

AMENDMENTS TO LB 1051

Introduced by Judiciary

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 28-348, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 28-348 Sections 28-348 to 28-387 and sections 7, 8, and
6 13 of this act shall be known and may be cited as the Adult
7 Protective Services Act.

8 Sec. 2. Section 28-349, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 28-349 The Legislature recognizes the need for the
11 investigation and provision of services to certain persons who
12 are substantially impaired and are unable to protect themselves
13 from abuse, neglect, or exploitation. Often such persons cannot
14 find others able or willing to render assistance. The Legislature
15 intends through the Adult Protective Services Act to establish a
16 program designed to fill this need and to assure the availability
17 of the program to all eligible persons. It is also the intent of
18 the Legislature to authorize the least restriction possible on the
19 exercise of personal and civil rights consistent with the person's
20 need for services.

21 Sec. 3. Section 28-350, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 28-350 For purposes of the Adult Protective Services Act,

1 unless the context otherwise requires, the definitions found in
2 sections 28-351 to 28-371 and sections 7 and 8 of this act shall
3 be used.

4 Sec. 4. Section 28-351, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 28-351 Abuse ~~shall mean~~ means any knowing ~~or~~
7 intentional ~~or negligent~~ act ~~or omission~~ on the part of a
8 caregiver ~~a vulnerable adult~~, or any other person which results in
9 physical injury, unreasonable confinement, cruel punishment, sexual
10 abuse ~~or sexual exploitation~~, ~~or denial of essential services to~~
11 of a vulnerable adult.

12 Sec. 5. Section 28-352, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 28-352 Adult protective services ~~shall mean~~ means those
15 services provided by the department for the prevention, correction,
16 or discontinuance of abuse, neglect, or exploitation. Such services
17 shall be those necessary and appropriate under the circumstances
18 to protect an abused, neglected, or exploited vulnerable adult,
19 ensure that the least restrictive alternative is provided, prevent
20 further abuse, neglect, or exploitation, and promote self-care and
21 independent living. Such services shall include, but not be limited
22 to: (1) Receiving and investigating reports of alleged abuse,
23 neglect, or exploitation; (2) developing social service plans; (3)
24 arranging for the provision of services such as medical care,
25 mental health care, legal services, fiscal management, housing, or
26 home health care; (4) arranging for the provision of items such
27 as food, clothing, or shelter; and (5) arranging or coordinating

1 services for caregivers.

2 Sec. 6. Section 28-358, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 28-358 Exploitation ~~shall mean~~ means the taking of
5 property of a vulnerable adult by any person by means of
6 undue influence, breach of a fiduciary relationship, deception,
7 or extortion or by any unlawful means.

8 Sec. 7. Section 28-355, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 ~~28-355 Denial of essential services shall mean that~~
11 Neglect means any knowing or intentional act or omission on the
12 part of a caregiver to provide essential services or the failure
13 of a vulnerable adult, due to physical or mental impairments,
14 to perform self-care or obtain essential services are denied or
15 ~~neglected~~ to such an extent that there is actual physical injury
16 to a vulnerable adult or imminent danger of the vulnerable adult
17 suffering physical injury or death.

18 Sec. 8. Sexual exploitation includes, but is not
19 limited to, unlawful intrusion as described in section 28-311.08
20 and causing, allowing, permitting, inflicting, or encouraging
21 a vulnerable adult to engage in voyeurism, in exhibitionism,
22 in prostitution, or in the lewd, obscene, or pornographic
23 photographing, filming, or depiction of the vulnerable adult.

24 Sec. 9. Section 28-370, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 28-370 Unreasonable confinement ~~shall mean~~ means
27 confinement which intentionally causes physical injury to a

1 vulnerable adult or false imprisonment as described in section
2 28-314 or 28-315.

3 Sec. 10. Section 28-372, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 28-372 (1) When any physician, psychologist, physician
6 assistant, nurse, nursing assistant, other medical, developmental
7 disability, or mental health professional, law enforcement
8 personnel, caregiver or employee of a caregiver, operator or
9 employee of a sheltered workshop, owner, operator, or employee
10 of any facility licensed by the department, or human services
11 professional or paraprofessional not including a member of the
12 clergy has reasonable cause to believe that a vulnerable adult
13 has been subjected to abuse, neglect, or exploitation or observes
14 such adult being subjected to conditions or circumstances which
15 reasonably would result in abuse, neglect, or exploitation, he or
16 she shall report the incident or cause a report to be made to the
17 appropriate law enforcement agency or to the department. Any other
18 person may report abuse, neglect, or exploitation if such person
19 has reasonable cause to believe that a vulnerable adult has been
20 subjected to abuse, neglect, or exploitation or observes such adult
21 being subjected to conditions or circumstances which reasonably
22 would result in abuse, neglect, or exploitation.

