

LEGISLATIVE BILL 934

Approved by the Governor April 18, 2016

Introduced by Coash, 27.

A BILL FOR AN ACT relating to public health and safety; to amend sections 28-371, 30-2222, 30-2636, and 83-174.02, Reissue Revised Statutes of Nebraska, sections 28-348, 28-350, 28-358, 28-374, 28-386, 29-110, 29-4003, 29-4103, 30-2601, 30-4103, 30-4104, 30-4115, and 30-4116, Revised Statutes Cumulative Supplement, 2014, and sections 28-101, 30-2201, and 30-2619, Revised Statutes Supplement, 2015; to change provisions relating to vulnerable adults and senior adults under the Adult Protective Services Act; to define and redefine terms; to change the statute of limitations for knowing and intentional abuse, neglect, or exploitation of a vulnerable adult; to change penalty provisions; to provide qualification requirements, powers, duties, and limitations for guardians ad litem in guardianship, conservatorship, and other protective proceedings; to state legislative findings; to require reports; to allow payment for costs of evaluations; to change provisions relating to the Public Guardianship Act; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

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

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

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

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

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

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

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

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

Sec. 5. (1) Isolation means intentional acts (a) committed for the purpose of preventing, and which do prevent, a vulnerable adult or senior adult from having contact with family, friends, or concerned persons, (b) committed to prevent a vulnerable adult or senior adult from receiving his or her mail or telephone calls, (c) of physical or chemical restraint of a vulnerable adult or senior adult committed for purposes of preventing contact with visitors, family, friends, or other concerned persons, or (d) which restrict, place, or confine a vulnerable adult or senior adult in a restricted area for purposes of social deprivation or preventing contact with family, friends, visitors, or other concerned persons.

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

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

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

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

Sec. 8. Section 28-374, Revised Statutes Cumulative Supplement, 2014, is amended to read:

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

(2) In each case of alleged abuse, neglect, or exploitation, the

department may make a request for further assistance from the appropriate law enforcement agency or initiate such action as may be appropriate under the circumstances.

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

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

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

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

- (a) Physically injured;
- (b) Unreasonably confined;
- (c) Sexually abused;
- (d) Exploited;
- (e) Cruelly punished;
- (f) Neglected; or
- (g) Sexually exploited.

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

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

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

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

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

(4) No person shall be prosecuted for a violation of the Securities Act of Nebraska under section 8-1117 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

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

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

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

(8) There shall not be any time limitations for prosecution or punishment for treason, murder, arson, forgery, sexual assault in the first or second degree under section 28-319 or 28-320, sexual assault of a child in the second or third degree under section 28-320.01, incest under section 28-703, or

sexual assault of a child in the first degree under section 28-319.01; nor shall there be any time limitations for prosecution or punishment for sexual assault in the third degree under section 28-320 when the victim is under sixteen years of age at the time of the offense.

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

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

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

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

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

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

(15 14) The changes made to this section by Laws 2009, LB 97, and Laws 2006, LB 1199, shall apply to offenses committed prior to May 21, 2009, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

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

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

Sec. 11. Section 29-4003, Revised Statutes Cumulative Supplement, 2014, is amended to read:

29-4003 (1)(a) The Sex Offender Registration Act applies to any person who on or after January 1, 1997:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(A) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense in this section;

(B) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(C) Sexual assault pursuant to section 28-319 or 28-320;

(D) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(E) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(F) Sexual abuse of a vulnerable adult or senior adult pursuant to subdivision (1)(c) of section 28-386;

(G) Incest of a minor pursuant to section 28-703;

(H) Pandering of a minor pursuant to section 28-802;

(I) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(J) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to section 28-813.01;

(K) Criminal child enticement pursuant to section 28-311;

(L) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(M) Debauching a minor pursuant to section 28-805; or

(N) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A) through (1)(a)(i)(M) of this section;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(a)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(iii) Is incarcerated in a jail, a penal or correctional facility, or any other public or private institution or is under probation or parole as a result of pleading guilty to or being found guilty of a registrable offense under subdivision (1)(a)(i) or (ii) of this section prior to January 1, 1997; or

(iv) Enters the state and is required to register as a sex offender under

the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(b) In addition to the registrable offenses under subdivision (1)(a) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2010:

(i)(A) Except as provided in subdivision (1)(b)(i)(B) of this section, has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

