

LEGISLATIVE BILL 294

Approved by the Governor May 19, 2015

Introduced by Scheer, 19; Pansing Brooks, 28; Garrett, 3; Watermeier, 1.

A BILL FOR AN ACT relating to law; to amend sections 21-20,177, 29-812, 29-815, 86-2,108, and 86-2,112, Reissue Revised Statutes of Nebraska, and sections 21-2,212, 27-413, 28-801.01, 28-802, 28-804, 28-831, 43-250, and 43-1303, Revised Statutes Cumulative Supplement, 2014; to adopt the Human Trafficking Victims Civil Remedy Act; to change certain service of process provisions; to redefine offense of sexual assault; to change penalties for solicitation of prostitution, pandering, keeping a place of prostitution, and human trafficking; to change provisions relating to search warrants, temporary custody requirements for juveniles, and foster care placement reports; to provide for forfeiture of assets for persons engaged in human trafficking; to create a fund; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal section 21-20,177, Reissue Revised Statutes of Nebraska, as amended by this legislative bill; and to declare an emergency.

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

Section 1. Sections 1 to 5 of this act shall be known and may be cited as the Human Trafficking Victims Civil Remedy Act.

Sec. 2. For purposes of the Human Trafficking Victims Civil Remedy Act:

(1) Human trafficking means labor trafficking, labor trafficking of a minor, sex trafficking, or sex trafficking of a minor, as those terms are defined in section 28-830; and

(2) Trafficking victim has the same meaning as in section 28-830.

Sec. 3. (1) Any trafficking victim or his or her parent or legal guardian who suffered or continues to suffer personal or psychological injury as a result of such human trafficking may bring a civil action against any person who knowingly (a) engaged in human trafficking of such victim within this state or (b) aided or assisted with the human trafficking of such victim within this state.

(2) A plaintiff who prevails in a civil action brought pursuant to the Human Trafficking Victims Civil Remedy Act may recover his or her actual damages plus any and all attorney's fees and costs reasonably associated with the civil action. In addition to all other remedies available under the act, the court may also award temporary, preliminary, and permanent injunctive relief as the court deems necessary and appropriate.

Sec. 4. Notwithstanding any other provision of law, any action to recover damages under the Human Trafficking Victims Civil Remedy Act shall be filed within ten years after the later of:

(1) The conclusion of any related criminal prosecution against the person or persons from whom recovery is sought;

(2) The receipt of actual or constructive notice sent or given to the trafficking victim or his or her parent or legal guardian by a member of a law enforcement entity informing the victim or his or her parent or legal guardian that the entity has identified the person who knowingly (a) engaged in human trafficking of such victim or (b) aided or assisted with the human trafficking of such victim;

(3) The time at which the human trafficking of the trafficking victim ended if he or she was eighteen years of age or older; or

(4) The victim reaching the age of majority if the victim was under eighteen years of age at the time he or she was a victim of human trafficking.

Sec. 5. In any action brought pursuant to the Human Trafficking Victims Civil Remedy Act, a plaintiff may request to use a pseudonym instead of his or her legal name in all court proceedings and records. Upon finding that the use of a pseudonym is proper, the court shall ensure that the pseudonym is used in all court proceedings and records.

Sec. 6. Section 21-2,212, Revised Statutes Cumulative Supplement, 2014, is amended to read:

21-2,212 (MBCA 15.10) (a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation. By being authorized to transact business in this state, the foreign corporation's agent for service of process also consents to service of process directed to the foreign corporation's agent in this state for a search warrant issued pursuant to sections ~~29-812 to 29-821~~ ~~28-807 to 28-829~~, or for any other validly issued and properly served court order or subpoena, including those authorized under sections ~~86-2,106~~ and ~~section~~ ~~86-2,112~~, for records or documents that are in the possession of the foreign corporation and are located inside or outside of this state. The consent to service of a court order, subpoena, or search warrant applies to a foreign corporation that is a party or nonparty to the matter for which the court order, subpoena, or search warrant is sought.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation

or the designated custodian of records at its principal office shown in its application for a certificate of authority or in its most recent biennial report if the foreign corporation:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from transacting business in this state under section 21-2,213; or

(3) Has had its certificate of authority revoked under section 21-2,218.

