

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 973**

Introduced by Coash, 27; McGill, 26.

Read first time January 19, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Child Protection Act; to amend  
2 sections 28-710 and 28-713.01, Reissue Revised Statutes  
3 of Nebraska, and sections 28-718 and 28-720, Revised  
4 Statutes Supplement, 2009; to change provisions relating  
5 to a central register; to provide for a hearing and  
6 appeal as prescribed; to harmonize provisions; and to  
7 repeal the original sections.

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

1           Section 1. Section 28-710, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-710 (1) Sections 28-710 to 28-727 and section 3 of  
4 this act shall be known and may be cited as the Child Protection  
5 Act.

6           (2) For purposes of the Child Protection Act:

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

10           (i) Placed in a situation that endangers his or her life  
11 or physical or mental health;

12           (ii) Cruelly confined or cruelly punished;

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

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

17           (v) Sexually abused; or

18           (vi) Sexually exploited by allowing, encouraging, or  
19 forcing such person to solicit for or engage in prostitution,  
20 debauchery, public indecency, or obscene or pornographic  
21 photography, films, or depictions;

22           (b) Department means the Department of Health and Human  
23 Services;

24           (c) Law enforcement agency means the police department  
25 or town marshal in incorporated municipalities, the office of the

1 sheriff in unincorporated areas, and the Nebraska State Patrol;

2 (d) Out-of-home child abuse or neglect means child  
3 abuse or neglect occurring in day care homes, foster homes,  
4 day care centers, group homes, and other child care facilities or  
5 institutions; and

6 (e) Subject of the report of child abuse or neglect means  
7 the person or persons identified in the report as responsible for  
8 the child abuse or neglect.

9 Sec. 2. Section 28-713.01, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 28-713.01 (1) Upon completion of the investigation  
12 pursuant to section 28-713:

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

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

25 (2) Such notice to the subject shall be sent by certified

1 mail to the last-known address of the subject of the report of  
2 child abuse or neglect and shall include:

3 (a) The nature of the report;

4 (b) The classification of the report under section  
5 28-720; and

6 (c) Notification of the right of the subject of the  
7 report of child abuse or neglect to a hearing and appeal in  
8 accordance with section 3 of this act or section 28-723.

9 (3) The record of a report classified as agency  
10 substantiated shall not be entered into the central register  
11 established under section 28-718 until ten days after receipt of  
12 the letter by the subject of the investigation. If the subject  
13 requests a hearing pursuant to section 3 of this act, the record of  
14 such report shall not be entered into the central register unless,  
15 after such hearing and any subsequent appeal have been held and  
16 the issues determined, such final determination substantiates the  
17 report of child abuse or neglect against the subject.

18 Sec. 3. (1) The subject of an investigation who receives  
19 a letter sent pursuant to section 28-713.01 may, within ten days  
20 after date of delivery of such letter, make a written request to  
21 the director for a hearing under this section. Upon receipt of  
22 the request for a hearing, the director shall set a date for such  
23 hearing, which date shall be no fewer than ten days and no more  
24 than sixty days after the date of the request. The director shall  
25 appoint a hearing officer to conduct the hearing. Such subject may

1 not submit more than one such written request per letter under this  
2 subsection unless new information relating to the matter comes to  
3 light after such written request is made and before the hearing is  
4 conducted.

5 (2) At the time and place fixed for such hearing, the  
6 subject may be heard and show cause why the record of the report of  
7 the investigation should not be entered into the central register  
8 under section 28-718. The director shall permit any person to  
9 intervene, appear, and be heard at such hearing by counsel or in  
10 person. Formal rules of pleading and evidence shall not apply to a  
11 hearing under this section.

12 (3) Within ten days after completion of the hearing,  
13 the hearing officer shall prepare a report based on the evidence  
14 presented, containing findings of fact and conclusions of law, and  
15 shall prepare a final decision and order directing such action as  
16 may be necessary. At the request of either party for good cause  
17 shown, the hearing officer may grant specific extensions of time  
18 beyond this period. The report and the final decision and order  
19 shall be delivered to each party or attorney of record by certified  
20 mail and to the director.

21 (4) The decision of the hearing officer may be appealed,  
22 and the appeal shall be in accordance with the Administrative  
23 Procedure Act.

24 Sec. 4. Section 28-718, Revised Statutes Supplement,  
25 2009, is amended to read:

1           28-718 There shall be a central register of child  
2 protection cases maintained in the department containing records  
3 of all reports of child abuse or neglect opened for investigation  
4 as provided in section 28-713 and classified as either court  
5 substantiated or agency substantiated as provided in section  
6 28-720, except that no such record shall be entered into the  
7 central register in any case in which the subject requests a  
8 hearing pursuant to section 3 of this act unless the final  
9 determination of the matter pursuant to such section substantiates  
10 the report of child abuse or neglect against the subject. The  
11 department may change records classified as inconclusive prior to  
12 August 30, 2009, to agency substantiated. The department shall give  
13 public notice of the changes made to this section and subsection  
14 (3) of section 28-720 by Laws 2009, LB 122, within thirty days  
15 after August 30, 2009, by having such notice published in a  
16 newspaper or newspapers of general circulation within the state.

17           Sec. 5. Section 28-720, Revised Statutes Supplement,  
18 2009, is amended to read:

19           28-720 All cases entered into the central register of  
20 child protection cases maintained pursuant to section 28-718 shall  
21 be classified as one of the following:

22           (1) Court substantiated, if a court of competent  
23 jurisdiction has entered a judgment of guilty against the subject  
24 of the report of child abuse or neglect upon a criminal complaint,  
25 indictment, or information or there has been an adjudication of

1 jurisdiction of a juvenile court over the child under subdivision  
2 (3) (a) of section 43-247 which relates or pertains to the report  
3 of child abuse or neglect;

4 (2) Court pending, if a criminal complaint, indictment,  
5 or information or a juvenile petition under subdivision (3) (a) of  
6 section 43-247, which relates or pertains to the subject of the  
7 report of abuse or neglect, has been filed and is pending in a  
8 court of competent jurisdiction; or

9 (3) Agency substantiated, if the department's  
10 determination of child abuse or neglect against the subject  
11 of the report of child abuse or neglect was supported by a  
12 preponderance of the evidence, and based upon an investigation  
13 pursuant to section 28-713 and any hearing or appeal determination  
14 pursuant to section 3 of this act.

15 Sec. 6. Original sections 28-710 and 28-713.01, Reissue  
16 Revised Statutes of Nebraska, and sections 28-718 and 28-720,  
17 Revised Statutes Supplement, 2009, are repealed.