

LEGISLATIVE BILL 1051

Approved by the Governor April 10, 2012

Introduced by Coash, 27.

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

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

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

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

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

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

Sec. 3. Section 28-350, Reissue Revised Statutes of Nebraska, 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 7 and 8 of this act shall be used.

Sec. 4. Section 28-351, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

Sec. 6. Section 28-358, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

adult suffering physical injury or death.

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

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

28-370 Unreasonable confinement ~~shall mean~~ means confinement which intentionally causes physical injury to a vulnerable adult or false imprisonment as described in section 28-314 or 28-315.

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

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

(2) Such report may be made by telephone, with the caller giving his or her name and address, and, if requested by the department, shall be followed by a written report within forty-eight hours. To the extent available the report shall contain: (a) The name, address, and age of the vulnerable adult; (b) the address of the caregiver or caregivers of the vulnerable adult; (c) the nature and extent of the alleged abuse, neglect, or exploitation or the conditions and circumstances which would reasonably be expected to result in such abuse, neglect, or exploitation; (d) any evidence of previous abuse, neglect, or exploitation, including the nature and extent of the abuse, neglect, or exploitation; and (e) any other information which in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse, neglect, or exploitation and the identity of the perpetrator or perpetrators.

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

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

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

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

28-373 (1) Upon the receipt of a report concerning abuse, neglect, or exploitation pursuant to section 28-372, it shall be the duty of the law enforcement agency (a) to make an investigation if deemed warranted because of alleged violations of section 28-386, (b) to take immediate steps, if necessary, to protect the vulnerable adult, and (c) to institute legal proceedings if appropriate. The law enforcement agency shall notify the department if an investigation is undertaken. Such notification shall be made no later than the next working day following receipt of the report.

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

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

28-374 (1) The department shall investigate each case of alleged abuse, neglect, or exploitation 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. 13. (1) Upon completion of the investigation pursuant to sections 28-373 and 28-374, the person who allegedly abused, neglected, or exploited a vulnerable adult shall be given written notice of the determination of the investigation and whether the person who allegedly abused, neglected, or exploited a vulnerable adult will be entered into the registry.

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

(a) The nature of the report;

(b) The classification of the report; and

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

(3) If the person who allegedly abused, neglected, or exploited a vulnerable adult will not be entered into the registry, the notice shall be sent by first-class mail and shall include:

(a) The nature of the report; and

(b) The classification of the report.

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

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

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

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

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

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

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

(a) Physically injured;

(b) Unreasonably confined;

(c) Sexually abused;

(d) Exploited;

(e) Cruelly punished; ~~or~~

(f) ~~Denied essential services-~~ Neglected; or

(g) Sexually exploited.

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

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

28-387 (1) A county court may issue an ex parte order authorizing the provision of short-term involuntary adult protective services or temporary placement for a vulnerable adult for up to forty-eight hours, excluding

nonjudicial days, pending the hearing for a need for continuing services, after finding on the record that:

- (a) The person is a vulnerable adult;
- (b) An emergency exists; and
- (c) There are compelling reasons for ordering protective services or temporary placement.

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

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

(4) A law enforcement officer accompanied by a representative of the department may enter the premises where the vulnerable adult is located after obtaining the court order and announcing his or her authority and purpose. Forcible entry may be made only after the court order has been obtained unless there is probable cause to believe that the delay of such entry would cause the vulnerable adult to be in imminent danger of life-threatening physical injury or ~~the denial of essential services- neglect.~~

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

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

(7) Notice of the hearing shall be served personally on the vulnerable adult. Waiver of notice by the vulnerable adult shall not be effective unless he or she attends the hearing or such notice is waived by the guardian ad litem. Notice of the hearing shall be given to the following parties whose whereabouts can be readily ascertained: (a) The spouse of the vulnerable adult; (b) children of the vulnerable adult; and (c) any other party specified by the court.

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

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

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

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

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

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

- (a) The nature of the report;
- (b) The classification of the report under section 28-720; and

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

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

(a) The nature of the report; and

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

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