(c) Service is perfected under subsection (b) of this section at the earliest of:

(1) The date the foreign corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

Sec. 7. Section 21-20,177, Reissue Revised Statutes of Nebraska, is amended to read:

21-20,177 (1) The registered agent of a foreign corporation authorized to transact business in this state shall be the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation. By being authorized to transact business in this state, the foreign corporation's agent for service of process shall also consent to service of process directed to the foreign corporation's agent in Nebraska for a search warrant issued pursuant to sections 29-812 to 29-821 ~~28-807 to 28-829~~, or for any other validly issued and properly served court order or subpoena, including those authorized under sections 86-2,106 and section 86-2,112, for records or documents that are in the possession of the foreign corporation and are located inside or outside of this state. The consent to service of a court order, subpoena, or search warrant applies to a foreign corporation that is a party or nonparty to the matter for which the court order, subpoena, or search warrant is sought.

(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation or the designated custodian of records at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation has:

(a) No registered agent or its registered agent cannot with reasonable diligence be served;

(b) Withdrawn from transacting business in this state under section 21-20,178; or

(c) Had its certificate of authority revoked under section 21-20,180.

(3) Service shall be perfected under subsection (2) of this section at the earliest of:

(a) The date the foreign corporation receives the mail;

(b) The date shown on the return receipt if signed on behalf of the foreign corporation; or

(c) Five days after its deposit in the United States mail as evidenced by the postmark if mailed postage prepaid and correctly addressed.

(4) This section shall not be construed to prescribe the only means or necessarily the required means of serving a foreign corporation.

Sec. 8. Section 27-413, Revised Statutes Cumulative Supplement, 2014, is amended to read:

27-413 For purposes of sections 27-414 and 27-415, offense of sexual assault means sexual assault under section 28-319 or 28-320, sexual assault of a child under section 28-319.01 or 28-320.01, sexual assault by use of an electronic communication device under section 28-320.02, sexual abuse of an inmate or parolee under sections 28-322.01 to 28-322.03, and sexual abuse of a protected individual under section 28-322.04, an attempt or conspiracy to commit any of the crimes listed in this section, or the commission of or conviction for a crime in another jurisdiction that is substantially similar to any crime listed in this section.

Sec. 9. Section 28-801.01, Revised Statutes Cumulative Supplement, 2014, is amended to read:

28-801.01 (1) Any person who solicits another person not his or her spouse to perform any act of sexual contact or sexual penetration, as those terms are defined in section 28-318, in exchange for money or other thing of value, commits solicitation of prostitution.

(2) Any person convicted of violating subsection (1) of this section shall be punished as follows:

(a) If such person has had no prior convictions, such person shall be guilty of a Class I misdemeanor and pay a fine of not less than two hundred fifty dollars, unless the person solicited is under the age of eighteen years, in which case such person violating this section shall be guilty of a Class IV felony. If the court places such person on probation, such order of probation shall include in ~~as one of its conditions (i)~~ the payment of a fine of not less than two hundred fifty dollars, (ii) that ~~and~~ such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment, and (iii) that such person shall satisfactorily attend and complete, at his or her own expense, an educational program designed to educate participants on the effect

of prostitution on the participants' health, on the person solicited, and on the community; and

(b) If such person has had one or more prior convictions, such person shall be guilty of a Class IV felony and pay a fine of not less than five hundred dollars. If the court places such person on probation, such order of probation shall include in ~~as one of its conditions (i)~~ the payment of a fine of not less than five hundred dollars, (ii) that and such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment, and (iii) that such person shall satisfactorily attend and complete, at his or her own expense, an educational program designed to educate participants on the effect of prostitution on the participants' health, on the person solicited, and on the community.

