

E AND R AMENDMENTS TO LB 934

Introduced by Hansen, 26, Chairman Enrollment and Review

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

3           Section 1. Section 28-101, Revised Statutes Supplement, 2015, is  
4 amended to read:

5           28-101 Sections 28-101 to ~~28-468, 28-470 to~~ 28-1357, 28-1418.01, and  
6 28-1429.03 and sections 5 and 6 of this act shall be known and may be  
7 cited as the Nebraska Criminal Code.

8           Sec. 2. Section 28-348, Revised Statutes Cumulative Supplement,  
9 2014, is amended to read:

10           28-348 Sections 28-348 to 28-387 and sections 5 and 6 of this act  
11 shall be known and may be cited as the Adult Protective Services Act.

12           Sec. 3. Section 28-350, Revised Statutes Cumulative Supplement,  
13 2014, is amended to read:

14           28-350 For purposes of the Adult Protective Services Act, unless the  
15 context otherwise requires, the definitions found in sections 28-351 to  
16 28-371 and sections 5 and 6 of this act shall be used.

17           Sec. 4. Section 28-358, Revised Statutes Cumulative Supplement,  
18 2014, is amended to read:

19           28-358 Exploitation means the wrongful or unauthorized taking,  
20 withholding, appropriation, conversion, control, or use of money, funds,  
21 securities, assets, or any other of property of a vulnerable adult or  
22 senior adult by any person by means of undue influence, breach of a  
23 fiduciary relationship, deception, ~~or~~ extortion, intimidation, force or  
24 threat of force, isolation, or by any unlawful means or by the breach of  
25 a fiduciary duty by the guardian, conservator, agent under a power of  
26 attorney, trustee, or any other fiduciary of a vulnerable adult or senior  
27 adult.

1           Sec. 5. (1) Isolation means intentional acts (a) committed for the  
2 purpose of preventing, and which do prevent, a vulnerable adult or senior  
3 adult from having contact with family, friends, or concerned persons, (b)  
4 committed to prevent a vulnerable adult or senior adult from receiving  
5 his or her mail or telephone calls, (c) of physical or chemical restraint  
6 of a vulnerable adult or senior adult committed for purposes of  
7 preventing contact with visitors, family, friends, or other concerned  
8 persons, or (d) which restrict, place, or confine a vulnerable adult or  
9 senior adult in a restricted area for purposes of social deprivation or  
10 preventing contact with family, friends, visitors, or other concerned  
11 persons, but not including medical isolation prescribed by a licensed  
12 physician caring for the vulnerable adult or senior adult.

13           (2) Isolation does not include (a) medical isolation prescribed by a  
14 licensed physician caring for the vulnerable adult or senior adult, (b)  
15 action taken in compliance with a harassment protection order issued  
16 pursuant to section 28-311.09, a valid foreign harassment protection  
17 order recognized pursuant to section 28-311.10, an order issued pursuant  
18 to section 42-924, an ex parte order issued pursuant to section 42-925,  
19 an order excluding a person from certain premises issued pursuant to  
20 section 42-357, or a valid foreign protection order recognized pursuant  
21 to section 42-931, or (c) action authorized by an administrator of a  
22 nursing home pursuant to section 71-6021.

23           Sec. 6. Senior adult means any person sixty-five years of age or  
24 older.

25           Sec. 7. Section 28-371, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27           28-371 Vulnerable adult means ~~shall mean~~ any person eighteen years  
28 of age or older who has a substantial mental or functional impairment or  
29 for whom a guardian or conservator has been appointed under the Nebraska  
30 Probate Code.

31           Sec. 8. Section 28-374, Revised Statutes Cumulative Supplement,

1 2014, is amended to read:

2 28-374 (1) The department shall investigate each case of alleged  
3 abuse, neglect, or exploitation of a vulnerable adult and shall provide  
4 such adult protective services as are necessary and appropriate under the  
5 circumstances.

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

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

13 (4) The department shall deliver a written report or case summary to  
14 the appropriate county attorney if the investigation indicates a  
15 reasonable cause to believe that a violation of section 28-386 has  
16 occurred.

17 Sec. 9. Section 28-386, Revised Statutes Cumulative Supplement,  
18 2014, is amended to read:

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

- 23 (a) Physically injured;
- 24 (b) Unreasonably confined;
- 25 (c) Sexually abused;
- 26 (d) Exploited;
- 27 (e) Cruelly punished;
- 28 (f) Neglected; or
- 29 (g) Sexually exploited.

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

1           Sec. 10. Section 29-110, Revised Statutes Cumulative Supplement,  
2   2014, is amended to read:

3           29-110 (1) Except as otherwise provided by law, no person shall be  
4   prosecuted for any felony unless the indictment is found by a grand jury  
5   within three years next after the offense has been done or committed or  
6   unless a complaint for the same is filed before the magistrate within  
7   three years next after the offense has been done or committed and a  
8   warrant for the arrest of the defendant has been issued.