23 (2) Such report may be made by telephone, with the
24 caller giving his or her name and address, and, if requested by
25 the department, shall be followed by a written report within
26 forty-eight hours. To the extent available the report shall
27 contain: (a) The name, address, and age of the vulnerable adult;

1 (b) the address of the caregiver or caregivers of the vulnerable
2 adult; (c) the nature and extent of the alleged abuse, neglect,
3 or exploitation or the conditions and circumstances which would
4 reasonably be expected to result in such abuse, neglect, or
5 exploitation; (d) any evidence of previous abuse, neglect, or
6 exploitation including the nature and extent of the abuse, neglect,
7 or exploitation; and (e) any other information which in the opinion
8 of the person making the report may be helpful in establishing
9 the cause of the alleged abuse, neglect, or exploitation and the
10 identity of the perpetrator or perpetrators.

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

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

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

23 Sec. 11. Section 28-373, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 28-373 (1) Upon the receipt of a report concerning abuse,
26 neglect, or exploitation pursuant to section 28-372, it shall be
27 the duty of the law enforcement agency (a) to make an investigation

1 if deemed warranted because of alleged violations of section
2 28-386, (b) to take immediate steps, if necessary, to protect
3 the vulnerable adult, and (c) to institute legal proceedings if
4 appropriate. The law enforcement agency shall notify the department
5 if an investigation is undertaken. Such notification shall be made
6 no later than the next working day following receipt of the report.

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

11 Sec. 12. Section 28-374, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 28-374 (1) The department shall investigate each case
14 of alleged abuse, neglect, or exploitation and shall provide such
15 adult protective services as are necessary and appropriate under
16 the circumstances.

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

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

25 (4) The department shall deliver a written report or case
26 summary to the appropriate county attorney if the investigation
27 indicates a reasonable cause to believe that a violation of section

1 28-386 has occurred.

2 Sec. 13. (1) Upon completion of the investigation
3 pursuant to sections 28-373 and 28-374, the person who allegedly
4 abused, neglected, or exploited a vulnerable adult shall be given
5 written notice of the determination of the investigation and
6 whether the person who allegedly abused, neglected, or exploited a
7 vulnerable adult will be entered into the registry.

8 (2) If the person who allegedly abused, neglected, or
9 exploited a vulnerable adult will be entered into the registry,
10 the notice shall be sent by certified mail with return receipt
11 requested or first-class mail to the last-known address of the
12 person who allegedly abused, neglected, or exploited a vulnerable
13 adult and shall include:

14 (a) The nature of the report;

15 (b) The classification of the report; and

16 (c) The right of the person who allegedly abused,
17 neglected, or exploited a vulnerable adult to request the
18 department to amend or expunge identifying information from the
19 report or to remove the substantiated report from the registry in
20 accordance with section 28-380.

21 (3) If the person who allegedly abused, neglected, or
22 exploited a vulnerable adult will not be entered in the registry,
23 the notice shall be sent by first-class mail and shall include:

24 (a) The nature of the report; and

25 (b) The classification of the report.

26 Sec. 14. Section 28-376, Revised Statutes Cumulative
27 Supplement, 2010, is amended to read:

1 28-376 (1) The department shall establish and maintain
2 an Adult Protective Services Central Registry ~~for recording each~~
3 ~~report of alleged abuse,~~ which shall contain any substantiated
4 report regarding a person who has allegedly abused, neglected, or
5 exploited a vulnerable adult.

6 (2) Upon request, a vulnerable adult who is the subject
7 of a report or, if the vulnerable adult is legally incapacitated,
8 the guardian or guardian ad litem of the vulnerable adult and
9 the person who has allegedly abused, neglected, or exploited the
10 vulnerable adult shall be entitled to receive a copy of all
11 information contained in the registry pertaining to ~~his or her~~
12 ~~case,~~ such report. The department shall not release data that would
13 be harmful or detrimental to the vulnerable adult or that would
14 identify or locate a person who, in good faith, made a report or
15 cooperated in a subsequent investigation unless ordered to do so by
16 a court of competent jurisdiction.

