child abuse or neglect, the department shall immediately notify the person or persons having custody of each child who has allegedly been abused or neglected that such report of alleged child abuse or neglect has been made and shall provide such person or persons with information of the nature of the alleged child abuse or neglect and any other information that the department deems necessary. The department shall investigate for the purpose of assessing each report of child abuse or neglect to determine the risk of harm to the child involved. The department shall also provide such social services as are necessary and appropriate under the circumstances to protect and assist the child and to preserve the family;

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

(4) The department shall, by the next working day after receiving a report of child abuse or neglect under subdivision (1) of this section, make a written report or a summary on forms provided by the department to the proper law enforcement agency in the county and enter in the ~~central registry~~ tracking system of child protection cases maintained pursuant to section 28-715 all reports of child abuse or neglect opened for investigation ~~of abuse or neglect~~ and any action taken; and

(5) The department shall, upon request, make available to the appropriate investigating law enforcement agency and the county attorney a copy of all reports relative to a case of suspected child abuse or neglect.

Sec. 4. Section 28-713.01, Revised Statutes Supplement, 2004, is amended to read:

28-713.01. Upon completion of the investigation pursuant to section 28-713:

(1) In situations of alleged out-of-home child abuse or neglect, the person or persons having custody of the allegedly abused or neglected child or children shall be given written notice of the results of the investigation and any other information the law enforcement agency or department deems necessary. Such notice and information shall be sent by first-class mail; and

(2) The subject of the report of child abuse or neglect shall be given written notice of the determination of the case and whether the subject of the report of child abuse or neglect will be entered into the central register ~~pursuant to subdivision (1), (2), or (3)~~ of child protection cases maintained pursuant to section 28-718 under the criteria provided in section 28-720.

Such notice to the subject shall be sent by certified mail to the ~~subject's~~ last-known address of the subject of the report of child abuse or neglect and shall include:

(a) The nature of the report;

(b) The classification of the report under section 28-720; and

(c) Notification of the ~~subject's~~ right of the subject of the report of child abuse or neglect to a hearing and appeal in accordance with section

28-723.

Sec. 5. Section 28-714, Reissue Revised Statutes of Nebraska, is amended to read:

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 of child abuse or neglect required by section 28-711.

Sec. 6. Section 28-715, Reissue Revised Statutes of Nebraska, is amended to read:

28-715. The department shall file each report of suspected abuse or neglect in a special state Abused or Neglected Child Registry to be maintained in the department retain all information from all reports of suspected child abuse or neglect required by section 28-711 and all records generated as a result of such reports in a tracking system of child protection cases. The tracking system shall be used for statistical purposes as well as a reference for future investigations if subsequent reports of child abuse or neglect are made involving the same victim or subject of a report of child abuse or neglect.

Sec. 7. Section 28-716, Reissue Revised Statutes of Nebraska, is amended to read:

28-716. Any person participating in an investigation or the making of a report of child abuse or neglect required by section 28-711 pursuant to the provisions of sections 28-710 to 28-717 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. 8. Section 28-717, Reissue Revised Statutes of Nebraska, is amended to read:

28-717. Any person who willfully fails to make any report of child abuse or neglect required by the provisions of sections 28-710 to 28-717, or knowingly releases confidential information other than as provided by sections 28-710 to 28-717, section 28-711 shall be guilty of a Class III misdemeanor.

Sec. 9. Section 28-718, Reissue Revised Statutes of Nebraska, is amended to read:

28-718. There shall be a central register of child protection cases maintained in the department containing records of all reports of child abuse or neglect opened for investigation as provided in section 28-713 and classified as either court substantiated or inconclusive as provided in section 28-720.