9           (2) Except as otherwise provided by law, no person shall be  
10   prosecuted, tried, or punished for any misdemeanor or other indictable  
11   offense below the grade of felony or for any fine or forfeiture under any  
12   penal statute unless the suit, information, or indictment for such  
13   offense is instituted or found within one year and six months from the  
14   time of committing the offense or incurring the fine or forfeiture or  
15   within one year for any offense the punishment of which is restricted by  
16   a fine not exceeding one hundred dollars and to imprisonment not  
17   exceeding three months.

18           (3) Except as otherwise provided by law, no person shall be  
19   prosecuted for kidnapping under section 28-313, false imprisonment under  
20   section 28-314 or 28-315, child abuse under section 28-707, pandering  
21   under section 28-802, debauching a minor under section 28-805, or an  
22   offense under section 28-813, 28-813.01, or 28-1463.03 when the victim is  
23   under sixteen years of age at the time of the offense (a) unless the  
24   indictment for such offense is found by a grand jury within seven years  
25   next after the offense has been committed or within seven years next  
26   after the victim's sixteenth birthday, whichever is later, or (b) unless  
27   a complaint for such offense is filed before the magistrate within seven  
28   years next after the offense has been committed or within seven years  
29   next after the victim's sixteenth birthday, whichever is later, and a  
30   warrant for the arrest of the defendant has been issued.

31           (4) No person shall be prosecuted for a violation of the Securities

1 Act of Nebraska under section 8-1117 unless the indictment for such  
2 offense is found by a grand jury within five years next after the offense  
3 has been done or committed or unless a complaint for such offense is  
4 filed before the magistrate within five years next after the offense has  
5 been done or committed and a warrant for the arrest of the defendant has  
6 been issued.

7 (5) No person shall be prosecuted for criminal impersonation under  
8 section 28-638, identity theft under section 28-639, or identity fraud  
9 under section 28-640 unless the indictment for such offense is found by a  
10 grand jury within five years next after the offense has been done or  
11 committed or unless a complaint for such offense is filed before the  
12 magistrate within five years next after the offense has been done or  
13 committed and a warrant for the arrest of the defendant has been issued.

14 (6) No person shall be prosecuted for a violation of section 68-1017  
15 if the aggregate value of all funds and other benefits obtained or  
16 attempted to be obtained is five hundred dollars or more unless the  
17 indictment for such offense is found by a grand jury within five years  
18 next after the offense has been done or committed or unless a complaint  
19 for such offense is filed before the magistrate within five years next  
20 after the offense has been done or committed and a warrant for the arrest  
21 of the defendant has been issued.

22 (7) No person shall be prosecuted for knowing and intentional abuse,  
23 neglect, or exploitation of a vulnerable adult or senior adult under  
24 section 28-386 unless the indictment for such offense is found by a grand  
25 jury within six years next after the offense has been done or committed  
26 or unless a complaint for such offense is filed before the magistrate  
27 within six years next after the offense has been done or committed and a  
28 warrant for the arrest of the defendant has been issued.

29 (8 7) There shall not be any time limitations for prosecution or  
30 punishment for treason, murder, arson, forgery, sexual assault in the  
31 first or second degree under section 28-319 or 28-320, sexual assault of

1 a child in the second or third degree under section 28-320.01, incest  
2 under section 28-703, or sexual assault of a child in the first degree  
3 under section 28-319.01; nor shall there be any time limitations for  
4 prosecution or punishment for sexual assault in the third degree under  
5 section 28-320 when the victim is under sixteen years of age at the time  
6 of the offense.

7 (~~9~~ 8) The time limitations prescribed in this section shall include  
8 all inchoate offenses pursuant to the Nebraska Criminal Code and  
9 compounding a felony pursuant to section 28-301.

10 (~~10~~ 9) The time limitations prescribed in this section shall not  
11 extend to any person fleeing from justice.

12 (~~11~~ ~~10~~) When any suit, information, or indictment for any crime or  
13 misdemeanor is limited by any statute to be brought or exhibited within  
14 any other time than is limited by this section, then the suit,  
15 information, or indictment shall be brought or exhibited within the time  
16 limited by such statute.

17 (~~12~~ ~~11~~) If any suit, information, or indictment is quashed or the  
18 proceedings set aside or reversed on writ of error, the time during the  
19 pendency of such suit, information, or indictment so quashed, set aside,  
20 or reversed shall not be reckoned within this statute so as to bar any  
21 new suit, information, or indictment for the same offense.

22 (~~13~~ ~~12~~) The changes made to this section by Laws 2004, LB 943, shall  
23 apply to offenses committed prior to April 16, 2004, for which the  
24 statute of limitations has not expired as of such date and to offenses  
25 committed on or after such date.