(3) It is an affirmative defense to prosecution under this section that such person was a trafficking victim as defined in section 28-830.

Sec. 10. Section 28-802, Revised Statutes Cumulative Supplement, 2014, is amended to read:

28-802 (1) A person commits pandering if such person:

- (a) Entices another person to become a prostitute; or
- (b) Procures or harbors therein an inmate for a house of prostitution or for any place where prostitution is practiced or allowed; or
- (c) Inveigles, entices, persuades, encourages, or procures any person to come into or leave this state for the purpose of prostitution or debauchery; or
- (d) Receives or gives or agrees to receive or give any money or other thing of value for procuring or attempting to procure any person to become a prostitute or commit an act of prostitution or come into this state or leave this state for the purpose of prostitution or debauchery.

(2) Pandering is a Class ~~III~~ IV felony for a first offense, unless the person being enticed, procured, harbored, or otherwise persuaded to become a prostitute is under the age of eighteen years, in which case pandering is a Class ~~II~~ III felony for a first offense. Pandering is a Class ~~II~~ III felony for a second or subsequent offense.

Sec. 11. Section 28-804, Revised Statutes Cumulative Supplement, 2014, is amended to read:

28-804 (1) Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who knowingly grants or permits the use of such place for the purpose of prostitution commits the offense of keeping a place of prostitution.

(2) Keeping a place of prostitution is a Class ~~IV~~ felony ~~misdemeanor~~, unless any person using such place for the practice of prostitution is under the age of eighteen years, in which case any person convicted of keeping a place of prostitution shall be guilty of a Class ~~III~~ IV felony.

Sec. 12. Section 28-831, Revised Statutes Cumulative Supplement, 2014, is amended to read:

28-831 ~~(1) Any person who engages in labor trafficking of a minor or sex trafficking of a minor is guilty of a Class II felony if the actor uses overt force or the threat of force or the trafficking victim has not yet attained the age of sixteen years. Any person who otherwise engages in labor trafficking of a minor or sex trafficking of a minor is guilty of a Class IIA felony.~~

~~(2) Any person who engages in labor trafficking or sex trafficking by inflicting or threatening to inflict serious personal injury, as defined in section 28-318, on another person or physically restrains or threatens to physically restrain another person is guilty of a Class IIA felony. Any person who otherwise engages in labor trafficking or sex trafficking is guilty of a Class III felony.~~

~~(3) Any person who knowingly benefits from or participates in a venture which has, as part of the venture, an act that is in violation of this section is guilty of a Class IIIA felony.~~

~~(1) No person shall knowingly engage in labor trafficking or sex trafficking.~~

~~(2) If an actor knowingly engages in labor trafficking or sex trafficking by:~~

~~(a) Inflicting or threatening to inflict serious personal injury, as defined by section 28-318, on another person, the actor is guilty of a Class III felony;~~

~~(b) Physically restraining or threatening to physically restrain the other person, the actor is guilty of a Class III felony;~~

~~(c) Abusing or threatening to abuse the legal process against another person to cause arrest or deportation for violation of federal immigration law, the actor is guilty of a Class IV felony;~~

~~(d) Controlling or threatening to control another person's access to a controlled substance listed in Schedule I, II or III of section 28-405, the actor is guilty of a Class IV felony;~~

~~(e) Exploiting another person's substantial functional impairment as defined in section 28-368 or substantial mental impairment as defined in section 28-369, the actor is guilty of a Class IV felony;~~

~~(f) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of the other person, the actor is guilty of a Class IV felony; or~~

~~(g) Causing or threatening to cause financial harm to another person, including debt bondage, the actor is guilty of a Class I misdemeanor.~~

~~(3) No person shall engage in labor trafficking of a minor or sex trafficking of a minor. An actor who engages in labor trafficking of a minor or sex trafficking of a minor shall be punished as follows:~~

~~(a) In cases in which the actor uses overt force or the threat of force against the trafficking victim, the actor is guilty of a Class II felony;~~

