

LEGISLATIVE BILL 642

Approved by the Governor April 19, 2002

Introduced by Dw. Pedersen, 39

AN ACT relating to child abuse; to amend section 28-725, Reissue Revised Statutes of Nebraska, and section 28-726, Revised Statutes Supplement, 2001; to provide for disclosure of certain information and immunity as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. For purposes of sections 1 to 6 of this act:

(1) Child fatality means the death of a child from suspected abuse, neglect, or maltreatment as determined by the county coroner or county attorney;

(2) Findings and information means a written summary as described in section 3 of this act; and

(3) Near fatality means a case in which an examining physician determines that a child is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

Sec. 2. Notwithstanding any other provision of law and subject to sections 1 to 6 of this act, the Department of Health and Human Services shall disclose to the public, upon request, a summary of the findings and information related to a child fatality or near fatality if:

(1) A person is criminally charged with having caused the child fatality or near fatality and is convicted or acquitted of the charged offense or a lesser offense; or

(2) A county attorney certifies that a person would have been charged with having caused the child fatality or near fatality but for that person's prior death.

Sec. 3. Findings and information disclosed pursuant to section 2 of this act shall consist of a written summary that includes any of the following information the Department of Health and Human Services is able to provide:

(1) The dates, outcomes, and results of any actions taken or services rendered by the department; and

(2) Confirmation of the receipt of all reports, accepted or not accepted, by the local office of the Department of Health and Human Services for assessment of suspected child abuse, neglect, or maltreatment, including confirmation that investigations were conducted, the results of the investigations, a description of the conduct of the most recent investigation and the services rendered, and a statement of the basis for the department's determination.

This section does not authorize access to confidential records in the custody of the department or disclosure to the public of the records or the content of any psychiatric, psychological, or therapeutic evaluations or of information that would reveal the identities of persons who provided information related to suspected child abuse, neglect, or maltreatment.

Sec. 4. Within five working days after receipt of a request for a summary of the findings and information related to a child fatality or near fatality, the Department of Health and Human Services shall consult with the appropriate county attorney and provide the findings and information unless the department or county attorney has reasonable cause to believe that the release of the information:

(1) Is not authorized by section 2 of this act;

(2) Is likely to cause mental, emotional, or physical harm or danger to a minor child residing in the household of the deceased or injured child or who is the sibling of the deceased or injured child;

(3) Is the subject of an ongoing or future criminal investigation or prosecution;

(4) Is not authorized by federal law and regulations; or

(5) Could result in physical or emotional harm to an individual.

Sec. 5. A person whose request under section 4 of this act is denied may apply to the district court of Lancaster County for an order compelling disclosure of a summary of the findings and information by the Department of Health and Human Services. The application shall set forth with reasonable particularity factors supporting the application. Actions under this section shall be set for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the appellate courts. After the district court has reviewed the specific findings and information in camera,

the court shall issue an order compelling disclosure unless the court finds that one or more of the circumstances set out in section 4 of this act exist.

Sec. 6. Any person acting in good faith in disclosing or declining to disclose findings and information under sections 1 to 5 of this act is immune from criminal or civil liability that might otherwise be incurred or imposed for that action.

Sec. 7. Section 28-725, Reissue Revised Statutes of Nebraska, is amended to read:

28-725. All records of the department concerning reports of noninstitutional child abuse or neglect, including reports made to the department or central register, and all records of the department generated as a result of such reports, shall be confidential and shall not be disclosed except as specifically authorized by sections 28-710 to 28-713, 28-715, and 28-718 to 28-727 and sections 1 to 6 of 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. 8. Section 28-726, Revised Statutes Supplement, 2001, is amended to read:

28-726. Except as provided in this section, ~~and~~ section 28-722, and sections 1 to 6 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 sections 28-710 to 28-727. Such persons, officials, and agencies having access to such records shall include, but not be limited to:

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

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

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

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

(5) 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;

(6) The State Foster Care Review Board when the records relate to a child in a foster care placement as defined in section 43-1301. The records provided to the state board shall not include the name or identity of any person making a report of suspected child abuse or neglect;

(7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000, as the act existed on September 1, 2001, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness;

(8) The person or persons having custody of the abused or neglected child in situations of alleged out-of-home abuse or neglect; and

(9) For purposes of licensing providers of child care programs, the Department of Health and Human Services Regulation and Licensure.

Sec. 9. Original section 28-725, Reissue Revised Statutes of Nebraska, and section 28-726, Revised Statutes Supplement, 2001, are repealed.