26 (~~14~~ ~~13~~) The changes made to this section by Laws 2005, LB 713, shall  
27 apply to offenses committed prior to September 4, 2005, for which the  
28 statute of limitations has not expired as of such date and to offenses  
29 committed on or after such date.

30 (~~15~~ ~~14~~) The changes made to this section by Laws 2009, LB 97, and  
31 Laws 2006, LB 1199, shall apply to offenses committed prior to May 21,

1 2009, for which the statute of limitations has not expired as of such  
2 date and to offenses committed on or after such date.

3 ~~(16 15)~~ The changes made to this section by Laws 2010, LB809, shall  
4 apply to offenses committed prior to July 15, 2010, for which the statute  
5 of limitations has not expired as of such date and to offenses committed  
6 on or after such date.

7 (17) The changes made to this section by this legislative bill shall  
8 apply to offenses committed prior to the effective date of this act for  
9 which the statute of limitations has not expired as of such date and to  
10 offenses committed on or after such date.

11 Sec. 11. Section 30-2201, Revised Statutes Supplement, 2015, is  
12 amended to read:

13 30-2201 Sections 30-401 to 30-406, 30-2201 to 30-2902, 30-3901 to  
14 30-3923, and 30-4001 to 30-4045, sections 12 to 21 of this act, and the  
15 Public Guardianship Act shall be known and may be cited as the Nebraska  
16 Probate Code.

17 Sec. 12. The Legislature finds that it is in the best interests of  
18 persons under disability and the public for the authorities and  
19 responsibilities of a guardian ad litem to be expanded to include an  
20 objective investigation and assessment of the needs of a person who comes  
21 before the court in any guardianship, conservatorship, or other  
22 protective proceeding to ensure the protection of the rights of the  
23 person who is the subject of the proceeding. The Legislature also finds  
24 that the public is benefited from having trustworthy and competent  
25 guardians and conservators appointed for incapacitated persons, wards,  
26 protected persons, and minors.

27 Sec. 13. (1) A guardian ad litem appointed pursuant to the Nebraska  
28 Probate Code shall:

29 (a) Be an attorney in good standing admitted to the practice of law  
30 in the State of Nebraska and meet any other requirements imposed by the  
31 Supreme Court; and

1           (b) Before serving as a guardian ad litem, complete the training  
2 requirements for a guardian ad litem as provided under Supreme Court  
3 rule.

4           (2) The Supreme Court shall promulgate rules for guardians ad litem  
5 in guardianship, conservatorship, or other protective proceedings.

6           (3) A guardian ad litem appointed pursuant to the Nebraska Probate  
7 Code may act as his or her own counsel and as counsel for the person who  
8 is the subject of the guardianship, conservatorship, or other protective  
9 proceeding unless such person obtains his or her own counsel or there are  
10 special reasons why the guardian ad litem or the person who is the  
11 subject of the proceeding should have separate counsel. In such cases,  
12 the guardian ad litem shall have the right to counsel and shall be  
13 entitled to have the court appoint counsel for him or her without regard  
14 to his or her financial ability to retain counsel.

15           Sec. 14. (1) A guardian ad litem appointed pursuant to the Nebraska  
16 Probate Code shall:

17           (a) Consult with the person for whom he or she has been appointed  
18 within two weeks after the appointment for such person and make every  
19 reasonable effort to become familiar with the condition of such person;

20           (b) Investigate, gather information regarding, and make an  
21 assessment of the condition of such person and report to the court the  
22 condition of such person;

23           (c) Advocate for the best interests of such person;

24           (d) Be present at all hearings before the court regarding such  
25 person unless expressly excused by the court;

26           (e) Inquire of others directly involved with such person as to such  
27 person's condition, including, but not limited to, any physician,  
28 psychologist, care provider, clergy member, financial institution,  
29 corporation, business entity, or other person with which such person has  
30 done or is doing business; and

31           (f) Defend the social, economic, and safety interests of such



1 person. For purposes of this subdivision, (i) social interest means the  
2 logical and practical expectations a person has who is the object of a  
3 guardianship, conservatorship, or other protective proceeding based on  
4 the guardian ad litem's objective and independent assessment of the  
5 person's situation, including economic, social, mental, physical,  
6 emotional, and other relevant factors, (ii) economic interest means what  
7 a reasonable person would consider to be prudent given the situation of  
8 the person who is the object of the guardianship, conservatorship, or  
9 other protective proceeding, and (iii) safety interest means what a  
10 reasonable person would consider safe given the mental, physical, and  
11 emotional situation of the person who is the object of a guardianship,  
12 conservatorship or other protective proceeding.

