

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1051**

Final Reading

Introduced by Coash, 27.

Read first time January 18, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to abuse and neglect; to amend sections 28-348,  
2 28-349, 28-350, 28-351, 28-352, 28-355, 28-358, 28-370,  
3 28-372, 28-373, 28-374, 28-386, 28-387, and 28-713.01,  
4 Reissue Revised Statutes of Nebraska, and section 28-376,  
5 Revised Statutes Cumulative Supplement, 2010; to define  
6 and redefine terms; to change provisions relating to  
7 reports of abuse, neglect, and exploitation investigated  
8 for the Adult Protective Services Central Registry and  
9 the central register of child protection cases; to  
10 harmonize provisions; and to repeal the original  
11 sections.

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

1           Section 1. Section 28-348, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-348 Sections 28-348 to 28-387 and sections 7, 8, and  
4 13 of this act shall be known and may be cited as the Adult  
5 Protective Services Act.

6           Sec. 2. Section 28-349, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           28-349 The Legislature recognizes the need for the  
9 investigation and provision of services to certain persons who are  
10 substantially impaired and are unable to protect themselves from  
11 abuse, neglect, or exploitation. Often such persons cannot find  
12 others able or willing to render assistance. The Legislature intends  
13 through the Adult Protective Services Act to establish a program  
14 designed to fill this need and to assure the availability of the  
15 program to all eligible persons. It is also the intent of the  
16 Legislature to authorize the least restriction possible on the  
17 exercise of personal and civil rights consistent with the person's  
18 need for services.

19           Sec. 3. Section 28-350, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           28-350 For purposes of the Adult Protective Services Act,  
22 unless the context otherwise requires, the definitions found in  
23 sections 28-351 to 28-371 and sections 7 and 8 of this act shall be  
24 used.

25           Sec. 4. Section 28-351, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           28-351 Abuse ~~shall mean~~ means any knowing, or  
3 intentional, ~~or negligent act or omission~~ on the part of a caregiver,  
4 ~~a vulnerable adult~~, or any other person which results in physical  
5 injury, unreasonable confinement, cruel punishment, sexual abuse, or  
6 sexual exploitation, ~~or denial of essential services to of a~~  
7 vulnerable adult.

8           Sec. 5. Section 28-352, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           28-352 Adult protective services ~~shall mean~~ means those  
11 services provided by the department for the prevention, correction,  
12 or discontinuance of abuse, neglect, or exploitation. Such services  
13 shall be those necessary and appropriate under the circumstances to  
14 protect an abused, neglected, or exploited vulnerable adult, ensure  
15 that the least restrictive alternative is provided, prevent further  
16 abuse, neglect, or exploitation, and promote self-care and  
17 independent living. Such services shall include, but not be limited  
18 to: (1) Receiving and investigating reports of alleged abuse,  
19 neglect, or exploitation; (2) developing social service plans; (3)  
20 arranging for the provision of services such as medical care, mental  
21 health care, legal services, fiscal management, housing, or home  
22 health care; (4) arranging for the provision of items such as food,  
23 clothing, or shelter; and (5) arranging or coordinating services for  
24 caregivers.

25           Sec. 6. Section 28-358, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           28-358 Exploitation ~~shall mean~~ means the taking of  
3 property of a vulnerable adult by any person by means of undue  
4 influence, breach of a fiduciary relationship, deception, or  
5 extortion or by any unlawful means.

6           Sec. 7. Section 28-355, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           ~~28-355 Denial of essential services shall mean that~~  
9 Neglect means any knowing or intentional act or omission on the part  
10 of a caregiver to provide essential services or the failure of a  
11 vulnerable adult, due to physical or mental impairments, to perform  
12 self-care or obtain essential services are denied or neglected to  
13 such an extent that there is actual physical injury to a vulnerable  
14 adult or imminent danger of the vulnerable adult suffering physical  
15 injury or death.

16           Sec. 8. Sexual exploitation includes, but is not limited  
17 to, unlawful intrusion as described in section 28-311.08 and causing,  
18 allowing, permitting, inflicting, or encouraging a vulnerable adult  
19 to engage in voyeurism, in exhibitionism, in prostitution, or in the  
20 lewd, obscene, or pornographic photographing, filming, or depiction  
21 of the vulnerable adult.