- (I) Murder in the first degree pursuant to section 28-303;
- (II) Murder in the second degree pursuant to section 28-304;
- (III) Manslaughter pursuant to section 28-305;
- (IV) Assault in the first degree pursuant to section 28-308;
- (V) Assault in the second degree pursuant to section 28-309;
- (VI) Assault in the third degree pursuant to section 28-310;
- (VII) Stalking pursuant to section 28-311.03;
- (VIII) Violation of section 28-311.08 requiring registration under the act pursuant to subsection (5) of section 28-311.08;
- (IX) Kidnapping pursuant to section 28-313;
- (X) False imprisonment pursuant to section 28-314 or 28-315;
- (XI) Sexual abuse of an inmate or parolee in the first degree pursuant to section 28-322.02;
- (XII) Sexual abuse of an inmate or parolee in the second degree pursuant to section 28-322.03;
- (XIII) Sexual abuse of a protected individual pursuant to section 28-322.04;
- (XIV) Incest pursuant to section 28-703;
- (XV) Child abuse pursuant to subdivision (1)(d) or (e) of section 28-707;
- (XVI) Enticement by electronic communication device pursuant to section 28-833; or
- (XVII) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this section.

(B) In order for the Sex Offender Registration Act to apply to the offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V), (VI), (VII), (IX), and (X) of this section, a court shall have found that evidence of sexual penetration or sexual contact, as those terms are defined in section 28-318, was present in the record, which shall include consideration of the factual basis for a plea-based conviction and information contained in the presentence report;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(b)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon; or

(iii) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(2) A person appealing a conviction of a registrable offense under this section shall be required to comply with the act during the appeals process.

Sec. 12. Section 29-4103, Revised Statutes Cumulative Supplement, 2014, is amended to read:

29-4103 For purposes of the DNA Identification Information Act:

(1) Combined DNA Index System means the Federal Bureau of Investigation's national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories;

(2) DNA means deoxyribonucleic acid which is located in the cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification;

(3) DNA record means the DNA identification information stored in the State DNA Data Base or the Combined DNA Index System which is derived from DNA typing test results;

(4) DNA sample means a blood, tissue, or bodily fluid sample provided by any person covered by the DNA Identification Information Act for analysis or storage, or both;

(5) DNA typing tests means the laboratory procedures which evaluate the characteristics of a DNA sample which are of value in establishing the identity of an individual;

(6) Law enforcement agency includes a police department, a town marshal, a county sheriff, and the Nebraska State Patrol;

(7) Other specified offense means misdemeanor stalking pursuant to sections 28-311.02 to 28-311.05 or false imprisonment in the second degree pursuant to section 28-315 or an attempt, conspiracy, or solicitation to commit stalking pursuant to sections 28-311.02 to 28-311.05, false imprisonment in the first degree pursuant to section 28-314, false imprisonment in the second degree pursuant to section 28-315, knowing and intentional sexual abuse of a vulnerable adult or senior adult pursuant to subdivision (1)(c) of section 28-386, or a violation of the Sex Offender Registration Act pursuant to section 29-4011; and

(8) Released means any release, parole, furlough, work release, prerelease, or release in any other manner from a prison, a jail, or any other

detention facility or institution.

Sec. 13. Section 30-2201, Revised Statutes Supplement, 2015, is amended to read:

30-2201 Sections 30-401 to 30-406, 30-2201 to 30-2902, 30-3901 to 30-3923, and 30-4001 to 30-4045, sections 14 to 23 of this act, and the Public Guardianship Act shall be known and may be cited as the Nebraska Probate Code.

Sec. 14. The Legislature finds that it is in the best interests of persons under disability and the public for the authorities and responsibilities of a guardian ad litem to be expanded to include an objective investigation and assessment of the needs of a person who comes before the court in any guardianship, conservatorship, or other protective proceeding to ensure the protection of the rights of the person who is the subject of the proceeding. The Legislature also finds that the public is benefited from having trustworthy and competent guardians and conservators appointed for incapacitated persons, wards, protected persons, and minors.

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

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

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

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

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

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

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

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

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

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

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

(f) Defend the social, economic, and safety interests of such person. For purposes of this subdivision, (i) social interest means the logical and practical expectations a person has who is the object of a guardianship, conservatorship, or other protective proceeding based on the guardian ad litem's objective and independent assessment of the person's situation, including economic, social, mental, physical, emotional, and other relevant factors, (ii) economic interest means what a reasonable person would consider to be prudent given the situation of the person who is the object of the guardianship, conservatorship, or other protective proceeding, and (iii) safety interest means what a reasonable person would consider safe given the mental, physical, and emotional situation of the person who is the object of a guardianship, conservatorship or other protective proceeding.

