Introduced by Pansing Brooks, 28; Linehan, 39; Slama, 1.

Read first time January 22, 2019

Committee: Judiciary

A BILL FOR AN ACT relating to children and families; to amend sections 28-707, 28-710, 28-713, 28-720.01, and 29-110, Reissue Revised Statutes of Nebraska, and sections 28-101 and 43-4406, Revised Statutes Cumulative Supplement, 2018; to redefine a term; to change provisions relating to child abuse, the Child Protection and Family Safety Act, human trafficking, and child welfare services; to provide duties for the Department of Health and Human Services; to change statutes of limitations with respect to human trafficking offenses; 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 Cumulative Supplement, 2018, is amended to read:

28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and section 6 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. Section 28-707, Reissue Revised Statutes of Nebraska, is amended to read:

28-707 (1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health;
(b) Cruelly confined or cruelly punished;
(c) Deprived of necessary food, clothing, shelter, or care;
(d) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 or by actual or attempted by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions;
(e) Placed in a situation to be sexually abused as defined in section 28-319, 28-319.01, or 28-320.01; or
(f) Placed in a situation to be a trafficking victim as defined in section 28-830.

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently and does not result in serious bodily injury as defined in section 28-109 or death.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury.
(5) Child abuse is a Class IIIA felony if the offense is committed negligently and results in serious bodily injury as defined in section 28-109.

(6) Child abuse is a Class IIA felony if the offense is committed negligently and results in the death of such child.

(7) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(8) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

(9) For purposes of this section, negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section 28-109, with respect to the safety or health of the minor child.

Sec. 3. Section 28-710, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

(i) Placed in a situation that endangers his or her life or physical
(ii) Cruelly confined or cruelly punished;

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

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

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

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

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

(c) Comprehensive assessment means an analysis of child safety, risk of future child abuse or neglect, and family strengths and needs on a report of child abuse or neglect. Comprehensive assessment does not include a determination as to whether the child abuse or neglect occurred but does determine the need for services and support to address the safety of children and the risk of future abuse or neglect;

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

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

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

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

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

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

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

Sec. 4. Section 28-713, Reissue Revised Statutes of Nebraska, is amended to read:

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

(a) (1) It is the duty of the law enforcement agency to investigate the report, to take immediate steps to protect the child, and to institute legal proceedings if appropriate. In situations of alleged out-of-home child abuse or neglect if the person or persons to be notified have not already been notified and the person to be notified is not the subject of the report of child abuse or neglect, the law enforcement agency shall immediately notify the person or persons having custody of each child who has allegedly been abused or neglected that such report of alleged child abuse or neglect has been made and shall provide such
person or persons with information of the nature of the alleged child
abuse or neglect. The law enforcement agency may request assistance from
the department during the investigation and shall, by the next working
day, notify either the hotline or the department of receipt of the
report, including whether or not an investigation is being undertaken by
the law enforcement agency. A copy of all reports, whether or not an
investigation is being undertaken, shall be provided to the department;

(b) (2) In situations of alleged out-of-home child abuse or neglect
if the person or persons to be notified have not already been notified
and the person to be notified is not the subject of the report of child
abuse or neglect, the department shall immediately notify the person or
persons having custody of each child who has allegedly been abused or
neglected that such report of alleged child abuse or neglect has been
made and shall provide such person or persons with information of the
nature of the alleged child abuse or neglect and any other information
that the department deems necessary. The department shall investigate for
the purpose of assessing each report of child abuse or neglect to
determine the risk of harm to the child involved. The department shall
also provide such social services as are necessary and appropriate under
the circumstances to protect and assist the child and to preserve the
family;

(c) (3) The department may make a request for further assistance
from the appropriate law enforcement agency or take such legal action as
may be appropriate under the circumstances;

(d) (4) The department shall, by the next working day after
receiving a report of child abuse or neglect under this subsection
subdivision (1) of this section, make a written report or a summary on
forms provided by the department to the proper law enforcement agency in
the county and enter in the tracking system of child protection cases
maintained pursuant to section 28-715 all reports of child abuse or
neglect opened for investigation and any action taken; and
(e) The department shall, upon request, make available to the appropriate investigating law enforcement agency and the county attorney a copy of all reports relative to a case of suspected child abuse or neglect.