13 (2) A guardian ad litem appointed pursuant to the Nebraska Probate  
14 Code may:

15 (a) Conduct discovery, present witnesses, cross-examine witnesses,  
16 present other evidence, file motions, and appeal any decisions regarding  
17 the person for whom he or she has been appointed;

18 (b) Enter into stipulations and agreements concerning such person in  
19 the guardianship, conservatorship, or other protective proceeding deemed  
20 by the guardian ad litem to be in such person's best interests;

21 (c) Request, at any time after the filing of a petition in a  
22 guardianship, conservatorship, or other protective proceeding, that the  
23 court order a medical, psychological, geriatric, or other evaluation of  
24 the person who is the subject of the guardianship, conservatorship, or  
25 other protective proceeding to determine the condition and extent of  
26 impairment, if any, of the person who is the subject of the guardianship,  
27 conservatorship, or other protective proceeding; and

28 (d) Have access to any report which resulted from any evaluation  
29 ordered by the court and which was used for evaluating the status of the  
30 person who is the subject of the guardianship, conservatorship, or other  
31 protective proceeding.

1           Sec. 15. The guardian ad litem may obtain, informally or by  
2 subpoena, the following information regarding the person for whom the  
3 guardian ad litem has been appointed: (1) A report from any medical  
4 provider, provider of psychological services, law enforcement, adult  
5 protective services agency, or financial institution; and (2) any account  
6 or record of any business, corporation, partnership, or other business  
7 entity which such person owns or in which such person has an interest.  
8 Any material obtained by a guardian ad litem pursuant to this section is  
9 admissible in evidence.

10           Sec. 16. (1) The guardian ad litem shall make recommendations to  
11 the court regarding a temporary or permanent guardianship,  
12 conservatorship, or other protective order. The report shall be in  
13 writing and provided to the court at least one week prior to the hearing  
14 date. A copy of the report shall be provided to all interested persons.

15           (2) For a guardianship proceeding, the report shall address whether  
16 the person for whom the guardianship is sought is an incapacitated  
17 person. If the guardian ad litem determines that the person is  
18 incapacitated, the guardian ad litem shall make recommendations as to  
19 whether the court should order a limited or full guardianship. If the  
20 guardian ad litem recommends a limited guardianship, the report shall  
21 include recommendations on the authorities and responsibilities the  
22 guardian and ward shall have. If a full guardianship is recommended, the  
23 report shall specifically address why a full guardianship is necessary to  
24 protect the best interests of the incapacitated person.

25           Sec. 17. (1) In carrying out his or her powers and duties as a  
26 guardian ad litem, the guardian ad litem shall consider any information  
27 that is warranted by the nature and circumstances of each guardianship,  
28 conservatorship, or other protective proceeding.

29           (2) The guardian ad litem may petition the court for an order to (a)  
30 inspect documents, in physical or electronic form, pertaining to the  
31 person who is the subject of the guardianship, conservatorship, or other

1 protective proceeding that are in the possession of a corporation,  
2 financial institution, health care provider, or business entity, or (b)  
3 visit any person who may provide relevant information about the person  
4 who is the subject of the guardianship, conservatorship, or other  
5 protective proceeding.

6 (3) Any person, corporation, financial institution, health care  
7 provider, or business entity that refuses to produce any document  
8 requested by the guardian ad litem and ordered by the court shall be  
9 subject to contempt of court or other discovery sanctions.

10 Sec. 18. The guardian ad litem may file a petition and any other  
11 motion the guardian ad litem deems to be in the best interests of the  
12 person for whom the guardian ad litem has been appointed.

13 Sec. 19. A guardian ad litem shall not have indirect or direct  
14 physical control over a person for whom the guardian ad litem has been  
15 appointed. A guardian ad litem shall not have indirect or direct control  
16 over the property or affairs of a person for whom the guardian ad litem  
17 has been appointed.

18 Sec. 20. A guardian ad litem's appointment begins at the time he or  
19 she is appointed by the court and does not end until the court allows the  
20 guardian ad litem to withdraw as guardian ad litem, terminates the  
21 appointment of the guardian ad litem, removes or suspends the guardian ad  
22 litem, or appoints the guardian ad litem to serve in another capacity.

23 Sec. 21. The court may order the cost of any evaluation as provided  
24 in section 14 of this act to be paid by the county where the  
25 guardianship, conservatorship, or other protective proceeding is brought,  
26 or the court may, after notice and a hearing, assess the cost of any such  
27 evaluation, in whole or in part, to the person who is the subject of the  
28 guardianship, conservatorship, or other protective proceeding. The court  
29 shall determine the ability of such person to pay and the amount of the  
30 payment.

31 Sec. 22. Section 30-2222, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 30-2222 In formal proceedings involving estates of decedents,  
3 minors, protected persons, or incapacitated persons, and in judicially  
4 supervised settlements, the following apply:

5 (1) Interests to be affected shall be described in pleadings which  
6 give reasonable information to owners by name or class, by reference to  
7 the instrument creating the interests, or in other appropriate manner.

