

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1051

Introduced by Coash, 27.

Read first time January 18, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to abuse and neglect; to amend sections 28-348,
2 28-350, 28-351, 28-355, 28-367, 28-370, 28-386, 28-387,
3 and 28-713.01, Reissue Revised Statutes of Nebraska, and
4 section 28-376, Revised Statutes Cumulative Supplement,
5 2010; to define and redefine terms; to change provisions
6 relating to reports of abuse investigated for the Adult
7 Protective Services Central Registry and the central
8 register of child protection cases; to harmonize
9 provisions; and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

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

3 28-348 Sections 28-348 to 28-387 and sections 4, 6, and 8
4 of this act shall be known and may be cited as the Adult Protective
5 Services Act.

6 Sec. 2. Section 28-350, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 28-350 For purposes of the Adult Protective Services Act,
9 unless the context otherwise requires, the definitions found in
10 sections 28-351 to 28-371 and sections 4 and 6 of this act shall be
11 used.

12 Sec. 3. Section 28-351, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 28-351 Abuse ~~shall mean~~ means any knowing, intentional,
15 or negligent act or omission on the part of a caregiver, a vulnerable
16 adult, or any other person which results in physical injury,
17 unreasonable confinement, cruel punishment, sexual abuse,
18 exploitation, or ~~denial of essential services to~~ neglect of a
19 vulnerable adult.

20 Sec. 4. Section 28-355, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 ~~28-355 Denial of essential services shall mean~~ Neglect
23 means that essential services are denied or ~~neglected~~ not provided to
24 such an extent that there is actual physical injury to a vulnerable
25 adult or imminent danger of the vulnerable adult suffering physical

1 injury or death.

2 Sec. 5. Section 28-367, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 28-367 Sexual abuse ~~shall include~~ includes unlawful
5 intrusion as described in section 28-311.08, sexual assault as
6 described in section 28-319 or 28-320, sexual exploitation, and
7 incest as described in section 28-703.

8 Sec. 6. Sexual exploitation includes, but is not limited
9 to, causing, allowing, permitting, inflicting, or encouraging a
10 vulnerable adult to engage in voyeurism, in exhibitionism, in
11 prostitution, or in the lewd, obscene, or pornographic photographing,
12 filming, or depiction of the vulnerable adult.

13 Sec. 7. Section 28-370, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 28-370 Unreasonable confinement ~~shall mean~~ means
16 confinement which intentionally causes physical injury to a
17 vulnerable adult or false imprisonment as described in section 28-314
18 or 28-315.

19 Sec. 8. (1) Upon completion of the investigation pursuant
20 to sections 28-373 and 28-374, the person who allegedly abused a
21 vulnerable adult shall be given written notice of the determination
22 of the investigation and whether the person who allegedly abused a
23 vulnerable adult will be entered into the registry.

24 (2) If the person who allegedly abused a vulnerable adult
25 will be entered into the registry, the notice shall be sent by

1 certified mail with return receipt requested or first-class mail to
2 the last-known address of the person who allegedly abused a
3 vulnerable adult and shall include:

4 (a) The nature of the report;

5 (b) The classification of the report; and

6 (c) The right of the person who allegedly abused a
7 vulnerable adult to request the department to amend or expunge
8 identifying information from the report or to remove the
9 substantiated report from the registry in accordance with section
10 28-380.

11 (3) If the person who allegedly abused a vulnerable adult
12 will not be entered in the registry, the notice shall be sent by
13 first-class mail and shall include:

14 (a) The nature of the report; and

15 (b) The classification of the report.

16 Sec. 9. Section 28-376, Revised Statutes Cumulative
17 Supplement, 2010, is amended to read:

18 28-376 (1) The department shall establish and maintain an
19 Adult Protective Services Central Registry ~~for recording each report~~
20 ~~of alleged abuse.~~ which shall contain any substantiated report
21 regarding a person who has allegedly abused a vulnerable adult.

22 (2) Upon request, a vulnerable adult who is the subject
23 of a report or, if the vulnerable adult is legally incapacitated, the
24 guardian or guardian ad litem of the vulnerable adult and the person
25 who has allegedly abused the vulnerable adult shall be entitled to

1 receive a copy of all information contained in the registry
2 pertaining to ~~his or her case.~~ such report. The department shall not
3 release data that would be harmful or detrimental to the vulnerable
4 adult or that would identify or locate a person who, in good faith,
5 made a report or cooperated in a subsequent investigation unless
6 ordered to do so by a court of competent jurisdiction.

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

10 (4) The department shall determine whether a name-change
11 order received from the clerk of a district court pursuant to section
12 25-21,271 is for a person on the Adult Protective Services Central
13 Registry and, if so, shall include the changed name with the former
14 name in the registry and file or cross-reference the information
15 under both names.

16 Sec. 10. Section 28-386, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 28-386 (1) A person commits knowing and intentional abuse
19 of a vulnerable adult if he or she through a knowing and intentional
20 act causes or permits a vulnerable adult to be:

- 21 (a) Physically injured;
22 (b) Unreasonably confined;
23 (c) Sexually abused;
24 (d) Exploited;
25 (e) Cruelly punished; or

1 (f) ~~Denied essential services.~~ Neglected.

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

4 Sec. 11. Section 28-387, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 28-387 (1) A county court may issue an ex parte order
7 authorizing the provision of short-term involuntary adult protective
8 services or temporary placement for a vulnerable adult for up to
9 forty-eight hours, excluding nonjudicial days, pending the hearing
10 for a need for continuing services, after finding on the record that:

11 (a) The person is a vulnerable adult;

12 (b) An emergency exists; and

13 (c) There are compelling reasons for ordering protective
14 services or temporary placement.

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

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

1 eligible.

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

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

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

1 ad litem.

2 (7) Notice of the hearing shall be served personally on
3 the vulnerable adult. Waiver of notice by the vulnerable adult shall
4 not be effective unless he or she attends the hearing or such notice
5 is waived by the guardian ad litem. Notice of the hearing shall be
6 given to the following parties whose whereabouts can be readily
7 ascertained: (a) The spouse of the vulnerable adult; (b) children of
8 the vulnerable adult; and (c) any other party specified by the court.

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

14 Sec. 12. Section 28-713.01, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 28-713.01 (1) Upon completion of the investigation
17 pursuant to section 28-713:

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

24 ~~(2)~~(b) The subject of the report of child abuse or
25 neglect shall be given written notice of the determination of the

1 case and whether the subject of the report of child abuse or neglect
2 will be entered into the central register of child protection cases
3 maintained pursuant to section 28-718 under the criteria provided in
4 section 28-720.

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

10 (a) The nature of the report;

11 (b) The classification of the report under section
12 28-720; and

13 (c) Notification of the right of the subject of the
14 report of child abuse or neglect to ~~a hearing and appeal~~ request the
15 department to amend or expunge identifying information from the
16 report or to remove the substantiated report from the central
17 register in accordance with section 28-723.

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

21 (a) The nature of the report; and

22 (b) The classification of the report under section
23 28-720.

24 Sec. 13. Original sections 28-348, 28-350, 28-351,
25 28-355, 28-367, 28-370, 28-386, 28-387, and 28-713.01, Reissue

- 1 Revised Statutes of Nebraska, and section 28-376, Revised Statutes
- 2 Cumulative Supplement, 2010, are repealed.