~~(b) In cases in which the trafficking victim has not attained the age of fifteen years, the actor is guilty of a Class II felony; or~~

~~(c) In cases involving a trafficking victim between the ages of fifteen and eighteen years, and the actor does not use overt force or threat of force against the trafficking victim, the actor is guilty of a Class III felony.~~

~~(4) Any person who benefits, financially or by receiving anything of value, from participation in a venture which has, as part of the venture, an act that is in violation of this section, is guilty of a Class IV felony.~~

Sec. 13. Section 29-812, Reissue Revised Statutes of Nebraska, is amended to read:

29-812 A search warrant authorized by sections 29-812 to 29-821 may be issued by any judge of the county court, district court, Court of Appeals, or Supreme Court for execution anywhere within the State of Nebraska or for service upon any publicly or privately held corporation, partnership, or other legal entity located within or outside the State of Nebraska. A similar search warrant authorized by such sections may be issued, subject to section 24-519, by any clerk magistrate within the county in which the property sought is located.

Sec. 14. Section 29-815, Reissue Revised Statutes of Nebraska, is amended to read:

29-815 (1) The warrant must be executed and returned within ten days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property or shall leave the copy and the receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken if they are present, or in the presence of at least one credible witness other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge or magistrate shall deliver a copy of the inventory upon request to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(2) The return and inventory required by subsection (1) of this section may be submitted to the magistrate or judge in person or by facsimile or other electronic means.

Sec. 15. Section 43-250, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-250 (1) A peace officer who takes a juvenile into temporary custody under section 29-401 or subdivision (1), (4), or (5) of section 43-248 shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

(a) The peace officer may release a juvenile taken into temporary custody under section 29-401 or subdivision (1) or (4) of section 43-248;

(b) The peace officer may require a juvenile taken into temporary custody under section 29-401 or subdivision (1) or (4) of section 43-248 to appear before the court of the county in which such juvenile was taken into custody at a time and place specified in the written notice prepared in triplicate by the peace officer or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The peace officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the peace officer shall immediately release such juvenile. The peace officer shall, as soon as practicable, file one copy of the notice with the county attorney or city attorney and, when required by the court, also file a copy of the notice with the court or the officer appointed by the court for such purpose; or

(c) The peace officer may retain temporary custody of a juvenile taken into temporary custody under section 29-401 or subdivision (1), (4), or (5) of section 43-248 and deliver the juvenile, if necessary, to the probation officer and communicate all relevant available information regarding such juvenile to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in section 43-260.01. Upon determining that the juvenile should be placed in a secure or nonsecure placement and securing placement in such secure or nonsecure setting by the probation officer, the peace officer shall implement the probation officer's decision to release or to detain and place the juvenile. When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility except:

(i) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody within a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed six hours, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the

juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(ii) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody outside of a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed twenty-four hours excluding nonjudicial days and while awaiting an initial court appearance, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(iii) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older;

(iv) If a juvenile is under sixteen years of age or is a juvenile as described in subdivision (3) of section 43-247, he or she shall not be placed within a secure area of a jail or other facility intended or used for the detention of adults;

(v) If, within the time limits specified in subdivision (1)(c)(i) or (1)(c)(ii) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;

(vi) A status offender or nonoffender taken into temporary custody shall not be held in a secure area of a jail or other facility intended or used for the detention of adults. Until January 1, 2013, a status offender accused of violating a valid court order may be securely detained in a juvenile detention facility longer than twenty-four hours if he or she is afforded a detention hearing before a court within twenty-four hours, excluding nonjudicial days, and if, prior to a dispositional commitment to secure placement, a public agency, other than a court or law enforcement agency, is afforded an opportunity to review the juvenile's behavior and possible alternatives to secure placement and has submitted a written report to the court; and

(vii) A juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, may be held in a secure area of a jail or other facility intended or used for the detention of adults for up to six hours before and six hours after any court appearance.