8 (2) Persons are bound by orders binding others in the following  
9 cases:

10 (i) Orders binding the sole holder or all coholders of a power of  
11 revocation or a presently exercisable general power of appointment,  
12 including one in the form of a power of amendment, bind other persons to  
13 the extent their interests (as objects, takers in default, or otherwise)  
14 are subject to the power.

15 (ii) To the extent there is no conflict of interest between them or  
16 among persons represented, orders binding a conservator bind the person  
17 whose estate he or she controls; orders binding a guardian bind the ward  
18 if no conservator of his or her estate has been appointed; orders binding  
19 a trustee bind beneficiaries of the trust in proceedings to probate a  
20 will establishing or adding to a trust, to review the acts or accounts of  
21 a prior fiduciary and in proceedings involving creditors or other third  
22 parties; and orders binding a personal representative bind persons  
23 interested in the undistributed assets of a decedent's estate in actions  
24 or proceedings by or against the estate. If there is no conflict of  
25 interest and no conservator or guardian has been appointed, a parent may  
26 represent his or her minor child.

27 (iii) An unborn or unascertained person who is not otherwise  
28 represented is bound by an order to the extent his or her interest is  
29 adequately represented by another party having a substantially identical  
30 interest in the proceeding.

31 (3) Notice is required as follows:

1 (i) Notice as prescribed by section 30-2220 shall be given to every  
2 interested person or to one who can bind an interested person as  
3 described in (2)(i) or (2)(ii) above. Notice may be given both to a  
4 person and to another who may bind him or her.

5 (ii) Notice is given to unborn or unascertained persons, who are not  
6 represented under (2)(i) or (2)(ii) above, by giving notice to all known  
7 persons whose interests in the proceedings are substantially identical to  
8 those of the unborn or unascertained persons.

9 (4) At any point in a proceeding, a court may appoint a guardian ad  
10 litem as provided in sections 12 to 21 of this act to represent the  
11 interest of a minor, an incapacitated, unborn, or unascertained person,  
12 or a person whose identity or address is unknown, if the court determines  
13 that representation of the interest otherwise would be inadequate. If not  
14 precluded by conflict of interests, a guardian ad litem may be appointed  
15 to represent several persons or interests. The court shall set out its  
16 reasons for appointing a guardian ad litem as a part of the record of the  
17 proceeding.

18 Sec. 23. Section 30-2601, Revised Statutes Cumulative Supplement,  
19 2014, is amended to read:

20 30-2601 Unless otherwise apparent from the context, in the Nebraska  
21 Probate Code:

22 (1) Incapacitated person means any person who is impaired by reason  
23 of mental illness, mental deficiency, physical illness or disability,  
24 chronic use of drugs, chronic intoxication, or other cause (except  
25 minority) to the extent that the person lacks sufficient understanding or  
26 capacity to make or communicate responsible decisions concerning himself  
27 or herself;

28 (2) A protective proceeding is a proceeding under the provisions of  
29 section 30-2630 to determine that a person cannot effectively manage or  
30 apply his or her estate to necessary ends, either because the person  
31 lacks the ability or is otherwise inconvenienced, or because the person

1 is a minor, and to secure administration of the person's estate by a  
2 conservator or other appropriate relief;

3 (3) A protected person is a minor or other person for whom a  
4 conservator has been appointed or other protective order has been made;

5 (4) A ward is a person for whom a guardian has been appointed. A  
6 minor ward is a minor for whom a guardian has been appointed solely  
7 because of minority;

8 (5) Full guardianship means the guardian has been granted all powers  
9 which may be conferred upon a guardian by law;

10 (6) Guardian means any person appointed to protect a ward and may  
11 include the Public Guardian;

12 (7) Public Guardian is as defined in section 30-4103;

13 (8) Limited guardianship means any guardianship which is not a full  
14 guardianship;

15 (9) Conservator means any person appointed to protect a protected  
16 person and may include the Public Guardian;~~and~~

17 (10) For purposes of article 26 of the Nebraska Probate Code,  
18 interested person means children, spouses, those persons who would be the  
19 heirs if the ward or person alleged to be incapacitated died without  
20 leaving a valid will who are adults and any trustee of any trust executed  
21 by the ward or person alleged to be incapacitated. After the death of a  
22 ward, interested person also includes the personal representative of a  
23 deceased ward's estate, the deceased ward's heirs in an intestate estate,  
24 and the deceased ward's devisees in a testate estate. The meaning of  
25 interested person as it relates to particular persons may vary from time  
26 to time and must be determined according to the particular purposes of,  
27 and matter involved in, any proceeding. If there are no persons  
28 identified as interested persons above, then interested person shall also  
29 include any person or entity named as a devisee in the most recently  
30 executed will of the ward or person alleged to be incapacitated; and -

31 (11) Guardian ad litem means an attorney appointed by the court in a

1 guardianship, conservatorship, or other protective proceeding pursuant to  
2 sections 12 to 21 of this act to represent the interests of a person who  
3 has been alleged to be incapacitated, ward, person to be protected, or  
4 minor.