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

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

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

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

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

Sec. 17. The guardian ad litem may obtain, informally or by subpoena, the following information regarding the person for whom the guardian ad litem has been appointed: (1) A report from any medical provider, provider of

psychological services, law enforcement, adult protective services agency, or financial institution; and (2) any account or record of any business, corporation, partnership, or other business entity which such person owns or in which such person has an interest. Any material obtained by a guardian ad litem pursuant to this section is admissible in evidence.

Sec. 18. (1) The guardian ad litem shall make recommendations to the court regarding a temporary or permanent guardianship, conservatorship, or other protective order. The report shall be in writing and provided to the court at least one week prior to the hearing date. A copy of the report shall be provided to all interested persons.

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

Sec. 19. (1) In carrying out his or her powers and duties as a guardian ad litem, the guardian ad litem shall consider any information that is warranted by the nature and circumstances of each guardianship, conservatorship, or other protective proceeding.

(2) The guardian ad litem may petition the court for an order to (a) inspect documents, in physical or electronic form, pertaining to the person who is the subject of the guardianship, conservatorship, or other protective proceeding that are in the possession of a corporation, financial institution, health care provider, or business entity, or (b) visit any person who may provide relevant information about the person who is the subject of the guardianship, conservatorship, or other protective proceeding.

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

Sec. 20. The guardian ad litem may file a petition and any other motion the guardian ad litem deems to be in the best interests of the person for whom the guardian ad litem has been appointed.

Sec. 21. A guardian ad litem shall not have indirect or direct physical control over a person for whom the guardian ad litem has been appointed. A guardian ad litem shall not have indirect or direct control over the property or affairs of a person for whom the guardian ad litem has been appointed.

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

Sec. 23. The court may order the cost of any evaluation as provided in section 16 of this act to be paid by the county where the guardianship, conservatorship, or other protective proceeding is brought, or the court may, after notice and a hearing, assess the cost of any such evaluation, in whole or in part, to the person who is the subject of the guardianship, conservatorship, or other protective proceeding. The court shall determine the ability of such person to pay and the amount of the payment.

Sec. 24. Section 30-2222, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

(3) Notice is required as follows:

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

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

(4) At any point in a proceeding, a court may appoint a guardian ad litem as provided in sections 14 to 23 of this act to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

Sec. 25. Section 30-2601, Revised Statutes Cumulative Supplement, 2014, is amended to read:

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

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

(2) A protective proceeding is a proceeding under the provisions of section 30-2630 to determine that a person cannot effectively manage or apply his or her estate to necessary ends, either because the person lacks the ability or is otherwise inconvenienced, or because the person is a minor, and to secure administration of the person's estate by a conservator or other appropriate relief;

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

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

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

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

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

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

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

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

(11) Guardian ad litem means an attorney appointed by the court in a guardianship, conservatorship, or other protective proceeding pursuant to sections 14 to 23 of this act to represent the interests of a person who has been alleged to be incapacitated, ward, person to be protected, or minor.

Sec. 26. Section 30-2619, Revised Statutes Supplement, 2015, is amended to read:

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

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the person alleged to be incapacitated has retained counsel of his or her own choice or has otherwise indicated a desire for an attorney of his or her own choice, the court may appoint an attorney to represent him or her in the proceeding. The court may appoint a guardian ad litem as provided in sections 14 to 23 of this act to advocate for the best interests of the person alleged to be incapacitated.

(c) The person alleged to be incapacitated may be examined by a physician

appointed by the court. The physician shall submit his or her report in writing to the court and may be interviewed by a visitor, if so appointed pursuant to sections 30-2619.01 and 30-2624, sent by the court.

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

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

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

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

30-2636 (a) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may appoint an attorney to represent the minor, giving consideration to the choice of the minor if he or she is fourteen years of age or older. A lawyer appointed by the court to represent a minor as provided in sections 14 to 23 of this act has the powers and duties of a guardian ad litem.

(b) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of his or her own choice, the court may appoint an attorney to represent him or her in the proceeding. The court may appoint a guardian ad litem as provided in sections 14 to 23 of this act to advocate for the best interests of the person to be protected. If the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

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

Sec. 28. Section 30-4103, Revised Statutes Cumulative Supplement, 2014, is amended to read:

30-4103 For purposes of the Public Guardianship Act:

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

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

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

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

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

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

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

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

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

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

Sec. 29. Section 30-4104, Revised Statutes Cumulative Supplement, 2014, is amended to read:

30-4104 (1) The office is created within the judicial branch of government and is directly responsible to the State Court Administrator. The State Court Administrator shall appoint a director of the office who shall be known as the Public Guardian. The Public Guardian shall be an attorney licensed to practice law in Nebraska, shall be hired based on a broad knowledge of human development, intellectual disabilities, sociology, and psychology, and shall have business acuity and experience in public education and volunteer

recruitment. ~~The Public Guardian shall hire a deputy public guardian and up to twelve associate public guardians who shall serve at the pleasure of the Public Guardian and perform such duties as assigned by the Public Guardian.~~

(2) The Public Guardian shall hire a multidisciplinary team of professionals to fulfill the responsibilities of the Public Guardianship Act. The multidisciplinary team shall include a deputy public guardian and may include one or more associate public guardian legal counsel, associate public guardians, administrative personnel, and any other personnel the Public Guardian deems appropriate. In addition, the Public Guardian may hire support staff as required. The multidisciplinary team may include professionals trained in law, health care, social work, education, business, accounting, administration, geriatrics, psychology, or other specialties with experience working with individuals with dementia, developmental disabilities, chronic and acute medical needs, mental health issues, substance abuse, or other conditions that are served by the Public Guardian.

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

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

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

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

30-4115 (1)(a) The office shall maintain the appropriate personnel and workload scope necessary to fulfill all its responsibilities and duties under the Public Guardianship Act.

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

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

(i) Identified needs of the service population;

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

(iii) Size of the geographical area covered;

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

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

(vi) Organizational responsibilities; and

(vii) Applicable legal requirements.

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

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

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

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

(2) The Public Guardian shall:

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

(b) Not file petitions for guardianships or conservatorships. After being appointed in a case, the Public Guardian may file a motion for termination, a motion for modification, or take any other legal action required to fulfill the

duties and responsibilities of a guardian or conservator in accordance with the Public Guardianship Act;

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

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

Sec. 32. Section 83-174.02, Reissue Revised Statutes of Nebraska, is amended to read:

83-174.02 (1) The Department of Correctional Services shall order an evaluation of the following individuals by a mental health professional to determine whether or not the individual is a dangerous sex offender:

(a) Individuals who have been convicted of (i) sexual assault of a child in the first degree pursuant to section 28-319.01 or (ii) sexual assault in the first degree pursuant to section 28-319;

(b) Individuals who have been convicted of two or more offenses requiring registration as a sex offender under section 29-4003 if one of the convictions was for any of the following offenses: (i) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense; (ii) sexual assault in the first degree pursuant to section 28-319 or sexual assault in the second degree pursuant to section 28-320; (iii) sexual assault of a child pursuant to section 28-320.01; (iv) sexual assault of a child in the first degree pursuant to section 28-319.01; (v) sexual assault of a child in the second or third degree pursuant to section 28-320.01; (vi) sexual assault of a vulnerable adult or senior adult pursuant to subdivision (1)(c) of section 28-386; (vii) incest of a minor pursuant to section 28-703; (viii) visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03; or (ix) any offense that is substantially equivalent to an offense listed in this section by any state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, or by court-martial or other military tribunal, notwithstanding a procedure comparable in effect to that described in section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(c) Individuals convicted of a sex offense against a minor who have refused to participate in or failed to successfully complete the sex offender treatment program offered by the Department of Correctional Services or the Department of Health and Human Services during the term of incarceration. The failure to successfully complete a treatment program due to time constraints or the unavailability of treatment programming shall not constitute a refusal to participate in treatment; and

(d) Individuals convicted of failure to comply with the registration requirements of the Sex Offender Registration Act who have previously been convicted for failure to comply with the registration requirements of the act or a similar registration requirement in another state.

(2) The evaluation required by this section shall be ordered at least one hundred eighty days before the scheduled release of the individual. Upon completion of the evaluation, and not later than one hundred fifty days prior to the scheduled release of the individual, the department shall send written notice to the Attorney General, the county attorney of the county where the offender is incarcerated, and the prosecuting county attorney. The notice shall contain an affidavit of the mental health professional describing his or her findings with respect to whether or not the individual is a dangerous sex offender.

Sec. 33. Original sections 28-371, 30-2222, 30-2636, and 83-174.02, Reissue Revised Statutes of Nebraska, sections 28-348, 28-350, 28-358, 28-374, 28-386, 29-110, 29-4003, 29-4103, 30-2601, 30-4103, 30-4104, 30-4115, and 30-4116, Revised Statutes Cumulative Supplement, 2014, and sections 28-101, 30-2201, and 30-2619, Revised Statutes Supplement, 2015, are repealed.

Sec. 34. Since an emergency exists, this act takes effect when passed and approved according to law.