Sec. 10. Section 28-719, Reissue Revised Statutes of Nebraska, is amended to read:

28-719. Upon complying with identification requirements established by regulation of the department, or when ordered by a court of competent jurisdiction, any person legally authorized by section 28-722, 28-726, or 28-727 to have access to records relating to child abuse and neglect may request and shall be immediately provided the information requested in accordance with the requirement of sections 28-710 to 28-713, 28-715, and 28-718 to 28-727 the Child Protection Act. Such information shall not include the name and address of the person making the report of child abuse or neglect. The names and other identifying data and the dates and the circumstances of any persons requesting or receiving information from the central register of child protection cases maintained pursuant to section 28-718 shall be entered in the such register record.

Sec. 11. Section 28-720, Reissue Revised Statutes of Nebraska, is amended to read:

28-720. All cases in entered into the central register of child protection cases maintained pursuant to section 28-718 shall be classified in as one of the following:

(1) categories: (1) Court substantiated, if a court of competent jurisdiction has entered a judgment of guilty against the subject of the report of child abuse or neglect upon a criminal complaint, indictment, or information or there has been an adjudication of jurisdiction of a juvenile court over the child under subdivision (3) (a) of section 43-247 which relates or pertains to the report of child abuse or neglect; (2) petition to be filed; (3) investigation inconclusive; or (4) unfounded report, whichever the case may be. All information identifying the subjects of unfounded reports shall be expunged from the register forthwith

(2) Court pending, if a criminal complaint, indictment, or information or a juvenile petition under subdivision (3) (a) of section 43-247, which relates or pertains to the subject of the report of abuse or neglect, has been filed and is pending in a court of competent jurisdiction; or

(3) Inconclusive, if the department's determination of child abuse or neglect against the subject of the report of child abuse or neglect was made, by a preponderance of the evidence, based upon an investigation pursuant to section 28-713.

Sec. 12. All reports of child abuse or neglect which are not under subdivision (1), (2), or (3) of section 28-720 shall be considered unfounded and shall be maintained only in the tracking system of child protection cases pursuant to section 28-715 and not in the central register of child protection cases maintained pursuant to section 28-718.

Sec. 13. Section 28-721, Reissue Revised Statutes of Nebraska, is amended to read:

28-721. At any time, the department may amend, expunge, or remove from the central register of child protection cases maintained pursuant to section 28-718 any record upon good cause shown and upon notice to the ~~subjects~~ subject of the report of child abuse or neglect and to the division.

Sec. 14. Section 28-722, Reissue Revised Statutes of Nebraska, is amended to read:

28-722. Upon request, a subject of ~~a~~ the report of child abuse or neglect or, if such subject is a minor or otherwise legally incompetent, the guardian or guardian ad litem of the ~~person~~ subject, shall be entitled to receive a copy of all information contained in the central register of child protection cases maintained pursuant to section 28-718 pertaining to his or her case. The department shall not release data that would be harmful or detrimental or that would identify or locate a person who, in good faith, made a report of child abuse or neglect or cooperated in a subsequent investigation unless ordered to do so by a court of competent jurisdiction.

Sec. 15. Section 28-723, Reissue Revised Statutes of Nebraska, is amended to read:

28-723. At any time subsequent to the completion of the department's investigation, ~~a~~ the subject of a the report of child abuse or neglect may request the department to amend, expunge identifying information from, or remove the record of the report from the ~~register~~ central register of child protection cases maintained pursuant to section 28-718. If the department refuses to do so or does not act within thirty days, the subject of the report of child abuse or neglect shall have the right to a fair hearing within the department to determine whether the record of the report of child abuse or neglect should be amended, expunged, or removed on the grounds that it is inaccurate or that it is being maintained in a manner inconsistent with ~~sections 28-710, 28-711, 28-712, 28-713, 28-715, and 28-718~~ to 28-727 the Child Protection Act. Such fair hearing shall be held within a reasonable time after the subject's request and at a reasonable place and hour. In such hearings, the burden of proving the accuracy and consistency of the record shall be on the department. A juvenile court finding of child abuse or child neglect shall be presumptive evidence that the report was not unfounded. The hearing shall be conducted by the head of the department or his or her designated agent, who is hereby authorized and empowered to order the amendment, expunction, or removal of the record to make it accurate or consistent with the requirements of ~~sections 28-710, 28-711, 28-712, 28-713, 28-715, and 28-718~~ to 28-727 the act. The decision shall be made in writing, at the close of the hearing, or within thirty days thereof, and shall state the reasons upon which it is based. Decisions of the department may be appealed under the provisions of the Administrative Procedure Act.

