

Chapter 5
Confidentiality and Privilege
(Last Updated: April 2013)

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Chapter 5.A

Confidentiality and Privilege State Confidentiality Provisions

(Last Updated: April 2013)

42-918 Contact with victims of spouse abuse and families; confidentiality; violation; penalty.

42-918 Contact with victims of spouse abuse and families; confidentiality; violation; penalty.

Under the Protection from Domestic Abuse Act, strict confidence shall be observed in all contact with victims of spouse abuse and their families. Any record, report, or files maintained by the department pursuant to the act shall be confidential, except that the department may release statistical information, while not revealing names. Violation of this section shall be a Class V misdemeanor.

See Also:

Chapter 12.B

Neb. Rev. Stat. §81-1842

Chapter 13.I

Federal Laws: Federal Confidentiality Provisions

Chapter 5.B

Confidentiality and Privilege

State Privilege Laws

(Last Updated: April 2013)

29-4301 Legislative findings.

29-4302 Terms, defined.

29-4303 Confidential communications; disclosure; when.

29-4304 Confidential communications; waiver; sections, how construed.

29-4301 Legislative findings.

The Legislature finds that because of the fear and stigma that often results from crimes of sexual assault or domestic violence, and because of the risk of retaliatory violence by the perpetrator, many victims hesitate to seek help even when it is available at no cost to them. Without assurances that communications made while receiving assistance in overcoming the adverse effects of a sexual assault or domestic violence situation will be confidential and protected from disclosure, victims will be even more reluctant to seek assistance or to confide openly to their advocates and to explore legal and social remedies fully. As a result, victims may fail to receive needed vital care and counseling and thus lack the support, resources, and information necessary to recover from the crime, to report the crime, to assist in the prosecution of the crime, to participate effectively in the justice system, to achieve legal protections, and to prevent future sexual assaults and domestic violence. This is a matter of statewide concern, and the prevention of violence is for the protection of the health, safety, and welfare of the public.

29-4302 Terms, defined.

For purposes of sections 29-4301 to 29-4304:

(1) Advocate means any employee or supervised volunteer of a domestic violence and sexual assault victim assistance program or of any other agency, business, or organization that is not affiliated with a law enforcement or prosecutor's office, whose primary purpose is assisting domestic violence and sexual assault victims;

(2) Victim means a person who communicates with an advocate for assistance in overcoming the adverse effects of domestic violence or sexual assault; and

(3) Confidential communication means any written or spoken information exchanged between a victim and an advocate in private or in the presence of a third party who is necessary to facilitate communication or further the advocacy process and which is disclosed to the advocate for the purposes of overcoming the adverse effects of domestic violence or sexual assault.

29-4303 Confidential communications; disclosure; when.

(1) A victim, an advocate without the consent of the victim, a third party as described in subdivision (3) of section 29-4302 without the consent of the victim, or a minor or incapacitated victim without the consent of a custodial guardian or a guardian ad litem appointed upon application of either party, shall not be compelled to give testimony or to produce records concerning a confidential communication for any purpose in any criminal, civil, legislative, administrative, or other proceeding, except as follows:

(a) The party seeking disclosure of a confidential communication shall, in a criminal, civil, or administrative proceeding, file a motion that sets forth specifically the issues on which disclosure is sought and enumerates the reasons why the party is seeking disclosure and why disclosure is necessary, accompanied by an affidavit or affidavits containing specific information which

establishes that the confidential communication constitutes relevant and material evidence in the case; and

(b) If the party seeking disclosure has complied with subdivision (a) of this subsection, the court or a hearing officer shall review the confidential communication in camera and out of the presence and hearing of all persons, except the victim, the advocate, and any other person the victim is willing to have present, to determine whether a failure to disclose the confidential communication would violate the constitutional rights of the party seeking disclosure.

(2) An advocate, a victim, or a third party as described in subdivision (3) of section 29-4302 cannot be compelled to provide testimony in any criminal, civil, legislative, administrative, or other proceeding that would identify the name, address, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim of the offense that is the subject of the proceeding unless the facility is a party to the proceeding.