5 Sec. 24. Section 30-2619, Revised Statutes Supplement, 2015, is  
6 amended to read:

7 30-2619 (a) The person alleged to be incapacitated or any person  
8 interested in his or her welfare may petition for a finding of incapacity  
9 and appointment of a guardian or a standby guardian. The petition shall  
10 be verified and shall contain specific allegations with regard to each of  
11 the areas as provided under section 30-2619.01 in which the petitioner  
12 claims that the person alleged to be incapacitated lacks sufficient  
13 understanding to make or communicate responsible decisions concerning his  
14 or her own person. An interested person may file a motion to make more  
15 definite and certain requesting a specific description of the functional  
16 limitations and physical and mental condition of the person alleged to be  
17 incapacitated with the specific reasons prompting the request for  
18 guardianship.

19 (b) Upon the filing of a petition, the court shall set a date for  
20 hearing on the issues of incapacity and unless the person alleged to be  
21 incapacitated has retained counsel of his or her own choice or has  
22 otherwise indicated a desire for an attorney of his or her own choice,  
23 the court may appoint an attorney to represent him or her in the  
24 proceeding. The court may appoint a guardian ad litem as provided in  
25 sections 12 to 21 of this act to advocate for the best interests of the  
26 person alleged to be incapacitated.

27 (c) The person alleged to be incapacitated may be examined by a  
28 physician appointed by the court. The physician shall submit his or her  
29 report in writing to the court and may be interviewed by a visitor, if so  
30 appointed pursuant to sections 30-2619.01 and 30-2624, sent by the court.

31 (d) The person alleged to be incapacitated is entitled to be present

1 at the hearing in person and to see and hear all evidence bearing upon  
2 his or her condition. He or she is entitled to be present by counsel, to  
3 compel the attendance of witnesses, to present evidence, to cross-examine  
4 witnesses, including the court-appointed physician and the visitor  
5 appointed by the court pursuant to sections 30-2619.01 and 30-2624, and  
6 to appeal any final orders or judgments. The issue may be determined at a  
7 closed hearing only if the person alleged to be incapacitated or his or  
8 her counsel so requests.

9 (e) At any hearing conducted under this section, the court may  
10 designate one or more standby guardians of the person whose appointment  
11 will become effective immediately upon the death, unwillingness or  
12 inability to act, resignation, or removal by the court of the initially  
13 appointed guardian and upon compliance with any rules promulgated by the  
14 Supreme Court. The standby guardian shall have the same powers and duties  
15 as the initially appointed guardian. The standby guardian shall receive a  
16 copy of the order establishing or modifying the initial guardianship and  
17 the order designating the standby guardian. Upon assuming office, the  
18 standby guardian shall so notify the court in writing. Upon notification  
19 and upon compliance with any rules promulgated by the Supreme Court, the  
20 court shall issue new letters of guardianship that specify that the  
21 standby guardianship appointment is permanent. A standby guardian shall  
22 complete the training required by section 30-2601.01 at the time or times  
23 required by rules promulgated by the Supreme Court or as otherwise  
24 provided by order of the county court.

25 (f) The Public Guardian shall not be appointed as a standby  
26 guardian.

27 Sec. 25. Section 30-2636, Reissue Revised Statutes of Nebraska, is  
28 amended to read:

29 30-2636 (a) Upon receipt of a petition for appointment of a  
30 conservator or other protective order because of minority, the court  
31 shall set a date for hearing on the matters alleged in the petition. If,



1 at any time in the proceeding, the court determines that the interests of  
2 the minor are or may be inadequately represented, the court may appoint  
3 an attorney to represent the minor, giving consideration to the choice of  
4 the minor if he or she is fourteen years of age or older. A lawyer  
5 appointed by the court to represent a minor as provided in sections 12 to  
6 21 of this act has the powers and duties of a guardian ad litem.

7 (b) Upon receipt of a petition for appointment of a conservator or  
8 other protective order for reasons other than minority, the court shall  
9 set a date for hearing. Unless the person to be protected has counsel of  
10 his or her own choice, the court may appoint an attorney to represent him  
11 or her in the proceeding. The court may appoint a guardian ad litem as  
12 provided in sections 12 to 21 of this act to advocate for the best  
13 interests of the person to be protected. If the alleged disability is  
14 mental illness, mental deficiency, physical illness or disability,  
15 chronic use of drugs, or chronic intoxication, the court may direct that  
16 the person to be protected be examined by a physician designated by the  
17 court, preferably a physician who is not connected with any institution  
18 in which the person is a patient or is detained. The court may send a  
19 visitor to interview the person to be protected. The visitor may be a  
20 guardian ad litem or an officer or employee of the court.