(2) When a juvenile is taken into temporary custody pursuant to subdivision (2) or (7) of section 43-248, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subsection, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative.

(3) If the peace officer takes the juvenile into temporary custody pursuant to subdivision (3) of section 43-248, the peace officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services as provided in subsection (2) of this section. At the time of the admission or turning the juvenile over to the department, the peace officer responsible for taking the juvenile into custody pursuant to subdivision (3) of section 43-248 shall execute a written certificate as prescribed by the Department of Health and Human Services which will indicate that the peace officer believes the juvenile to be mentally ill and dangerous, a summary of the subject's behavior supporting such allegations, and that the harm described in section 71-908 is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the juvenile. A copy of the certificate shall be forwarded to the county attorney. The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement.

(4) When a juvenile is taken into temporary custody pursuant to subdivision (6) of section 43-248, the peace officer shall deliver the juvenile to the enrolled school of such juvenile.

(5) A juvenile taken into custody pursuant to a legal warrant of arrest shall be delivered to a probation officer who shall determine the need for detention of the juvenile as provided in section 43-260.01. If detention is not required, the juvenile may be released without bond if such release is in the best interests of the juvenile, the safety of the community is not at risk, and

the court that issued the warrant is notified that the juvenile had been taken into custody and was released.

(6) In determining the appropriate temporary placement of a juvenile under this section, the peace officer shall select the placement which is least restrictive of the juvenile's freedom so long as such placement is compatible with the best interests of the juvenile and the safety of the community.

Sec. 16. Section 43-1303, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-1303 (1) The office shall maintain the statewide register of all foster care placements occurring within the state, and there shall be a monthly report made to the registry of all foster care placements by the Department of Health and Human Services, any child-placing agency, or any court in a form as developed by the office in consultation with representatives of entities required to make such reports. For each child entering and leaving foster care, such monthly report shall consist of identifying information, placement information, and the plan or permanency plan developed by the person or court in charge of the child pursuant to section 43-1312, and information on whether any such child was a person immune from criminal prosecution under subsection (5) of section 28-801 or was considered a trafficking victim as defined in subdivision (16) of section 28-830. The department and every court and child-placing agency shall report any foster care placement within three working days. The report shall contain the following information:

(a) Child identification information, including name, social security number, date of birth, gender, race, and religion;

(b) Identification information for parents and stepparents, including name, social security number, address, and status of parental rights;

(c) Placement information, including initial placement date, current placement date, and the name and address of the foster care provider;

(d) Court status information, including which court has jurisdiction, initial custody date, court hearing date, and results of the court hearing;

(e) Agency or other entity having custody of the child;

(f) Case worker; and

(g) Permanency plan objective.

(2)(a) The office shall designate a local board to conduct foster care file audit case reviews for each case of children in foster care placement.

(b) The office may adopt and promulgate rules and regulations for the following:

(i) Establishment of training programs for local board members which shall include an initial training program and periodic inservice training programs;

(ii) Development of procedures for local boards;

(iii) Establishment of a central record-keeping facility for all local board files, including foster care file audit case reviews;

(iv) Accumulation of data and the making of annual reports on children in foster care. Such reports shall include (A) personal data on length of time in foster care, (B) number of placements, (C) frequency and results of foster care file audit case reviews and court review hearings, (D) number of children supervised by the foster care programs in the state annually, (E) trend data impacting foster care, services, and placements, (F) analysis of the data, and (G) recommendations for improving the foster care system in Nebraska;

(v) To the extent not prohibited by section 43-1310, evaluation of the judicial and administrative data collected on foster care and the dissemination of such data to the judiciary, public and private agencies, the department, and members of the public; and

(vi) Manner in which the office shall determine the appropriateness of requesting a court review hearing as provided for in section 43-1313.

(3) A local board shall send a written report to the office for each foster care file audit case review conducted by the local board. A court shall send a written report to the office for each foster care review hearing conducted by the court.