29-4304 Confidential communications; waiver; sections, how construed.

(1) A victim does not waive the protections afforded by sections 29-4301 to 29-4304 by testifying in court about the offense, except that:

(a) If the victim partially discloses the contents of a confidential communication in the course of testifying, then either party may request the court to rule that justice requires the protections afforded by sections 29-4301 to 29-4304 be waived to the extent the protections apply to that portion of the confidential communication; and

(b) Any waiver shall apply only to the extent necessary to require any witness to respond to counsel's questions concerning a confidential communication that is relevant to the case.

(2) An advocate cannot waive the protections afforded a victim under sections 29-4301 to 29-4304. However, if a victim brings suit against an advocate or the agency, business, or organization in which the advocate was employed or served as a volunteer at the time of the advocacy relationship, the advocate may testify or produce records regarding confidential communications with the victim and is not in violation of sections 29-4301 to 29-4304.

(3) Sections 29-4301 to 29-4304 shall not relieve an advocate of any duty to report suspected adult abuse or neglect as required by section 28-372 or suspected child abuse or neglect as required by section 28-711 or any other legal duty to report a criminal or unlawful act.

(4) Sections 29-4301 to 29-4304 shall not be construed to limit any other testimonial privilege available to any person under the laws of this state.

Chapter 5.C

Confidentiality, Privilege & Mandatory Reporting Mandatory Reporting

(Last Updated: April 2013)

28-711 Child subjected to abuse or neglect; report; contents; toll-free number.

28-707 Child abuse; privileges not available; penalties.

28-372 Report of abuse; required; contents; notification; toll-free number established.

28-902 Failure to report injury of violence; physician or surgeon; emergency room or first-aid station attendant; penalty.

28-711. Child subjected to abuse or neglect; report; contents; toll-free number

(1) When any physician, any medical institution, any nurse, any school employee, any social worker, the Inspector General appointed under section 24 of this act, or any other person has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, he or she shall report such incident or cause a report of child abuse or neglect 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, shall be followed by a written report, and to the extent available shall contain the address and age of the abused or neglected child, the address of the person or persons having custody of the abused or neglected child, the nature and extent of the child abuse or neglect or the conditions and circumstances which would reasonably result in such child abuse or neglect, any evidence of previous child 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 child abuse or neglect and the identity of the perpetrator or perpetrators. Law enforcement agencies receiving any reports of child abuse or neglect under this subsection shall notify the department pursuant to section 28-718 on the next working day by telephone or mail.

(2) The department shall establish a statewide toll-free number to be used by any person any hour of the day or night, any day of the week, to make reports of child abuse or neglect. Reports of child abuse or neglect not previously made to or by a law enforcement agency shall be made immediately to such agency by the department.

28-707. Child abuse; privileges not available; penalties

(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 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;
or
- (e) Placed in a situation to be sexually abused as defined in section 28-319, 28-319.01, or 28-320.01.

(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 as defined in section 28-109 or death.

(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 III 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.

28-372. Report of abuse; required; contents; notification; toll-free number established

(1) When any physician, psychologist, physician assistant, nurse, nursing assistant, other medical, developmental disability, or mental health professional, law enforcement personnel, caregiver or employee of a caregiver, operator or employee of a sheltered workshop, owner, operator, or employee of any facility licensed by the department, or human services professional or paraprofessional not including a member of the clergy has reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation, he or she shall report the incident or cause a report to be made to the appropriate law enforcement agency or to the department. Any other person may report abuse, neglect, or exploitation if such person has reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation.

(2) Such report may be made by telephone, with the caller giving his or her name and address, and, if requested by the department, shall be followed by a written report within forty-eight hours. To the extent available the report shall contain: (a) The name, address,

and age of the vulnerable adult; (b) the address of the caregiver or caregivers of the vulnerable adult; (c) the nature and extent of the alleged abuse, neglect, or exploitation or the conditions and circumstances which would reasonably be expected to result in such abuse, neglect, or exploitation; (d) any evidence of previous abuse, neglect, or exploitation, including the nature and extent of the abuse, neglect, or exploitation; and (e) any other information which in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse, neglect, or exploitation and the identity of the perpetrator or perpetrators.