21 (c) After hearing, upon finding that clear and convincing evidence  
22 exists for the appointment of a conservator or other protective order,  
23 the court shall make an appointment or other appropriate protective  
24 order.

25 Sec. 26. Section 30-4103, Revised Statutes Cumulative Supplement,  
26 2014, is amended to read:

27 30-4103 For purposes of the Public Guardianship Act:

28 (1) Council means the Advisory Council on Public Guardianship;

29 (2) Multidisciplinary team means the team of professionals hired by  
30 the Public Guardian pursuant to section 30-4104;

31 (3 2) Office means the Office of Public Guardian;

1 (4 3) Private conservator means an individual or a corporation with  
2 general power to serve as trustee who is not with the office and who is  
3 appointed by the court to act as conservator for a protected person;

4 (5 4) Private guardian means any person who is not with the office  
5 and who is appointed by the court to act as guardian for a ward;

6 (6 5) Protected person is as defined in section 30-2601;

7 (7 6) Public Guardian means the director of the office;

8 (8 7) Successor conservator means an individual or a corporation  
9 with general power to serve as trustee who is recruited by the office to  
10 become a conservator for a protected person previously served by the  
11 office;

12 (9 8) Successor guardian means a person or entity who is recruited  
13 by the office to become a guardian for a ward previously served by the  
14 office; and

15 (10 9) Ward is as defined in section 30-2601.

16 Sec. 27. Section 30-4104, Revised Statutes Cumulative Supplement,  
17 2014, is amended to read:

18 30-4104 (1) The office is created within the judicial branch of  
19 government and is directly responsible to the State Court Administrator.  
20 The State Court Administrator shall appoint a director of the office who  
21 shall be known as the Public Guardian. The Public Guardian shall be an  
22 attorney licensed to practice law in Nebraska, shall be hired based on a  
23 broad knowledge of human development, intellectual disabilities,  
24 sociology, and psychology, and shall have business acuity and experience  
25 in public education and volunteer recruitment. ~~The Public Guardian shall~~  
26 ~~hire a deputy public guardian and up to twelve associate public guardians~~  
27 ~~who shall serve at the pleasure of the Public Guardian and perform such~~  
28 ~~duties as assigned by the Public Guardian.~~

29 (2) The Public Guardian shall hire a multidisciplinary team of  
30 professionals to fulfill the responsibilities of the Public Guardianship  
31 Act. The multidisciplinary team shall include a deputy public guardian

1 and may include one or more associate public guardian legal counsel,  
2 associate public guardians, administrative personnel, and any other  
3 personnel the Public Guardian deems appropriate. In addition, the Public  
4 Guardian may hire support staff as required. The multidisciplinary team  
5 may include professionals trained in law, health care, social work,  
6 education, business, accounting, administration, geriatrics, psychology,  
7 or other specialties with experience working with individuals with  
8 dementia, developmental disabilities, chronic and acute medical needs,  
9 mental health issues, substance abuse, or other conditions that are  
10 served by the Public Guardian.

11 (3) An associate public guardian legal counsel shall be an attorney  
12 licensed to practice law in Nebraska. The deputy public guardian shall be  
13 an attorney licensed to practice law in Nebraska unless the State Court  
14 Administrator directs otherwise.

15 (4) Legal representation provided by the Public Guardian, deputy  
16 public guardian, and associate public guardian legal counsel shall be  
17 limited to representing the Public Guardian and his or her designees in  
18 the roles and responsibilities of a court-appointed guardian or  
19 conservator in accordance with the Public Guardianship Act.

20 (5) The Public Guardian shall assume all the duties and  
21 responsibilities of a guardian and conservator for any individual  
22 appointed to his or her supervision and may designate authority to act on  
23 his or her behalf to the deputy public guardian, associate public  
24 guardian legal counsel, and associate public guardians. The Public  
25 Guardian shall administer public guardianship and public conservatorship  
26 and shall serve as staff to the council. ~~The Public Guardian may hire~~  
27 ~~support staff as required.~~

28 Sec. 28. Section 30-4115, Revised Statutes Cumulative Supplement,  
29 2014, is amended to read:

30 30-4115 (1)(a) The office shall maintain the appropriate personnel  
31 and workload scope necessary to fulfill all its responsibilities and

1 duties under the Public Guardianship Act.

2 (b) The office shall provide appropriate and high-quality care and  
3 support, including timely decisionmaking, to all public wards and public  
4 protected persons served by the Public Guardian and his or her designees.

