

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1048

Introduced by Quick, 35; Cavanaugh, 6; Hansen, M., 26; McCollister, 20;
McDonnell, 5; Pansing Brooks, 28.

Read first time January 16, 2020

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to child abuse or neglect; to amend section
- 2 28-713.01, Reissue Revised Statutes of Nebraska, and sections 28-710
- 3 and 28-713, Revised Statutes Supplement, 2019; to provide for
- 4 notification regarding child abuse or neglect to the Commissioner of
- 5 Education when the subject is a school employee; to define terms; to
- 6 create the offense of sexual assault by a school employee; to
- 7 provide penalties; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-710, Revised Statutes Supplement, 2019, is
2 amended to read:

3 28-710 (1) Sections 28-710 to 28-727 shall be known and may be cited
4 as the Child Protection and Family Safety Act.

5 (2) For purposes of the Child Protection and Family Safety Act:

6 (a) Alternative response means a comprehensive assessment of (i)
7 child safety, (ii) the risk of future child abuse or neglect, (iii)
8 family strengths and needs, and (iv) the provision of or referral for
9 necessary services and support. Alternative response is an alternative to
10 traditional response and does not include an investigation or a formal
11 determination as to whether child abuse or neglect has occurred, and the
12 subject of the report shall not be entered into the central registry of
13 child protection cases maintained pursuant to section 28-718;

14 (b) Child abuse or neglect means knowingly, intentionally, or
15 negligently causing or permitting a minor child to be:

16 (i) Placed in a situation that endangers his or her life or physical
17 or mental health;

18 (ii) Cruelly confined or cruelly punished;

19 (iii) Deprived of necessary food, clothing, shelter, or care;

20 (iv) Left unattended in a motor vehicle if such minor child is six
21 years of age or younger;

22 (v) Placed in a situation to be sexually abused;

23 (vi) Placed in a situation to be sexually exploited through sex
24 trafficking of a minor as defined in section 28-830 or by allowing,
25 encouraging, or forcing such person to engage in debauchery, public
26 indecency, or obscene or pornographic photography, films, or depictions;
27 or

28 (vii) Placed in a situation to be a trafficking victim as defined in
29 section 28-830;

30 (c) Comprehensive assessment means an analysis of child safety, risk
31 of future child abuse or neglect, and family strengths and needs on a

1 report of child abuse or neglect. Comprehensive assessment does not
2 include a determination as to whether the child abuse or neglect occurred
3 but does determine the need for services and support to address the
4 safety of children and the risk of future abuse or neglect;

5 (d) Department means the Department of Health and Human Services;

6 (e) Investigation means fact gathering related to the current safety
7 of a child and the risk of future child abuse or neglect that determines
8 whether child abuse or neglect has occurred and whether child protective
9 services are needed;

10 (f) Law enforcement agency means the police department or town
11 marshal in incorporated municipalities, the office of the sheriff in
12 unincorporated areas, and the Nebraska State Patrol;

13 (g) Out-of-home child abuse or neglect means child abuse or neglect
14 occurring outside of a child's family home, including in day care homes,
15 foster homes, day care centers, residential child-caring agencies as
16 defined in section 71-1926, other child care facilities or institutions,
17 and the community. Out-of-home child abuse or neglect also includes cases
18 in which the subject of the report of child abuse or neglect is not a
19 member of the child's household, no longer has access to the child, is
20 unknown, or cannot be identified;

21 (h) Review, Evaluate, and Decide Team means an internal team of
22 staff within the department and shall include no fewer than two
23 supervisors or administrators and two staff members knowledgeable on the
24 policies and practices of the department, including, but not limited to,
25 the structured review process. County attorneys, child advocacy centers,
26 or law enforcement agency personnel may attend team reviews upon request
27 of a party;

28 (i) School employee means a person who is employed by or who
29 performs services as a volunteer for a public, private, denominational,
30 or parochial school approved or accredited by the State Department of
31 Education;

1 (j) Student means a person currently enrolled in or attending a
2 public, private, denominational, or parochial school approved or
3 accredited by the State Department of Education, or who was a student
4 enrolled in or who attended such a school within thirty days of any
5 violation of section 4 of this act;

6 (k) (i) Traditional response means an investigation by a law
7 enforcement agency or the department pursuant to section 28-713 which
8 requires a formal determination of whether child abuse or neglect has
9 occurred; and

10 (l) (j) Subject of the report of child abuse or neglect or subject
11 of the report means the person or persons identified in the report as
12 responsible for the child abuse or neglect.

