

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1007

Introduced by Coash, 27.

Read first time January 15, 2016

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Adult Protective Services Act; to amend
2 section 28-371, Reissue Revised Statutes of Nebraska, sections
3 28-348, 28-350, 28-358, 28-374, 28-386, and 29-110, Revised Statutes
4 Cumulative Supplement, 2014, and section 28-101, Revised Statutes
5 Supplement, 2015; to change provisions relating to vulnerable adults
6 and senior adults; to define and redefine terms; to eliminate the
7 statute of limitations for knowing and intentional abuse, neglect,
8 or exploitation of a vulnerable adult; to change provisions relating
9 to penalties; to harmonize provisions; and to repeal the original
10 sections.

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

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

3 28-101 Sections 28-101 to ~~28-468, 28-470 to~~ 28-1357, 28-1418.01, and
4 28-1429.03 and sections 5 and 6 of this act shall be known and may be
5 cited as the Nebraska Criminal Code.

6 Sec. 2. Section 28-348, Revised Statutes Cumulative Supplement,
7 2014, is amended to read:

8 28-348 Sections 28-348 to 28-387 and sections 5 and 6 of this act
9 shall be known and may be cited as the Adult Protective Services Act.

10 Sec. 3. Section 28-350, Revised Statutes Cumulative Supplement,
11 2014, is amended to read:

12 28-350 For purposes of the Adult Protective Services Act, unless the
13 context otherwise requires, the definitions found in sections 28-351 to
14 28-371 and sections 5 and 6 of this act shall be used.

15 Sec. 4. Section 28-358, Revised Statutes Cumulative Supplement,
16 2014, is amended to read:

17 28-358 Exploitation means the wrongful or unauthorized taking,
18 withholding, appropriation, conversion, control, or use of money, funds,
19 securities, assets, or any other of property of a vulnerable adult or
20 senior adult by any person by means of undue influence, breach of a
21 fiduciary relationship, deception, ~~or~~ extortion, intimidation, force or
22 threat of force, isolation, or by any unlawful means or by the breach of
23 a fiduciary duty by the guardian, conservator, agent under a power of
24 attorney, trustee, or any other fiduciary of a vulnerable adult or senior
25 adult.

26 Sec. 5. Isolation means intentional acts (1) committed for the
27 purpose of preventing, and which do prevent, a vulnerable adult or senior
28 adult from having contact with family, friends, or concerned persons; (2)
29 committed to prevent a vulnerable adult or senior adult from receiving
30 his or her mail or telephone calls; (3) of physical or chemical restraint
31 of a vulnerable adult or senior adult committed for the purpose of

1 preventing contact with visitors, family, friends, or other concerned
2 persons; or (4) which restrict, place, or confine a vulnerable adult or
3 senior adult in a restricted area for the purposes of social deprivation
4 or preventing contact with family, friends, visitors, or other concerned
5 persons, but not including medical isolation prescribed by a licensed
6 physician caring for the vulnerable adult or senior adult. This
7 definition shall not be construed to affect a legal restraining order.

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

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

12 28-371 Vulnerable adult means ~~shall mean~~ any person eighteen years
13 of age or older who has a substantial mental or functional impairment or
14 for whom a guardian or conservator has been appointed under the Nebraska
15 Probate Code.

16 Sec. 8. Section 28-374, Revised Statutes Cumulative Supplement,
17 2014, is amended to read:

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

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

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

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

1 occurred.

2 Sec. 9. Section 28-386, Revised Statutes Cumulative Supplement,
3 2014, is amended to read:

4 28-386 (1) A person commits knowing and intentional abuse, neglect,
5 or exploitation of a vulnerable adult or senior adult if he or she
6 through a knowing and intentional act causes or permits a vulnerable
7 adult to be:

8 (a) Physically injured;

9 (b) Unreasonably confined;

10 (c) Sexually abused;

11 (d) Exploited;

12 (e) Cruelly punished;

13 (f) Neglected; or

14 (g) Sexually exploited.