22           Sec. 9. Section 28-370, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           28-370 Unreasonable confinement ~~shall mean~~ means  
25 confinement which intentionally causes physical injury to a

1 vulnerable adult or false imprisonment as described in section 28-314  
2 or 28-315.

3           Sec. 10. Section 28-372, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           28-372 (1) When any physician, psychologist, physician  
6 assistant, nurse, nursing assistant, other medical, developmental  
7 disability, or mental health professional, law enforcement personnel,  
8 caregiver or employee of a caregiver, operator or employee of a  
9 sheltered workshop, owner, operator, or employee of any facility  
10 licensed by the department, or human services professional or  
11 paraprofessional not including a member of the clergy has reasonable  
12 cause to believe that a vulnerable adult has been subjected to abuse,  
13 neglect, or exploitation or observes such adult being subjected to  
14 conditions or circumstances which reasonably would result in abuse,  
15 neglect, or exploitation, he or she shall report the incident or  
16 cause a report to be made to the appropriate law enforcement agency  
17 or to the department. Any other person may report abuse, neglect, or  
18 exploitation if such person has reasonable cause to believe that a  
19 vulnerable adult has been subjected to abuse, neglect, or  
20 exploitation or observes such adult being subjected to conditions or  
21 circumstances which reasonably would result in abuse, neglect, or  
22 exploitation.

23           (2) Such report may be made by telephone, with the caller  
24 giving his or her name and address, and, if requested by the  
25 department, shall be followed by a written report within forty-eight

1 hours. To the extent available the report shall contain: (a) The  
2 name, address, and age of the vulnerable adult; (b) the address of  
3 the caregiver or caregivers of the vulnerable adult; (c) the nature  
4 and extent of the alleged abuse, neglect, or exploitation or the  
5 conditions and circumstances which would reasonably be expected to  
6 result in such abuse, neglect, or exploitation; (d) any evidence of  
7 previous abuse, neglect, or exploitation, including the nature and  
8 extent of the abuse, neglect, or exploitation; and (e) any other  
9 information which in the opinion of the person making the report may  
10 be helpful in establishing the cause of the alleged abuse, neglect,  
11 or exploitation and the identity of the perpetrator or perpetrators.

12 (3) Any law enforcement agency receiving a report of  
13 abuse, neglect, or exploitation shall notify the department no later  
14 than the next working day by telephone or mail.

15 (4) A report of abuse, neglect, or exploitation made to  
16 the department which was not previously made to or by a law  
17 enforcement agency shall be communicated to the appropriate law  
18 enforcement agency by the department no later than the next working  
19 day by telephone or mail.

20 (5) The department shall establish a statewide toll-free  
21 number to be used by any person any hour of the day or night and any  
22 day of the week to make reports of abuse, neglect, or exploitation.

23 Sec. 11. Section 28-373, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 28-373 (1) Upon the receipt of a report concerning abuse,

1 neglect, or exploitation pursuant to section 28-372, it shall be the  
2 duty of the law enforcement agency (a) to make an investigation if  
3 deemed warranted because of alleged violations of section 28-386, (b)  
4 to take immediate steps, if necessary, to protect the vulnerable  
5 adult, and (c) to institute legal proceedings if appropriate. The law  
6 enforcement agency shall notify the department if an investigation is  
7 undertaken. Such notification shall be made no later than the next  
8 working day following receipt of the report.

9 (2) The law enforcement agency shall make a written  
10 report or a case summary to the department of all investigated cases  
11 of abuse, neglect, or exploitation and action taken with respect to  
12 all such cases.

13 Sec. 12. Section 28-374, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 28-374 (1) The department shall investigate each case of  
16 alleged abuse, neglect, or exploitation and shall provide such adult  
17 protective services as are necessary and appropriate under the  
18 circumstances.

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

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

1 taken.

2 (4) The department shall deliver a written report or case  
3 summary to the appropriate county attorney if the investigation  
4 indicates a reasonable cause to believe that a violation of section  
5 28-386 has occurred.