13 Sec. 2. Section 28-713, Revised Statutes Supplement, 2019, is
14 amended to read:

15 28-713 (1) Unless an intake is assigned to alternative response,
16 upon the receipt of a call reporting child abuse and neglect as required
17 by section 28-711:

18 (a) It is the duty of the law enforcement agency to investigate the
19 report, to take immediate steps to protect the child, and to institute
20 legal proceedings if appropriate. In situations of alleged out-of-home
21 child abuse or neglect if the person or persons to be notified have not
22 already been notified and the person to be notified is not the subject of
23 the report of child abuse or neglect, the law enforcement agency shall
24 immediately notify the person or persons having custody of each child who
25 has allegedly been abused or neglected that such report of alleged child
26 abuse or neglect has been made and shall provide such person or persons
27 with information of the nature of the alleged child abuse or neglect. The
28 law enforcement agency may request assistance from the department during
29 the investigation and shall, by the next working day, notify either the
30 hotline or the department of receipt of the report, including whether or
31 not an investigation is being undertaken by the law enforcement agency. A

1 copy of all reports, whether or not an investigation is being undertaken,
2 shall be provided to the department;

3 (b) In situations of alleged out-of-home child abuse or neglect if
4 the person or persons to be notified have not already been notified and
5 the person to be notified is not the subject of the report of child abuse
6 or neglect, the department shall immediately notify the person or persons
7 having custody of each child who has allegedly been abused or neglected
8 that such report of alleged child abuse or neglect has been made and
9 shall provide such person or persons with information of the nature of
10 the alleged child abuse or neglect and any other information that the
11 department deems necessary. The department shall investigate for the
12 purpose of assessing each report of child abuse or neglect to determine
13 the risk of harm to the child involved. The department shall also provide
14 such social services as are necessary and appropriate under the
15 circumstances to protect and assist the child and to preserve the family;

16 (c) In situations of alleged out-of-home child abuse or neglect, if
17 the subject of the report of child abuse or neglect is a school employee
18 and the child is a student in the school to which such school employee is
19 assigned for work, the Department of Health and Human Services shall
20 immediately notify the Commissioner of Education of receipt of the
21 report, including whether or not an investigation is being undertaken by
22 the law enforcement agency or the Department of Health and Human
23 Services;

24 (d) ~~(c)~~ The department may make a request for further assistance
25 from the appropriate law enforcement agency or take such legal action as
26 may be appropriate under the circumstances;

27 (e) ~~(d)~~ The department shall, by the next working day after
28 receiving a report of child abuse or neglect under this subsection of
29 this section, make a written report or a summary on forms provided by the
30 department to the proper law enforcement agency in the county and enter
31 in the tracking system of child protection cases maintained pursuant to

1 section 28-715 all reports of child abuse or neglect opened for
2 investigation and any action taken; and

3 (f) ~~(e)~~ The department shall, upon request, make available to the
4 appropriate investigating law enforcement agency and the county attorney
5 a copy of all reports relative to a case of suspected child abuse or
6 neglect.

7 (2)(a) In addition to the responsibilities under subsection (1) of
8 this section, upon the receipt of any report that a child is a reported
9 or suspected victim of sex trafficking of a minor or labor trafficking of
10 a minor as defined in section 28-830 and without regard to the subject of
11 the report, the department shall:

12 (i) Assign the case to staff for an in-person investigation. The
13 department shall assign a report for investigation regardless of whether
14 or not the subject of the report is a member of the child's household or
15 family or whether the subject is known or unknown, including cases of
16 out-of-home child abuse and neglect;

17 (ii) Conduct an in-person investigation and appropriately coordinate
18 with law enforcement agencies, the local child advocacy center, and the
19 child abuse and neglect investigation team under section 28-729;

20 (iii) Use specialized screening and assessment instruments to
21 identify whether the child is a victim of sex trafficking of a minor or
22 labor trafficking of a minor or at high risk of becoming such a victim
23 and determine the needs of the child and family to prevent or respond to
24 abuse, neglect, and exploitation. On or before December 1, 2019, the
25 department shall develop and adopt these instruments in consultation with
26 knowledgeable organizations and individuals, including representatives of
27 child advocacy centers, behavioral health providers, child welfare and
28 juvenile justice service providers, law enforcement representatives, and
29 prosecutors; and

30 (iv) Provide for or refer and connect the child and family to
31 services deemed appropriate by the department in the least restrictive

1 environment, or provide for safe and appropriate placement, medical
2 services, mental health care, or other needs as determined by the
3 department based upon the department's assessment of the safety, risk,
4 and needs of the child and family to respond to or prevent abuse,
5 neglect, and exploitation.

