

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1031

Introduced by Ashford, 20.

Read first time January 17, 2008

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to protective services; to amend sections
2 28-377 and 28-726, Revised Statutes Supplement, 2007;
3 to change provisions relating to confidentiality
4 requirements for persons engaged in bona fide research or
5 auditing; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-377, Revised Statutes Supplement,
2 2007, is amended to read:

3 28-377 Except as otherwise provided in sections 28-376
4 to 28-380, no person, official, or agency shall have access to
5 the records relating to abuse unless in furtherance of purposes
6 directly connected with the administration of the Adult Protective
7 Services Act and section 28-726. Persons, officials, and agencies
8 having access to such records shall include, but not be limited to:

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

11 (2) A county attorney in preparation of an abuse
12 petition;

13 (3) A physician who has before him or her a person whom
14 he or she reasonably suspects may be abused;

15 (4) An agency having the legal responsibility or
16 authorization to care for, treat, or supervise an abused vulnerable
17 adult;

18 (5) Defense counsel in preparation of the defense of a
19 person charged with abuse;

20 (6) Any person engaged in bona fide research or auditing,
21 except that no information identifying the subjects of the report
22 shall be made available to the researcher or auditor unless
23 such researcher or auditor provides the department with: (a)
24 A certificate of confidentiality, on a form provided by the
25 department, the sole purpose of which form shall be to obligate

1 the researcher or auditor not to disclose the identities of the
2 subjects of the report, and proof of approval by an accredited
3 postsecondary educational or governmental institutional review
4 board issued to the researcher or auditor by the agency or
5 institution sponsoring or funding such research or audit. The
6 legal effect of the certificate and proof of approval shall be
7 to legally obligate the researcher or auditor and all persons
8 assisting in such research or audit to maintain as confidential
9 all information identifying the subjects of the report; and (b) a
10 written statement describing the nature and purpose of the proposed
11 research or audit, including an explanation of the need for such
12 researcher or auditor to have access to information identifying
13 the subject of the report and the safeguards employed to protect
14 confidentiality. Upon providing the documents required by this
15 subsection, the identities of the subjects of the report shall be
16 disclosed to such researcher or auditor. A researcher or auditor
17 providing the documents under this section may not be subpoenaed
18 or forced to testify with respect to identities of the subjects of
19 his or her research or auditing. The researcher or auditor shall
20 be charged for any costs of such research or audit incurred by the
21 department at a rate established by rules and regulations adopted
22 and promulgated by the department;

23 (7) The designated protection and advocacy system
24 authorized pursuant to the Developmental Disabilities Assistance
25 and Bill of Rights Act, 42 U.S.C. 6000, as the act existed on

1 September 1, 2001, and the Protection and Advocacy for Mentally Ill
2 Individuals Act, 42 U.S.C. 10801, as the act existed on September
3 1, 2001, acting upon a complaint received from or on behalf of a
4 person with developmental disabilities or mental illness; and

5 (8) For purposes of licensing providers of child care
6 programs, the department.

7 Sec. 2. Section 28-726, Revised Statutes Supplement,
8 2007, is amended to read:

9 28-726 Except as provided in this section and sections
10 28-722 and 28-734 to 28-739, no person, official, or agency
11 shall have access to information in the tracking system of
12 child protection cases maintained pursuant to section 28-715 or
13 in records in the central register of child protection cases
14 maintained pursuant to section 28-718 unless in furtherance of
15 purposes directly connected with the administration of the Child
16 Protection Act. Such persons, officials, and agencies having access
17 to such information shall include, but not be limited to:

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

20 (2) A county attorney in preparation of a child abuse or
21 neglect petition or termination of parental rights petition;

22 (3) A physician who has before him or her a child whom he
23 or she reasonably suspects may be abused or neglected;

24 (4) An agency having the legal responsibility or
25 authorization to care for, treat, or supervise an abused or

1 neglected child or a parent, a guardian, or other person
2 responsible for the abused or neglected child's welfare who is the
3 subject of the report of child abuse or neglect;

4 (5) Any person engaged in bona fide research or auditing.
5 No information identifying the subjects of the report of child
6 abuse or neglect shall be made available to the researcher or
7 auditor unless such researcher or auditor provides the department
8 with: (a) A certificate of confidentiality, on a form provided
9 by the department, the sole purpose of which form shall be to
10 obligate the researcher or auditor not to disclose the identities
11 of the subjects of the report, and proof of approval by an
12 accredited postsecondary educational or governmental institutional
13 review board issued to the researcher or auditor by the agency or
14 institution sponsoring or funding such research or audit. The legal
15 effect of the certificate and proof of approval shall be to legally
16 obligate the researcher or auditor and all persons assisting in
17 such research or audit to maintain as confidential all information
18 identifying the subjects of the report; and (b) a written statement
19 describing the nature and purpose of the proposed research or
20 audit, including an explanation of the need for such researcher or
21 auditor to have access to information identifying the subject of
22 the report and the safeguards employed to protect confidentiality.
23 Upon providing the documents required by this subsection, the
24 identities of the subjects of the report shall be disclosed to
25 such researcher or auditor. A researcher or auditor providing the

1 documents under this section may not be subpoenaed or forced to
2 testify with respect to identities of the subjects of his or her
3 research or auditing;

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

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

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

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

22 Sec. 3. Original sections 28-377 and 28-726, Revised
23 Statutes Supplement, 2007, are repealed.