(4) The office shall report and make recommendations to the Legislature, department, local boards, and county welfare offices. Such reports and recommendations shall include, but not be limited to, the annual judicial and administrative data collected on foster care pursuant to subsections (2) and (3) of this section and the annual evaluation of such data. The report and recommendations submitted to the Legislature shall be submitted electronically. In addition, the office shall provide copies of such reports and recommendations to each court having the authority to make foster care placements. The executive director of the office or his or her designees from the office may visit and observe foster care facilities in order to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met. The executive director shall also provide, at a time specified by the Health and Human Services Committee of the Legislature, regular electronic updates regarding child welfare data and information at least quarterly, and a fourth-quarter report which shall be the annual report. The executive director shall include issues, policy concerns, and problems which have come to the office and the executive director from analysis of the data. The executive director shall recommend alternatives to the identified problems and related needs of the office and the foster care system to the committee. The Health and Human Services Committee shall coordinate and prioritize data and information requests submitted to the office by members of the Legislature. The annual report of the office shall be completed by December 1 each year, ~~beginning December 1, 2012,~~ and shall be submitted electronically to the committee.

Sec. 17. Section 86-2,108, Reissue Revised Statutes of Nebraska, is amended to read:

86-2,108 (1)(a) A governmental entity acting under subsection (2) of section 86-2,106 shall (i) when a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under such subsection for a period not to exceed ninety days if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result or (ii) when an administrative subpoena is obtained, delay the notification required under such subsection for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result.

(b) For purposes of this section:

(i) Adverse result means:

(A) Endangering the life or physical safety of an individual;

(B) Flight from prosecution;

(C) Destruction of or tampering with evidence;

(D) Intimidation of potential witnesses; or

(E) Otherwise seriously jeopardizing an investigation or unduly delaying a trial; and

(ii) Supervisory official means the investigative agent in charge, the assistant investigative agent in charge, an equivalent of an investigating agency's headquarters or regional office, the chief prosecuting attorney, the first assistant prosecuting attorney, or an equivalent of a prosecuting attorney's headquarters or regional office.

(c) The governmental entity shall maintain a true copy of certification under subdivision (a)(ii) of this subsection.

(d) Extensions of the delay of notification provided in sections 86-2,106 and 86-2,107 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (2) of this section.

(e) Upon expiration of the period of delay of notification under subdivision (a) or (d) of this subsection, the governmental entity shall serve upon or deliver by registered or first-class mail to the customer or subscriber a copy of the process or request together with notice that:

(i) States with reasonable specificity the nature of the law enforcement inquiry; and

(ii) Informs such customer or subscriber:

(A) That information maintained for such customer or subscriber by the provider named in such process or request was supplied to or requested by that governmental entity and the date on which the supplying or request took place;

(B) That notification of such customer or subscriber was delayed;

(C) What governmental entity or court made the certification or determination pursuant to which that delay was made; and

(D) Which provision of sections 86-2,104 to 86-2,109 allowed such delay.

(2) A governmental entity acting under section 86-2,106, except as provided in when it is not required to notify the subscriber or customer under subdivision (2)(a) of section 86-2,106 or to the extent that it may delay such notice pursuant to subsection (1) of this section, may apply to a court for an order commanding a provider of electronic communication service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in an adverse result.

Sec. 18. Section 86-2,112, Reissue Revised Statutes of Nebraska, is amended to read:

86-2,112 (1) The Attorney General or any county attorney may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of records including books, papers, documents, and tangible things which constitute or contain evidence relevant or material to the investigation or enforcement of the laws of this state when it reasonably appears that such action is necessary and proper. The attendance of witnesses and the production of records shall be required from any place within the State of Nebraska, and service of subpoenas may be made upon any publicly or privately held corporation, partnership, or other legal entity located within or outside the State of Nebraska. Witnesses summoned by the Attorney General or a county attorney shall be paid the same fees that are paid witnesses in the courts of the State of Nebraska and mileage at the rate provided in section 81-1176.