5 (c) Public guardianship and public conservatorship cases shall be  
6 managed by the Public Guardian and be served by the multidisciplinary  
7 team through a caseload distribution of wards and protected persons that  
8 takes into consideration the:

9 (i) Identified needs of the service population;

10 (ii) Complexity and status of each case, based upon factors such as  
11 the individual's living situation, the type of guardianship being  
12 provided, or the existence of complex medical conditions;

13 (iii) Size of the geographical area covered;

14 (iv) Qualifications and professional expertise of each team member;

15 (v) Availability of auxiliary services by support staff and  
16 volunteers;

17 (vi) Organizational responsibilities; and

18 (vii) Applicable legal requirements.

19 (2) The Public Guardian may accept an appointment as a public  
20 guardian or public conservator for an individual not to exceed an average  
21 ratio of twenty public wards or public protected persons to each member  
22 of the multidisciplinary team. When determining such average ratio, all  
23 full-time members of the office's multidisciplinary team may be counted  
24 forty individuals per associate public guardian hired by the office.

25 (3) When the average ratio described in subsection (2) of this  
26 section has been reached, the Public Guardian shall not accept further  
27 appointments. The Public Guardian, upon reaching the maximum number of  
28 appointments, shall notify the State Court Administrator that such the  
29 maximum number of appointments has been reached.

30 Sec. 29. Section 30-4116, Revised Statutes Cumulative Supplement,  
31 2014, is amended to read:

1           30-4116 (1) When the court appoints the Public Guardian as guardian  
2 or conservator for an individual, the Public Guardian immediately  
3 succeeds to (a) all powers and duties of a guardian provided in sections  
4 30-2626 and 30-2628, if appointed a guardian, or (b) all powers and  
5 duties of a conservator provided in sections 30-2646, 30-2647, 30-2653,  
6 30-2654, 30-2655, 30-2656, and 30-2657, if appointed a conservator.

7           (2) The Public Guardian shall:

8           (a) Be considered as an interested party in the welfare of the ward  
9 or protected person to which the Public Guardian is nominated. If the  
10 office is unable to accept the nomination due to its caseload or the  
11 status of its client-to-staff average ratio under section 30-4115, good  
12 cause shall be presumed to exist to deny its appointment. In such event,  
13 the appearance of the office shall no longer be required and the Public  
14 Guardian shall no longer be considered an interested party for purposes  
15 of filing a motion for termination or modification of a public  
16 guardianship or public conservatorship;

17           **(b) Not file petitions for guardianships or conservatorships. After**  
18 **being appointed in a case, the Public Guardian may file a motion for**  
19 **termination, a motion for modification, or take any other legal action**  
20 **required to fulfill the duties and responsibilities of a guardian or**  
21 **conservator in accordance with the Public Guardianship Act;**

22           (c) Visit the facility in which the ward or protected person is to  
23 be placed if it is proposed that the individual be placed outside his or  
24 her home; and

25           (d) Monitor the ward or protected person and his or her care and  
26 progress on a continuing basis. Monitoring shall, at a minimum, consist  
27 of monthly personal contact with the ward or protected person. The Public  
28 Guardian shall maintain a written record of each visit with a ward or  
29 protected person. The Public Guardian shall maintain periodic contact  
30 with all individuals and agencies, public or private, providing care or  
31 related services to the ward or protected person.

1           Sec. 30. Original sections 28-371, 30-2222, and 30-2636, Reissue  
2 Revised Statutes of Nebraska, sections 28-348, 28-350, 28-358, 28-374,  
3 28-386, 29-110, 30-2601, 30-4103, 30-4104, 30-4115, and 30-4116, Revised  
4 Statutes Cumulative Supplement, 2014, and sections 28-101, 30-2201, and  
5 30-2619, Revised Statutes Supplement, 2015, are repealed.

6           2. On page 1, strike beginning with "the" in line 1 through line 7  
7 and insert "public health and safety; to amend sections 28-371, 30-2222,  
8 and 30-2636, Reissue Revised Statutes of Nebraska, sections 28-348,  
9 28-350, 28-358, 28-374, 28-386, 29-110, 30-2601, 30-4103, 30-4104,  
10 30-4115, and 30-4116, Revised Statutes Cumulative Supplement, 2014, and  
11 sections 28-101, 30-2201, and 30-2619, Revised Statutes Supplement, 2015;  
12 to change provisions relating to vulnerable adults and senior adults  
13 under the Adult Protective Services Act; to define and redefine terms; to  
14 change the statute of limitations for knowing and intentional abuse,  
15 neglect, or exploitation of a vulnerable adult; to change penalty  
16 provisions; to provide qualification requirements, powers, duties, and  
17 limitations for guardians ad litem in guardianship, conservatorship, and  
18 other protective proceedings; to state legislative findings; to require  
19 reports; to allow payment for costs of evaluations; to change provisions  
20 relating to the Public Guardianship Act; to harmonize provisions; and to  
21 repeal the original sections."