(3) Any law enforcement agency receiving a report of abuse, neglect, or exploitation shall notify the department no later than the next working day by telephone or mail.

(4) A report of abuse, neglect, or exploitation made to the department which was not previously made to or by a law enforcement agency shall be communicated to the appropriate law enforcement agency by the department no later than the next working day by telephone or mail.

(5) The department shall establish a statewide toll-free number to be used by any person any hour of the day or night and any day of the week to make reports of abuse, neglect, or exploitation.

28-902. Failure to report injury of violence; physician or surgeon; emergency room or first-aid station attendant; penalty

(1) Every person engaged in the practice of medicine and surgery, or who is in charge of any emergency room or first-aid station in this state, shall report every case, in which he is consulted for treatment or treats a wound or injury of violence which appears to have been received in connection with the commission of a criminal offense, immediately to the chief of police of the municipality or to the sheriff of the county wherein the consultation or treatment occurs. Such report shall include the name of such person, the residence, if ascertainable, and a brief description of the injury. Any provision of law or rule of evidence relative to confidential communications is suspended insofar as the provisions of this section are concerned.

(2) Any person who fails to make the report required by subsection (1) of this section commits a Class III misdemeanor.

Chapter 5.D

Confidentiality, Privilege & Mandatory Reporting Address Confidentiality Act

(Last Updated: April 2013)

42-1201 Act, how cited.

42-1202 Findings.

42-1203 Terms, defined.

42-1204 Substitute address; application to Secretary of State; approval; certification; renewal; prohibited acts; violation; penalty.

42-1205 Certification; forfeiture or cancellation; when.

42-1206 Address or substitute address; use; when.

42-1207 Early voting; authorized.

42-1208 Secretary of State; use of substitute address; exceptions.

42-1209 Program participants; application assistance.

42-1210 Rules and regulations.

42-1201 Act, how cited.

Sections 42-1201 to 42-1210 shall be known and may be cited as the Address Confidentiality Act.

42-1202 Findings.

The Legislature finds that persons attempting to escape from actual or threatened abuse, sexual assault, or stalking frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purposes of the Address Confidentiality Act are to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of abuse, sexual assault, or stalking, to enable interagency cooperation with the office of the Secretary of State in providing address confidentiality for victims of abuse, sexual assault, or stalking, and to enable state and local agencies to accept a program participant's use of an address designated by the Secretary of State as a substitute mailing address.

42-1203 Terms, defined.

For purposes of the Address Confidentiality Act:

- (1) Abuse means causing or attempting to cause physical harm, placing another person in fear of physical harm, or causing another person to engage involuntarily in sexual activity by force, threat of force, or duress, when committed by (a) a person against his or her spouse, (b) a person against his or her former spouse, (c) a person residing with the victim if such person and the victim are or were in a dating relationship, (d) a person who formerly resided with the victim if such person and the victim are or were in a dating relationship, (e) a person against a parent of his or her children, whether or not such person and the victim have been married or resided together at any time, (f) a person against a person with whom he or she is in a dating relationship, (g) a person against a person with whom he or she formerly was in a dating relationship, or (h) a person related to the victim by consanguinity or affinity;
- (2) Address means a residential street address, school address, or work address of an individual as specified on the individual's application to be a program participant;
- (3) Dating relationship means an intimate or sexual relationship;
- (4) Program participant means a person certified as a program participant under section 42-1204;
- (5) Sexual assault has the same meaning as in section 28-319, 28-319.01, 28-320, 28-320.01, or 28-386; and
- (6) Stalking has the same meaning as in sections 28-311.02 to 28-311.05.

42-1204 Substitute address; application to Secretary of State; approval; certification; renewal; prohibited acts; violation; penalty.