Sec. 16. Section 28-724, Reissue Revised Statutes of Nebraska, is amended to read:

28-724. Written notice of any amendment, expunction, or removal of any record in the central register of child protection cases maintained pursuant to section 28-718 ~~made pursuant to sections 28-710, 28-711, 28-712, 28-713, 28-715, and 28-718~~ to 28-727 shall be served upon the subject of such the report of child abuse or neglect. The department shall inform any other individuals or agencies which received such record ~~pursuant to sections 28-710, 28-711, 28-712, 28-713, 28-715, and 28-718~~ to 28-727 ~~or in any other manner to amend, expunge, or remove~~ of any amendment, expunction, or removal of such record.

Sec. 17. Section 28-725, Revised Statutes Supplement, 2004, is amended to read:

28-725. All ~~records~~ information of the department concerning reports of child abuse or neglect of noninstitutional ~~child abuse or neglect~~ children, including ~~reports made to the department or~~ information in the tracking system of child protection cases maintained pursuant to section 28-715 or records in the central register of child protection cases maintained pursuant to section 28-718, and all ~~records~~ information of the department generated as a result of such reports or records, shall be confidential and

shall not be disclosed except as specifically authorized by ~~sections 28-710 to 28-713, 28-715, 28-718 to 28-727, and~~ the Child Protection Act and sections 28-734 to 28-739 or other applicable law. The subject of the report of child abuse or neglect may authorize any individual or organization to receive the following information from the central register of child protection cases maintained pursuant to section 28-718 which relates or pertains to him or her: (1) The date of the alleged child abuse or neglect; and (2) the classification of the case pursuant to section 28-720. Permitting, assisting, or encouraging the unauthorized release of any information contained in such reports or records shall be a Class V misdemeanor.

Sec. 18. Section 28-726, Revised Statutes Supplement, 2004, is amended to read:

28-726. Except as provided in this section and sections 28-722 and 28-734 to 28-739, no person, official, or agency shall have access to ~~such records~~ information in the tracking system of child protection cases maintained pursuant to section 28-715 or in records in the central register of child protection cases maintained pursuant to section 28-718 unless in furtherance of purposes directly connected with the administration of ~~sections 28-710 to 28-727~~ the Child Protection Act. Such persons, officials, and agencies having access to such ~~records~~ information shall include, but not be limited to:

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

(2) A county attorney in preparation of ~~an abuse, neglect, or termination~~ a child abuse or neglect petition or termination of parental rights 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 the report of child abuse or neglect;

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

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

(7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001, as the act existed on January 1, 2005, and ~~7 42 U.S.C. 6000, as the act existed on September 1, 2001,~~ and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness;

(8) The person or persons having custody of the abused or neglected child in situations of alleged out-of-home child abuse or neglect; and

(9) For purposes of licensing providers of child care programs, the Department of Health and Human Services Regulation and Licensure.

Sec. 19. Section 28-727, Reissue Revised Statutes of Nebraska, is amended to read:

28-727. Upon request, a physician or the person in charge of an institution, school, facility, or agency making a legally mandated report of child abuse or neglect pursuant to section 28-711 shall receive a summary of the findings of and actions taken by the department in response to his or her report. The amount of detail such summary contains shall depend on the source of the report of child abuse or neglect and shall be established by regulations of the department.

Sec. 20. Section 43-1724, Reissue Revised Statutes of Nebraska, is amended to read:

43-1724. Any employer or other payor who fails to withhold and remit any income of an obligor receiving income from the employer or other payor, after proper notice as provided in section 43-1723, shall be required to pay the certified amount to the ~~clerk of the district court specified in the notice~~ State Disbursement Unit. The county attorney or authorized attorney may file an action in district court to enforce this section. The court may sanction an employer or other payor twenty-five dollars per day, up to five hundred dollars per incident, for failure to comply with proper notice.