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

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

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

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

(iv) Provide services or refer and connect the child and family to services based on the needs of the child and family, regardless of the identity of the subject of the report. The department shall identify and connect the child and family with services in the least restrictive
environment which shall address the need for safe and appropriate
shelter, medical and mental health care, including substance abuse
services, supportive and appropriate relationship, victim advocacy,
education, and other needs as determined by the department.

(b) On or before December 1, 2019, the department shall adopt rules
and regulations outlining the investigation process, screening and
assessment tools, and criteria for opening an ongoing case for
allegations of sex trafficking of a minor and labor trafficking of a
minor.

Sec. 5. Section 28-720.01, Reissue Revised Statutes of Nebraska, is
amended to read:

28-720.01 (1) Except as provided in subsection (2) of this section,
all reports of child abuse or neglect which are not under subdivision
(1)(a), (b), or (c) of section 28-720 shall be considered unfounded and
shall be maintained only in the tracking system of child protection cases
pursuant to section 28-715 and not in the central registry of child
protection cases maintained pursuant to section 28-718.

(2) When the identity of the subject of the report of child abuse or
neglect is unknown or unable to be confirmed, the department shall
classify the report as agency substantiated when a preponderance of the
evidence indicates that a child is a victim of abuse or neglect. This
shall include, but is not limited to, reports alleging children are
victims of sex trafficking of a minor or labor trafficking of a minor, as
defined in section 28-830, or have been recorded in obscene or
pornographic images. Child victims in agency substantiated reports under
this section shall be included in the department's data and reporting on
the numbers of child victims of abuse, neglect, and sex trafficking of a
minor or labor trafficking of a minor.

(3) The department shall only maintain unfounded reports and agency
substantiated reports described in subsection (2) of this section in the
tracking system of child protection cases pursuant to section 28-715 and
not in the central registry of child protection cases maintained pursuant to section 28-718.

Sec. 6. On or before December 1, 2019, the Department of Health and Human Services shall provide to the Legislature, Governor, and Attorney General a comprehensive report on the availability of services for victims of sex trafficking of a minor or labor trafficking of a minor under section 28-831 and minors who are at risk of becoming such victims. The report shall be developed in consultation with representatives of child advocacy centers, behavioral health providers, child welfare and juvenile justice service providers, law enforcement representatives, and prosecutors and shall contain recommendations on the best practices to serve these minors, needed changes to policy and practice to better connect minors with services, and strategies for increasing access to appropriate and necessary services. The report to the Legislature shall be provided electronically.

Sec. 7. Section 29-110, Reissue Revised Statutes of Nebraska, 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
(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) Except as otherwise provided by law, no person shall be prosecuted for a violation of subsection (2) or (3) of section 28-831 (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed and a warrant for the arrest of the defendant has been issued.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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, sexual assault of a child in the first degree
under section 28-319.01, labor trafficking of a minor or sex trafficking
of a minor under subsection (1) of section 28-831; 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.

(10) 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.

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

(12) (11) 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.

(13) (12) 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.

(14) (13) 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.

(15) (14) 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.

(16) (15) 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.

(17) (16) The changes made to this section by Laws 2010, LB 809, 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.

(18) (17) The changes made to this section by Laws 2016, LB 934, shall apply to offenses committed prior to April 19, 2016, for which the
statute of limitations has not expired as of such date and to offenses committed on or after such date.

(19) 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. 8. Section 43-4406, Revised Statutes Cumulative Supplement, 2018, is amended to read:

43-4406 On or before each September 15, the department shall report electronically to the Health and Human Services Committee of the Legislature the following information regarding child welfare services, with respect to children served by any lead agency or the pilot project and children served by the department:

(1) The percentage of children served and the allocation of the child welfare budget, categorized by service area and by lead agency or the pilot project, including:

(a) The percentage of children served, by service area and the corresponding budget allocation; and

(b) The percentage of children served who are wards of the state and the corresponding budget allocation;

(2) The number of siblings in out-of-home care placed with siblings as of the June 30 immediately preceding the date of the report, categorized by service area and by lead agency or the pilot project;

(3) The number of waivers granted under subsection (2) of section 71-1904;

(4) An update of the information in the report of the Children's Behavioral Health Task Force pursuant to sections 43-4001 to 43-4003, including:

(a) The number of children receiving mental health and substance abuse services annually by the Division of Behavioral Health of the department;
(b) The number of children receiving behavioral health services annually at the Hastings Regional Center;
(c) The number of state wards receiving behavioral health services as of September 1 immediately preceding the date of the report;
(d) Funding sources for children's behavioral health services for the fiscal year ending on the immediately preceding June 30;
(e) Expenditures in the immediately preceding fiscal year by the division, categorized by category of behavioral health service and by behavioral health region; and
(f) Expenditures in the immediately preceding fiscal year from the medical assistance program and CHIP as defined in section 68-969 for mental health and substance abuse services, for all children and for wards of the state;
(5) The following information as obtained for each service area and lead agency or the pilot project:
(a) Case manager education, including college degree, major, and level of education beyond a baccalaureate degree;
(b) Average caseload per case manager;
(c) Average number of case managers per child during the preceding twelve months;
(d) Average number of case managers per child for children who have been in the child welfare system for three months, for six months, for twelve months, and for eighteen months and the consecutive yearly average for children until the age of majority or permanency is attained;
(e) Monthly case manager turnover;
(f) Monthly face-to-face contacts between each case manager and the children on his or her caseload;
(g) Monthly face-to-face contacts between each case manager and the parent or parents of the children on his or her caseload;
(h) Case documentation of monthly consecutive team meetings per quarter;
(i) Case documentation of monthly consecutive parent contacts per quarter;

(j) Case documentation of monthly consecutive child contacts with case manager per quarter;

(k) Case documentation of monthly consecutive contacts between child welfare service providers and case managers per quarter;

(l) Timeliness of court reports; and

(m) Non-court-involved children, including the number of children served, the types of services requested, the specific services provided, the cost of the services provided, and the funding source;

(6) All placements in residential treatment settings made or paid for by the child welfare system, the Office of Juvenile Services, the State Department of Education or local education agencies, any lead agency or the pilot project through letters of agreement, and the medical assistance program, including, but not limited to:

(a) Child variables;

(b) Reasons for placement;

(c) The percentage of children denied medicaid-reimbursed services and denied the level of placement requested;

(d) With respect to each child in a residential treatment setting:

(i) If there was a denial of initial placement request, the length and level of each placement subsequent to denial of initial placement request and the status of each child before and immediately after, six months after, and twelve months after placement;

(ii) Funds expended and length of placements;

(iii) Number and level of placements;

(iv) Facility variables; and

(v) Identification of specific child welfare services unavailable in the child's community that, if available, could have prevented the need for residential treatment; and

(e) Identification of child welfare services unavailable in the
state that, if available, could prevent out-of-state placements;

(7) From any lead agency or the pilot project, the percentage of its accounts payable to subcontracted child welfare service providers that are thirty days overdue, sixty days overdue, and ninety days overdue;

(8) For any individual involved in the child welfare system receiving a service or a placement through the department or its agent for which referral is necessary, the date when such referral was made by the department or its agent and the date and the method by which the individual receiving the services was notified of such referral. To the extent the department becomes aware of the date when the individual receiving the referral began receiving such services, the department or its agent shall document such date; and

(9) The number of sexual abuse allegations that occurred for children being served by the Division of Children and Family Services of the Department of Health and Human Services and placed at a residential child-caring agency and the number of corresponding (a) screening decision occurrences by category, (b) open investigations by category, and (c) agency substantiations, court substantiations, and court-pending status cases; and

(10) Information on children who may be at risk of becoming or who are victims of sex trafficking of a minor or labor trafficking of a minor, as defined in section 28-830, including:

(a) The number of reports to the statewide toll-free number pursuant to section 28-711 alleging sex trafficking of a minor or labor trafficking of a minor and the number of children alleged to be victims;

(b) The number of substantiated victims of sex trafficking of a minor or labor trafficking of a minor, including demographic information and information on whether the children were already served by the department;

(c) The number of children determined to be at risk of becoming victims of sex trafficking of a minor or labor trafficking of a minor,
including demographic information and information on whether the children were previously served by the department;

(d) The types and costs of services provided to children at risk of becoming or who are victims of sex trafficking of a minor or labor trafficking of a minor; and

(e) The number of ongoing cases opened due to allegations of sex trafficking of a minor or labor trafficking of a minor and number of children and families served through these cases.

Sec. 9. Original sections 28-707, 28-710, 28-713, 28-720.01, and 29-110, Reissue Revised Statutes of Nebraska, and sections 28-101 and 43-4406, Revised Statutes Cumulative Supplement, 2018, are repealed.

Sec. 10. Since an emergency exists, this act takes effect when passed and approved according to law.