(1) An adult, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person as defined in section 30-2601 may apply to the Secretary of State to have an address designated by the Secretary of State serve as the substitute address of such adult, minor, or incapacitated person. The Secretary of State shall approve an application if it is filed in the manner and on the form prescribed by the Secretary of State and if it contains:

(a) A sworn statement by the applicant that the applicant has good reason to believe (i) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of abuse, sexual assault, or stalking and (ii) that the applicant fears for his or her safety, his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(b) A designation of the Secretary of State as agent for purposes of service of process and receipt of mail;

(c) The mailing address and the telephone number or numbers where the applicant can be contacted by the Secretary of State;

(d) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of abuse, sexual assault, or stalking; and

(e) The signature of the applicant and of any individual or representative of any office designated in writing under section 42-1209 who assisted in the preparation of the application and the date on which the applicant signed the application.

(2) Applications shall be filed in the office of the Secretary of State.

(3) Upon filing a properly completed application, the Secretary of State shall certify the applicant as a program participant. Such certification shall be valid for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The Secretary of State may by rule and regulation establish a renewal procedure.

(4) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant, the applicant's children, or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, is guilty of a Class II misdemeanor.

42-1205 Certification; forfeiture or cancellation; when.

(1) If a program participant obtains a name change, he or she shall forfeit his or her certification as a program participant unless the program participant applies to the Secretary of State for recertification and provides documentation of the legal name change.

(2) The Secretary of State may cancel a program participant's certification if there is a change in the mailing address from the one listed on the application under section 42-1204, unless the program participant provides the Secretary of State with notice of the change of address in such manner as is provided by rules and regulations adopted and promulgated by the Secretary of State.

(3) The Secretary of State may cancel certification of a program participant if mail forwarded to the program participant's address is returned as undeliverable.

(4) The Secretary of State shall cancel certification of a program participant who applies using false information.

42-1206 Address or substitute address; use; when.

(1) A program participant may request that state and local agencies use the address designated by the Secretary of State as the program participant's substitute address. When creating a new public record, a state or local agency which has a bona fide statutory, tax situs, or administrative requirement for the participant's residence address may request that the participant verbally provide the agency with such residence address if the agency has the capability to use such address for such bona fide purpose without permanently entering it into the agency's records. If the agency does not have such capability, it shall accept the address designated by the Secretary of State as a program participant's substitute address, unless the Secretary of State determines that:

(a) The state or local agency has a bona fide statutory, tax situs, or administrative requirement for the use of the address which would otherwise be confidential under the Address Confidentiality Act; and

(b) The address will be used only for such bona fide statutory, tax situs, or administrative requirement.

(2) The Secretary of State shall forward all first-class mail to each program participant's substitute address.

42-1207 Early voting; authorized.

(1) A program participant who is otherwise qualified to vote may apply to vote early under sections 32-938 to 32-951. The county clerk or election commissioner shall transmit the ballot for early voting to the program participant at the address designated by the program participant in his or her application as an early voter. Neither the name nor

the address of a program participant shall be included in any list of registered voters available to the public.

(2) The county clerk or election commissioner shall not make a program participant's address contained in voter registration records available for public inspection or copying except under the following circumstances:

- (a) If requested by a law enforcement agency, to the law enforcement agency; or
- (b) If directed by a court order, to a person identified in the order.

42-1208 Secretary of State; use of substitute address; exceptions.

The Secretary of State shall not make any records in a program participant's file available for inspection or copying, other than the substitute address designated by the Secretary of State, except under the following circumstances:

- (1) If requested of the Secretary of State by the chief commanding officer of a law enforcement agency or the officer's designee in the manner provided for by rules and regulations adopted and promulgated by the Secretary of State;
- (2) To a person identified in a court order upon the receipt by the Secretary of State of that court order which specifically orders the disclosure of a particular program participant's address and the reasons stated therefor; or
- (3) To verify the participation of a specific program participant, in which case the Secretary of State may only confirm or deny information supplied by the requester.

42-1209 Program participants; application assistance.

The Secretary of State shall designate state and local agencies and nonprofit entities that provide counseling and shelter services to victims of abuse, sexual assault, or stalking to assist persons applying to be program participants. Any assistance or counseling rendered by the office of the Secretary of State or its designees to such applicants shall not be deemed legal advice or the practice of law.

42-1210 Rules and regulations.

The Secretary of State may adopt and promulgate rules and regulations to carry out the Address Confidentiality Act.