Sec. 21. Section 43-3342.03, Reissue Revised Statutes of Nebraska,

is amended to read:

43-3342.03. (1) All support orders shall direct payment of support as provided in section 42-369. Any support order issued prior to the date that the State Disbursement Unit becomes operative for which the payment is to be made to the clerk of the district court shall be deemed to require payment to the State Disbursement Unit after a notice to the obligor is issued.

(2) The unit may collect a fee equal to the actual cost of processing any ~~payment made with insufficient funds.~~ After payments for returned check charges or charges for electronic payments not accepted. After a payor has originated two payments ~~made with insufficient funds~~ resulting in returned check charges or charges for electronic payments not accepted within a period of ~~one year~~ two years, the unit ~~shall~~ may issue a notice to the originator that, for the following year, any payment shall be required to be paid by ~~cash, guaranteed funds, or wire funds transfer~~ money order, cashier's check, or certified check. After a payor has originated three payments ~~made with insufficient funds~~ resulting in returned check charges or electronic payments not accepted, the unit ~~shall~~ may issue a notice to the originator that all future payments shall be paid by ~~cash, guaranteed funds, or wire funds transfer~~ money order, cashier's check, or certified check, except that pursuant to rule and regulation and at least two years after such issuance of notice, the unit may waive for good cause shown such requirements for methods of payment.

Sec. 22. Section 43-3709, Reissue Revised Statutes of Nebraska, is amended to read:

43-3709. (1) The minimum qualifications for any prospective court appointed special advocate volunteer are that he or she shall:

(a) Be at least twenty-one years of age or older and have demonstrated an interest in children and their welfare;

(b) Be willing to commit to the court for a minimum of one year of service to a child;

(c) Complete an application, including providing background information required pursuant to subsection (2) of this section;

(d) Participate in a screening interview; and

(e) Participate in the training required pursuant to section 43-3708.

(2) As required background screening, the program director shall obtain the following information regarding a volunteer applicant:

(a) A check of the applicant's criminal history record information maintained by the Identification Division of the Federal Bureau of Investigation through the Nebraska State Patrol;

(b) A check of his or her record with the ~~state Abused or Neglected Child Registry~~ central register of child protection cases maintained under section 28-718;

(c) A check of his or her driving record; and

(d) At least three references who will attest to the applicant's character, judgment, and suitability for the position of a court appointed special advocate volunteer.

(3) If the applicant has lived in Nebraska for less than twelve months, the program director shall obtain the records required in subdivisions (2)(a) through (2)(c) of this section from all other jurisdictions in which the applicant has lived during the preceding year.

Sec. 23. Section 71-6906, Reissue Revised Statutes of Nebraska, is amended to read:

71-6906. Notification shall not be required pursuant to sections 71-6901 to 71-6908 if any of the following conditions exist:

(1) The attending physician certifies in writing in the pregnant woman's medical record that continuation of the pregnancy provides an immediate threat and grave risk to the life or health of the pregnant woman and there is insufficient time to provide the required notification;

(2) The abortion is authorized in writing by the person who is entitled to notification; or

(3) The pregnant woman declares that she is a victim of abuse as defined in section 28-351, sexual abuse as defined in section 28-367, or child abuse or neglect as defined in section 28-710. Notice of such a declaration shall be made to the proper authorities as provided in sections 28-372 and 28-711. If such a declaration is made, the attending physician or his or her agent shall inform the pregnant woman of his or her duty to notify the proper authorities as provided in sections 28-372 and 28-711.

Sec. 24. Original sections 28-714 to 28-724, 28-727, 43-1724, 43-3342.03, 43-3709, and 71-6906, Reissue Revised Statutes of Nebraska, and sections 28-710, 28-711, 28-713, 28-713.01, 28-725, and 28-726, Revised Statutes Supplement, 2004, are repealed.