

LEGISLATIVE BILL 505

Approved by the Governor May 21, 1979

Introduced by Simon, 31; Haberman, 44

AN ACT to amend sections 28-710 to 28-713 and 28-715, Revised Statutes Supplement, 1978, relating to abuse or neglect of children or others; to provide for central reporting; to require maintenance of a registry; to provide for confidentiality except as prescribed; to provide a penalty; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 28-710, Revised Statutes Supplement, 1978, be amended to read as follows:

28-710. As used in sections 28-710 to 28-717 and sections 6 to 15 of this act, unless the context otherwise requires:

(1) Department shall mean the Department of Public Welfare;

(2) Law enforcement agency shall mean the police department or town marshal in incorporated municipalities and the office of the sheriff in unincorporated areas;

(3) Abuse or neglect shall mean knowingly, intentionally, or negligently causing or permitting a minor child or an incompetent or disabled person 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) left unattended in a motor vehicle, if such minor child is six years of age or younger; or (e) sexually abused; and

(4) Division shall mean the county division of public welfare.

Sec. 2. That section 28-711, Revised Statutes Supplement, 1978, be amended to read as follows:

28-711. (1) When any physician, medical institution, nurse, school employee, social worker, or any other person has reasonable cause to believe that a child or an incompetent or disabled person has been subjected to abuse or neglect, or observes such person being subjected to conditions or circumstances which reasonably would result in abuse or neglect, he or she

shall report such incident or cause a report to be made to the proper law enforcement agency or to the department on the toll-free number established by subsection (2) of this section. Such report may be made orally by telephone, with the caller giving his or her name and address, and shall be followed by a written report, and to the extent available shall contain the address and age of the abused or neglected person, the address of the person or persons having custody of the abused or neglected person, the nature and extent of the abuse or neglect, or the conditions and circumstances which would reasonably result in such abuse or neglect, any evidence of previous abuse or neglect including the nature and extent, and any other information which in the opinion of the person may be helpful in establishing the cause of such abuse or neglect and the identity of the perpetrator or perpetrators. Law enforcement agencies receiving any reports of abuse or neglect under this subsection shall notify the state central registry on the next working day by phone or mail.

(2) There shall be established a single, statewide toll-free number within the department to be used by any person any hour of the day or night, any day of the week to make reports of abuse or neglect to the department. Reports of abuse or neglect not previously made to or by a law enforcement agency shall be made immediately to such agency by the department. Reports of abuse or neglect not previously made to or by the division shall be made to such division by the department on the next business day after the department receives the report.

Sec. 3. That section 28-712, Revised Statutes Supplement, 1978, be amended to read as follows:

28-712. {+} Upon the receipt of a report concerning abuse or neglect as required by section 28-711, it shall be the duty of the law enforcement agency to make a determination as to whether or not an investigation should be made and if an investigation is deemed warranted because of alleged violations of sections 28-707 and 28-708 to cause an investigation of the alleged abuse or neglect to be made, to take immediate steps to protect the abused or neglected person, and to institute legal proceedings if appropriate. The law enforcement agency shall notify the department if an investigation is undertaken. Such notification shall be made on the next business day following receipt of the report. All such reports shall be referred, whether an investigation is conducted or not, to the division not later than the next working day after the receipt of the report.



~~(2) When the law enforcement agency in any county of two hundred fifty thousand or more inhabitants shall receive a report concerning abuse or neglect pursuant to section 28-714, such law enforcement agency shall forward the report to the protective services unit of the county division of public welfare within one working day. The protective services unit shall forward all reports received directly by it to the appropriate law enforcement agency immediately upon receipt.~~

Sec. 4. That section 28-713, Revised Statutes Supplement, 1978, be amended to read as follows:

28-713. (1) The division shall investigate each case of alleged abuse or neglect referred to it by ~~a law enforcement agency~~ the department and shall provide such social services as are necessary and appropriate under the circumstances to protect the abused or neglected person and preserve the family.

(2) The division may make a request for further assistance from the law enforcement agency or take such legal action as may be appropriate under the circumstances.

(3) The division shall make a written report or a case summary, as the Department of Public Welfare may require, to the proper law enforcement agency in the county and to the state Abused and Neglected Child, Incompetent and Disabled Person Registry of all reported cases of abuse or neglect and action taken with respect to all such cases on forms provided by the Department of Public Welfare.