6 Sec. 13. (1) Upon completion of the investigation  
7 pursuant to sections 28-373 and 28-374, the person who allegedly  
8 abused, neglected, or exploited a vulnerable adult shall be given  
9 written notice of the determination of the investigation and whether  
10 the person who allegedly abused, neglected, or exploited a vulnerable  
11 adult will be entered into the registry.

12 (2) If the person who allegedly abused, neglected, or  
13 exploited a vulnerable adult will be entered into the registry, the  
14 notice shall be sent by certified mail with return receipt requested  
15 or first-class mail to the last-known address of the person who  
16 allegedly abused, neglected, or exploited a vulnerable adult and  
17 shall include:

18 (a) The nature of the report;

19 (b) The classification of the report; and

20 (c) The right of the person who allegedly abused,  
21 neglected, or exploited a vulnerable adult to request the department  
22 to amend or expunge identifying information from the report or to  
23 remove the substantiated report from the registry in accordance with  
24 section 28-380.

25 (3) If the person who allegedly abused, neglected, or



1 exploited a vulnerable adult will not be entered into the registry,  
2 the notice shall be sent by first-class mail and shall include:

3 (a) The nature of the report; and

4 (b) The classification of the report.

5 Sec. 14. Section 28-376, Revised Statutes Cumulative  
6 Supplement, 2010, is amended to read:

7 28-376 (1) The department shall establish and maintain an  
8 Adult Protective Services Central Registry ~~for recording each report~~  
9 ~~of alleged abuse.~~ which shall contain any substantiated report  
10 regarding a person who has allegedly abused, neglected, or exploited  
11 a vulnerable adult.

12 (2) Upon request, a vulnerable adult who is the subject  
13 of a report or, if the vulnerable adult is legally incapacitated, the  
14 guardian or guardian ad litem of the vulnerable adult and the person  
15 who has allegedly abused, neglected, or exploited the vulnerable  
16 adult shall be entitled to receive a copy of all information  
17 contained in the registry pertaining to ~~his or her case.~~ such report.  
18 The department shall not release data that would be harmful or  
19 detrimental to the vulnerable adult or that would identify or locate  
20 a person who, in good faith, made a report or cooperated in a  
21 subsequent investigation unless ordered to do so by a court of  
22 competent jurisdiction.

23 (3) The department shall establish classifications for  
24 all cases in the registry. ~~All cases determined to be unfounded shall~~  
25 ~~be expunged from the registry.~~

1           (4) The department shall determine whether a name-change  
2 order received from the clerk of a district court pursuant to section  
3 25-21,271 is for a person on the Adult Protective Services Central  
4 Registry and, if so, shall include the changed name with the former  
5 name in the registry and file or cross-reference the information  
6 under both names.

7           Sec. 15. Section 28-386, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           28-386 (1) A person commits knowing and intentional  
10 abuse, neglect, or exploitation of a vulnerable adult if he or she  
11 through a knowing and intentional act causes or permits a vulnerable  
12 adult to be:

- 13           (a) Physically injured;
- 14           (b) Unreasonably confined;
- 15           (c) Sexually abused;
- 16           (d) Exploited;
- 17           (e) Cruelly punished; ~~or~~
- 18           (f) ~~Denied essential services.~~ Neglected; or
- 19           (g) Sexually exploited.

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

22           Sec. 16. Section 28-387, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           28-387 (1) A county court may issue an ex parte order  
25 authorizing the provision of short-term involuntary adult protective

1 services or temporary placement for a vulnerable adult for up to  
2 forty-eight hours, excluding nonjudicial days, pending the hearing  
3 for a need for continuing services, after finding on the record that:

4 (a) The person is a vulnerable adult;

5 (b) An emergency exists; and

6 (c) There are compelling reasons for ordering protective  
7 services or temporary placement.

8 (2) An ex parte order shall be issued only if other  
9 protective custody services are unavailable or other services provide  
10 insufficient protection.

11 (3) The department shall contact the appropriate county  
12 attorney to file an application for short-term involuntary adult  
13 protective services or temporary placement if an investigation  
14 indicates probable cause to believe that an emergency exists for a  
15 vulnerable adult. The department shall not be given legal custody nor  
16 be made guardian of such vulnerable adult. A vulnerable adult shall  
17 be responsible for the costs of services provided either through his  
18 or her own income or other programs for which he or she may be  
19 eligible.