(2) The Attorney General or a county attorney may apply to a court for an order commanding the person or entity to which a subpoena is directed not to notify any other person of the existence of the subpoena. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the subpoena will result in an adverse result, as such term is defined in section 86-2,108.

Sec. 19. (1)(a) In addition to any other civil or criminal penalties provided by law, any property used in the commission of a violation of section 28-831 may be forfeited through a civil proceeding as provided in this section.

(b) The following property shall be subject to civil forfeiture if used or intended for use as an instrumentality in or used in furtherance of a violation of section 28-831:

(i) Conveyances, including aircraft, vehicles, or vessels;
(ii) Books, records, telecommunication equipment, or computers;
(iii) Money or weapons;
(iv) Everything of value furnished, or intended to be furnished, in exchange for an act in violation and all proceeds traceable to the exchange;
(v) Negotiable instruments and securities;
(vi) Any property, real or personal, directly or indirectly acquired or received in a violation or as an inducement to violate;
(vii) Any property traceable to proceeds from a violation; and
(viii) Any real property, including any right, title, and interest in the whole of or any part of any lot or tract of land, used in furtherance of a violation of section 28-831.

(c)(i) No property used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the property is a consenting party or privy to a violation of section 28-831.

(ii) No property is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his or her knowledge or consent. If the confiscating authority has reason to believe that the property is leased or rented property, then the confiscating authority shall notify the owner of the property within five days after the confiscation or within five days after forming reason to believe that the property is leased or rented property.

(iii) Forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if such party neither had knowledge of nor consented to the act or omission.

(2) No property shall be forfeited under this section, to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without his or her knowledge or consent.

(3) Seizure without process may be made if the seizure is incident to an arrest or a search under a search warrant.

(4)(a) When any property is seized under this section, proceedings shall be instituted within a reasonable period of time from the date of seizure or the subject property shall be immediately returned to the party from whom seized.

(b) A petition for forfeiture shall be filed by the Attorney General or a county attorney in the name of the State of Nebraska and may be filed in the county in which the seizure is made, the county in which the criminal prosecution is brought, or the county in which the owner of the seized property is found. Forfeiture proceedings may be brought in the district court or the county court. A copy of the petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(i) The owner of the property if the owner's address is known;

(ii) Any secured party who has registered a lien or filed a financing statement as provided by law if the identity of the secured party can be ascertained by the entity filing the petition by making a good faith effort to ascertain the identity of the secured party;

(iii) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the seizing law enforcement agency has actual knowledge; and

(iv) Any person in possession of property subject to forfeiture at the time that it was seized.

(5) If the property is a motor vehicle subject to titling under the Motor Vehicle Certificate of Title Act or a vessel subject to titling under the State Boat Act, and if there is any reasonable cause to believe that the motor vehicle or vessel has been titled, inquiry of the Department of Motor Vehicles shall be made as to what the records of the department show as to who is the record owner of the motor vehicle or vessel and who, if anyone, holds any lien or security interest that affects the motor vehicle or vessel.

(6) If the property is a motor vehicle or vessel and is not titled in the State of Nebraska, then an attempt shall be made to ascertain the name and address of the person in whose name the motor vehicle or vessel is licensed, and if the motor vehicle or vessel is licensed in a state which has in effect a certificate of title law, inquiry of the appropriate agency of that state shall be made as to what the records of the agency show as to who is the record owner of the motor vehicle or vessel and who, if anyone, holds any lien, security interest, or other instrument in the nature of a security device that affects the motor vehicle or vessel.

(7) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, inquiry shall be made as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(8) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, inquiry shall be made as to what the records of the Federal Aviation Administration show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(9) If the answer to an inquiry states that the record owner of the

property is any person other than the person who was in possession of it when it was seized or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage, or deed of trust that affects the property, the record owner and also any lienholder, secured party, other person who holds an interest in the property in the nature of a security interest, or holder of an encumbrance, mortgage, or deed of trust that affects the property is to be named in the petition of forfeiture and is to be served with process in the same manner as in civil cases.