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

20 (4) The department shall determine whether a name-change
21 order received from the clerk of a district court pursuant to
22 section 25-21,271 is for a person on the Adult Protective Services
23 Central Registry and, if so, shall include the changed name with
24 the former name in the registry and file or cross-reference the
25 information under both names.

26 Sec. 15. Section 28-386, Reissue Revised Statutes of
27 Nebraska, is amended to read:

1 28-386 (1) A person commits knowing and intentional
2 abuse, neglect, or exploitation of a vulnerable adult if he or
3 she through a knowing and intentional act causes or permits a
4 vulnerable adult to be:

- 5 (a) Physically injured;
- 6 (b) Unreasonably confined;
- 7 (c) Sexually abused;
- 8 (d) Exploited;
- 9 (e) Cruelly punished; ~~or~~
- 10 (f) ~~Denied essential services.~~ Neglected; or
- 11 (g) Sexually exploited.

12 (2) Knowing and intentional abuse, neglect, or
13 exploitation of a vulnerable adult is a Class IIIA felony.

14 Sec. 16. Section 28-387, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 28-387 (1) A county court may issue an ex parte
17 order authorizing the provision of short-term involuntary adult
18 protective services or temporary placement for a vulnerable adult
19 for up to forty-eight hours, excluding nonjudicial days, pending
20 the hearing for a need for continuing services, after finding on
21 the record that:

- 22 (a) The person is a vulnerable adult;
- 23 (b) An emergency exists; and
- 24 (c) There are compelling reasons for ordering protective
25 services or temporary placement.

26 (2) An ex parte order shall be issued only if other
27 protective custody services are unavailable or other services

1 provide insufficient protection.

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

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

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

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

10 (7) Notice of the hearing shall be served personally on
11 the vulnerable adult. Waiver of notice by the vulnerable adult
12 shall not be effective unless he or she attends the hearing or such
13 notice is waived by the guardian ad litem. Notice of the hearing
14 shall be given to the following parties whose whereabouts can be
15 readily ascertained: (a) The spouse of the vulnerable adult; (b)
16 children of the vulnerable adult; and (c) any other party specified
17 by the court.

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

23 Sec. 17. Section 28-713.01, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 28-713.01 (1) Upon completion of the investigation
26 pursuant to section 28-713:

27 ~~(1)~~ (a) In situations of alleged out-of-home child abuse

1 or neglect, the person or persons having custody of the allegedly
2 abused or neglected child or children shall be given written notice
3 of the results of the investigation and any other information the
4 law enforcement agency or department deems necessary. Such notice
5 and information shall be sent by first-class mail; and

6 ~~(2)~~ (b) The subject of the report of child abuse or
7 neglect shall be given written notice of the determination of
8 the case and whether the subject of the report of child abuse
9 or neglect will be entered into the central register of child
10 protection cases maintained pursuant to section 28-718 under the
11 criteria provided in section 28-720.

12 ~~Such~~ (2) If the subject of the report will be entered
13 into the central register, the notice to the subject shall be sent
14 by certified mail with return receipt requested or first-class mail
15 to the last-known address of the subject of the report of child
16 abuse or neglect and shall include:

- 17 (a) The nature of the report;
18 (b) The classification of the report under section
19 28-720; and

20 (c) Notification of the right of the subject of the
21 report of child abuse or neglect to a ~~hearing and appeal request~~
22 the department to amend or expunge identifying information from
23 the report or to remove the substantiated report from the central
24 register in accordance with section 28-723.

25 (3) If the subject of the report will not be entered into
26 the central register, the notice to the subject shall be sent by
27 first-class mail and shall include:

1 (a) The nature of the report; and
2 (b) The classification of the report under section
3 28-720.
4 Sec. 18. Original sections 28-348, 28-349, 28-350,
5 28-351, 28-352, 28-355, 28-358, 28-370, 28-372, 28-373, 28-374,
6 28-386, 28-387, and 28-713.01, Reissue Revised Statutes of
7 Nebraska, and section 28-376, Revised Statutes Cumulative
8 Supplement, 2010, are repealed.