20 (4) A law enforcement officer accompanied by a  
21 representative of the department may enter the premises where the  
22 vulnerable adult is located after obtaining the court order and  
23 announcing his or her authority and purpose. Forcible entry may be  
24 made only after the court order has been obtained unless there is  
25 probable cause to believe that the delay of such entry would cause

1 the vulnerable adult to be in imminent danger of life-threatening  
2 physical injury or ~~the denial of essential services.~~ neglect.

3 (5) When, from the personal observations of a  
4 representative of the department and a law enforcement officer, it  
5 appears probable that the vulnerable adult is likely to be in  
6 imminent danger of life-threatening physical injury or ~~the denial of~~  
7 ~~essential services~~ neglect if he or she is not immediately removed  
8 from the premises, the law enforcement agency shall, when authorized  
9 by the court order, take into custody and transport the vulnerable  
10 adult to an appropriate medical or protective placement facility.

11 (6) When action is taken under this section, a hearing  
12 shall be held within forty-eight hours of the signing of the court  
13 order, excluding nonjudicial days, to establish probable cause for  
14 short-term involuntary adult protective services or for protective  
15 placement. Unless the vulnerable adult has counsel of his or her own  
16 choice or has indicated a desire for an attorney of his or her own  
17 choice, the court shall appoint an attorney to represent him or her  
18 in the proceeding, who shall have the powers and duties of a guardian  
19 ad litem.

20 (7) Notice of the hearing shall be served personally on  
21 the vulnerable adult. Waiver of notice by the vulnerable adult shall  
22 not be effective unless he or she attends the hearing or such notice  
23 is waived by the guardian ad litem. Notice of the hearing shall be  
24 given to the following parties whose whereabouts can be readily  
25 ascertained: (a) The spouse of the vulnerable adult; (b) children of

1 the vulnerable adult; and (c) any other party specified by the court.

2 (8) A judgment authorizing continuance of short-term  
3 involuntary adult protective services shall prescribe those specific  
4 adult protective services which are to be provided, the duration of  
5 the services which shall not exceed sixty days, and the person or  
6 persons who are authorized or ordered to provide them.

7 Sec. 17. Section 28-713.01, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9 28-713.01 (1) Upon completion of the investigation  
10 pursuant to section 28-713:

11 ~~(1)~~ (a) In situations of alleged out-of-home child abuse  
12 or neglect, the person or persons having custody of the allegedly  
13 abused or neglected child or children shall be given written notice  
14 of the results of the investigation and any other information the law  
15 enforcement agency or department deems necessary. Such notice and  
16 information shall be sent by first-class mail; and

17 ~~(2)~~ (b) The subject of the report of child abuse or  
18 neglect shall be given written notice of the determination of the  
19 case and whether the subject of the report of child abuse or neglect  
20 will be entered into the central register of child protection cases  
21 maintained pursuant to section 28-718 under the criteria provided in  
22 section 28-720.

23 ~~Such~~ (2) If the subject of the report will be entered  
24 into the central register, the notice to the subject shall be sent by  
25 certified mail with return receipt requested or first-class mail to

1 the last-known address of the subject of the report of child abuse or  
2 neglect and shall include:

3 (a) The nature of the report;

4 (b) The classification of the report under section  
5 28-720; and

6 (c) Notification of the right of the subject of the  
7 report of child abuse or neglect to ~~a hearing and appeal request the~~  
8 department to amend or expunge identifying information from the  
9 report or to remove the substantiated report from the central  
10 register in accordance with section 28-723.

11 (3) If the subject of the report will not be entered into  
12 the central register, the notice to the subject shall be sent by  
13 first-class mail and shall include:

14 (a) The nature of the report; and

15 (b) The classification of the report under section  
16 28-720.

17 Sec. 18. Original sections 28-348, 28-349, 28-350,  
18 28-351, 28-352, 28-355, 28-358, 28-370, 28-372, 28-373, 28-374,  
19 28-386, 28-387, and 28-713.01, Reissue Revised Statutes of Nebraska,  
20 and section 28-376, Revised Statutes Cumulative Supplement, 2010, are  
21 repealed.