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

17 Sec. 10. Section 29-110, Revised Statutes Cumulative Supplement,
18 2014, is amended to read:

19 29-110 (1) Except as otherwise provided by law, no person shall be
20 prosecuted for any felony unless the indictment is found by a grand jury
21 within three years next after the offense has been done or committed or
22 unless a complaint for the same is filed before the magistrate within
23 three years next after the offense has been done or committed and a
24 warrant for the arrest of the defendant has been issued.

25 (2) Except as otherwise provided by law, no person shall be
26 prosecuted, tried, or punished for any misdemeanor or other indictable
27 offense below the grade of felony or for any fine or forfeiture under any
28 penal statute unless the suit, information, or indictment for such
29 offense is instituted or found within one year and six months from the
30 time of committing the offense or incurring the fine or forfeiture or
31 within one year for any offense the punishment of which is restricted by

1 a fine not exceeding one hundred dollars and to imprisonment not
2 exceeding three months.

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

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

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

30 (6) No person shall be prosecuted for a violation of section 68-1017
31 if the aggregate value of all funds and other benefits obtained or

1 attempted to be obtained is five hundred dollars or more unless the
2 indictment for such offense is found by a grand jury within five years
3 next after the offense has been done or committed or unless a complaint
4 for such offense is filed before the magistrate within five years next
5 after the offense has been done or committed and a warrant for the arrest
6 of the defendant has been issued.

7 (7) There shall not be any time limitations for prosecution or
8 punishment for treason, murder, arson, forgery, sexual assault in the
9 first or second degree under section 28-319 or 28-320, sexual assault of
10 a child in the second or third degree under section 28-320.01, incest
11 under section 28-703, or sexual assault of a child in the first degree
12 under section 28-319.01; nor shall there be any time limitations for
13 prosecution or punishment for sexual assault in the third degree under
14 section 28-320 when the victim is under sixteen years of age at the time
15 of the offense.

16 (8) There shall not be any time limitations for prosecution or
17 punishment for knowing and intentional abuse, neglect, or exploitation of
18 a vulnerable adult or senior adult under section 28-386.

19 (9 8) The time limitations prescribed in this section shall include
20 all inchoate offenses pursuant to the Nebraska Criminal Code and
21 compounding a felony pursuant to section 28-301.

22 (10 9) The time limitations prescribed in this section shall not
23 extend to any person fleeing from justice.

24 (11 ~~10~~) When any suit, information, or indictment for any crime or
25 misdemeanor is limited by any statute to be brought or exhibited within
26 any other time than is limited by this section, then the suit,
27 information, or indictment shall be brought or exhibited within the time
28 limited by such statute.

29 (12 ~~11~~) If any suit, information, or indictment is quashed or the
30 proceedings set aside or reversed on writ of error, the time during the
31 pendency of such suit, information, or indictment so quashed, set aside,

1 or reversed shall not be reckoned within this statute so as to bar any
2 new suit, information, or indictment for the same offense.

3 (~~13~~ 12) The changes made to this section by Laws 2004, LB 943, shall
4 apply to offenses committed prior to April 16, 2004, for which the
5 statute of limitations has not expired as of such date and to offenses
6 committed on or after such date.

7 (~~14~~ 13) The changes made to this section by Laws 2005, LB 713, shall
8 apply to offenses committed prior to September 4, 2005, for which the
9 statute of limitations has not expired as of such date and to offenses
10 committed on or after such date.

11 (~~15~~ 14) The changes made to this section by Laws 2009, LB 97, and
12 Laws 2006, LB 1199, shall apply to offenses committed prior to May 21,
13 2009, for which the statute of limitations has not expired as of such
14 date and to offenses committed on or after such date.

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

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

23 Sec. 11. Original section 28-371, Reissue Revised Statutes of
24 Nebraska, sections 28-348, 28-350, 28-358, 28-374, 28-386, and 29-110,
25 Revised Statutes Cumulative Supplement, 2014, and section 28-101, Revised
26 Statutes Supplement, 2015, are repealed.