6 (b) On or before July 1, 2020, the department shall adopt rules and
7 regulations on the process of investigation, screening, and assessment of
8 reports of child abuse or neglect and the criteria for opening an ongoing
9 case upon allegations of sex trafficking of a minor or labor trafficking
10 of a minor.

11 (3) When a preponderance of the evidence indicates that a child is a
12 victim of abuse or neglect as a result of being a trafficking victim as
13 defined in section 28-830, the department shall identify the child as a
14 victim of trafficking, regardless of whether the subject of the report is
15 a member of the child's household or family or whether the subject is
16 known or unknown. The child shall be included in the department's data
17 and reporting on the numbers of child victims of abuse, neglect, and
18 trafficking.

19 Sec. 3. Section 28-713.01, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 28-713.01 (1) Upon completion of the investigation pursuant to
22 section 28-713:

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

29 (b) The subject of the report of child abuse or neglect shall be
30 given written notice of the determination of the case and whether the
31 subject of the report of child abuse or neglect will be entered into the

1 central registry of child protection cases maintained pursuant to section
2 28-718 under the criteria provided in section 28-720; and -

3 (c) If the subject of the report of child abuse or neglect is a
4 school employee and the child is a student in the school to which such
5 school employee is assigned for work, the notice of the determination of
6 the case to the subject shall also be sent to the Commissioner of
7 Education.

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

12 (a) The nature of the report;

13 (b) The classification of the report under section 28-720;

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

18 (d) If the subject of the report of child abuse or neglect is a
19 minor child who is twelve years of age or older but younger than nineteen
20 years of age:

21 (i) Notification of the mandatory expungement hearing to be held
22 according to section 28-721, a waiver form to waive the hearing, and an
23 explanation of the hearing process;

24 (ii) An explanation of the implications of being entered in the
25 central registry as a subject;

26 (iii) Notification of any other procedures determined appropriate in
27 rules and regulations adopted and promulgated by the department; and

28 (iv) Provision of a copy of all notice materials required to be
29 provided to the subject under this subsection to the minor child's
30 attorney of record, parent or guardian, and guardian ad litem, if
31 applicable.

1 (3) If the subject of the report will not be entered into the
2 central registry, the notice to the subject shall be sent by first-class
3 mail and shall include:

4 (a) The nature of the report; and

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

6 Sec. 4. (1) For purposes of this section:

7 (a) School employee means a person who is employed by or who
8 performs services as a volunteer for a public, private, denominational,
9 or parochial school approved or accredited by the State Department of
10 Education; and

11 (b) Student means a person currently enrolled in or attending a
12 public, private, denominational, or parochial school approved or
13 accredited by the State Department of Education, or who was a student
14 enrolled in or who attended such a school within thirty days of any
15 violation of this section.

16 (2) A person commits the offense of sexual abuse by a school
17 employee if a school employee subjects a student to sexual penetration or
18 sexual contact, or engages in a pattern or practice or scheme of conduct
19 to subject a student to sexual penetration or sexual contact. It is not a
20 defense to a charge under this section that the student consented to such
21 sexual penetration or sexual contact.

22 (3) Any school employee who engages in sexual penetration with a
23 student is guilty of sexual abuse by a school employee in the first
24 degree. Sexual abuse by a school employee in the first degree is a Class
25 IIA felony.

26 (4) Any school employee who engages in sexual contact with a student
27 is guilty of sexual abuse by a school employee in the second degree.
28 Sexual abuse by a school employee in the second degree is a Class IIIA
29 felony.

30 (5) Any school employee who engages in a pattern or practice or
31 scheme of conduct to subject a student to sexual penetration or sexual

1 contact is guilty of sexual abuse by a school employee in the third
2 degree. Sexual abuse by a school employee in the third degree is a Class
3 IV felony.

4 Sec. 5. Original section 28-713.01, Reissue Revised Statutes of
5 Nebraska, and sections 28-710 and 28-713, Revised Statutes Supplement,
6 2019, are repealed.