Sec. 5. That section 28-715, Revised Statutes Supplement, 1978, be amended to read as follows:

28-715. The Department of Public Welfare shall file each report of suspected abuse or neglect in a special state Abused or Neglected Child, Incompetent and Disabled Person Registry to be maintained in such department. ~~Such files shall be confidential and access to any specific case shall be limited to a county attorney, juvenile court or county or state Director of Public Welfare in this or other states, to be used by them only for purposes connected directly with the protection of any child or incompetent or disabled person. Statistical information from such files, when not revealing names, may be released without limitation. Subject to such provisions, the records shall be maintained in accordance with regulations adopted by the Director of Public Welfare.~~

Sec. 6. There shall be a central register of child protection cases maintained in the department.

Sec. 7. Upon complying with identification requirements established by regulation of the department, or when ordered by a court of competent jurisdiction, any person legally authorized by section 10, 14, or 15 of this act to have access to records relating to abuse and neglect may request and shall be immediately provided the information requested in accordance with the requirement of this act. Such information shall not include the name and address of the person making the report. The names and other identifying data and the dates and the circumstances of any persons requesting or receiving information from the central register shall be entered in the register record.

Sec. 8. All cases in the central register shall be classified in one of the following categories: (1) Court substantiated; (2) petition to be filed; (3) investigation inconclusive; or (4) unfounded report, whichever the case may be. All information identifying the subjects of unfounded reports shall be expunged from the register forthwith.

Sec. 9. At any time, the department may amend, expunge, or remove from the central register any record upon good cause shown and upon notice to the subjects of the report and the division.

Sec. 10. Upon request, a subject of a report or, if such subject is a minor or otherwise legally incompetent, the guardian or guardian ad litem of the person, shall be entitled to receive a copy of all information contained in the central register pertaining to his or her case. The department shall not release data that would be harmful or detrimental 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.

Sec. 11. At any time subsequent to the completion of the division's investigation, a subject of a report may request the department to amend, expunge identifying information from, or remove the record of the report from the register. If the department refuses to do so or does not act within thirty days, the subject shall have the right to a fair hearing within the department to determine whether the record of the report should be amended, expunged, or removed on the grounds that it is inaccurate or that it is being maintained in a manner inconsistent with this act. Such fair hearing shall be held within a reasonable time after the



subject's request and at a reasonable place and hour. The appropriate division shall be given notice of a fair hearing. In such hearings, the burden of proving the accuracy and consistency of the record shall be on the department and the appropriate division. A juvenile court finding of child abuse or child neglect shall be presumptive evidence that the report was not unfounded. The hearing shall be conducted by the head of the department or his or her designated agent, who is hereby authorized and empowered to order the amendment, expunction, or removal of the record to make it accurate or consistent with the requirements of this act. The decision shall be made in writing, at the close of the hearing, or within thirty days thereof, and shall state the reasons upon which it is based. Decisions of the department may be appealed under the provisions of sections 84-909 to 84-916, Reissue Revised Statutes of Nebraska, 1943.

Sec. 12. Written notice of any amendment, expunction, or removal of any record made pursuant to this act shall be served upon the subject of such report and the appropriate division. The division or service unit, upon receipt of such notice, shall take similar action in regard to the local abuse and neglect records and shall, for the same purpose, inform any other individuals or agencies which received such record pursuant to this act or in any other manner.

Sec. 13. All records of the department or division concerning reports of noninstitutional child abuse or neglect, including reports made to the department, central register, division, and all records of the department or division generated as a result of such reports, shall be confidential and shall not be disclosed except as specifically authorized by this act or other applicable law. Permitting, assisting, or encouraging the unauthorized release of any information contained in such reports or records shall be a Class V misdemeanor.

Sec. 14. Except as provided in this section and section 10 of this act, no person, official, or agency shall have access to such records unless in furtherance of purposes directly connected with the administration of this act. Such persons, officials, and agencies having access to such records shall include but not be limited to:

(1) A division or multicounty service unit in the furtherance of its responsibilities under this act;

(2) A law enforcement agency investigating a report of known or suspected abuse or neglect;

(3) A county attorney in preparation of an abuse, neglect, or termination petition;

(4) A physician who has before him or her a person whom he or she reasonably suspects may be abused or neglected;

(5) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused or neglected child, incompetent, or disabled person, or a parent, guardian, or other person responsible for the abused or neglected child, incompetent, or disabled person's welfare who is the subject of a report; and

(6) Any person engaged in bona fide research or auditing. No information identifying the subjects of the report shall be made available to the researcher or auditor.

Sec. 15. Upon request, a physician or the person in charge of an institution, school, facility, or agency making a legally mandated report shall receive a summary of the findings of and actions taken by the division in response to his or her report. The amount of detail such summary contains shall depend on the source of the report and shall be established by regulations of the department.

Sec. 16. That original sections 28-710 to 28-713 and 28-715, Revised Statutes Supplement, 1973, are repealed.

Sec. 17. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.