(10) If the owner of the property cannot be found and served with a copy of the petition of forfeiture or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, there shall be filed with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of, " filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall be completed in the same manner as is provided in the code of civil procedure for the service of process in civil actions in the district courts of this state.

(11) No proceedings instituted pursuant to this section shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by this section shall be introduced into evidence at the hearing.

(12)(a) An owner of property that has been seized shall file an answer within thirty days after the completion of service of process. If an answer is not filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the seizing law enforcement agency. If an answer is filed, a time for hearing on forfeiture shall be set within thirty days after filing the answer or at the succeeding term of court if court would not be in session within thirty days after filing the answer. The court may postpone the forfeiture hearing to a date past the time any criminal action is pending against the owner upon request of any party.

(b) If the owner of the property has filed an answer denying that the property is subject to forfeiture, then the burden is on the petitioner to prove that the property is subject to forfeiture. However, if an answer has not been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture. The burden of proof placed upon the petitioner in regard to property forfeited under this section shall be by a preponderance of the evidence.

(c) At the hearing any claimant of any right, title, or interest in the property may prove his or her lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage, or deed of trust to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(d) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property. However, if proof at the hearing discloses that the interest of any bona fide lienholder, any secured party, any other person holding an interest in the property in the nature of a security interest, or any holder of a bona fide encumbrance, mortgage, or deed of trust is greater than or equal to the present value of the property, the court shall order the property released to him or her. If the interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited.

(13) Unless otherwise provided in this section, all personal property which is forfeited under this section shall be liquidated and, after deduction of court costs and the expense of liquidation, the proceeds shall be remitted to the county treasurer of the county in which the seizure was made. The county treasurer shall remit all such proceeds from property forfeited pursuant to this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(14) All money forfeited under this section shall be remitted in the same manner as provided in subsection (13) of this section.

(15) All real estate forfeited under this section shall be sold to the highest bidder at a public auction for cash, the auction to be conducted by the county sheriff or his or her designee at such place, on such notice, and in accordance with the same procedure, as far as practicable, as is required in the case of sales of land under execution at law. The proceeds of the sale shall first be applied to the cost and expense in administering and conducting the sale, then to the satisfaction of all mortgages, deeds of trust, liens, and encumbrances of record on the property. The remaining proceeds shall be remitted in the same manner as provided in subsection (13) of this section.

(16) The civil forfeiture procedure set forth in this section is the sole remedy of any claimant, and no court shall have jurisdiction to interfere therewith by replevin, by injunction, by supersedeas, or by any other manner.

Sec. 20. The Human Trafficking Victim Assistance Fund is created. The fund shall contain money donated as gifts, bequests, or other contributions from public or private entities. Funds made available by any department or agency of the United States may also be credited to the fund if so directed by such department or agency. The fund shall be administered by the Nebraska Commission on Law Enforcement and Criminal Justice. All money credited to such fund shall be used to support care, treatment, and other services for victims

of human trafficking and commercial sexual exploitation of a child. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 21. Sections 6, 22, and 25 of this act become operative on January 1, 2017. Sections 12 and 23 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 22. Original section 21-2,212, Revised Statutes Cumulative Supplement, 2014, is repealed.

Sec. 23. Original section 28-831, Revised Statutes Cumulative Supplement, 2014, is repealed.

Sec. 24. Original sections 21-20,177, 29-812, 29-815, 86-2,108, and 86-2,112, Reissue Revised Statutes of Nebraska, and sections 27-413, 28-801.01, 28-802, 28-804, 43-250, and 43-1303, Revised Statutes Cumulative Supplement, 2014, are repealed.

Sec. 25. The following section is outright repealed: Section 21-20,177, Reissue Revised Statutes of Nebraska, as amended by this legislative bill.

Sec. 26. Since an emergency exists, this act takes effect when passed and approved according to law.