

**Chapter 7**  
**Adult Abuse**  
(Last Updated: April 2013)

**Chapter 7.A Adult Protective Services Act**

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### **Adult Abuse Adult Protective Services Act** (Last Updated: April 2013)

- 28-348 Act, how cited.**
- 28-349 Legislative intent.**
- 28-350 Definitions, where found.**
- 28-351 Abuse, defined.**
- 28-352 Adult protective services, defined.**
- 28-353 Caregiver, defined.**
- 28-354 Cruel punishment, defined.**
- 28-355 Denial of essential services, defined.**
- 28-356 Department, defined.**
- 28-357 Essential services, defined.**
- 28-358 Exploitation, defined.**
- 28-359 Law enforcement agency, defined.**
- 28-360 Least restrictive alternative, defined.**
- 28-361 Living independently, defined.**
- 28-361.01. Denial of essential services, defined**
- 28-362 Permit, defined.**
- 28-363 Physical injury, defined.**
- 28-364 Proper supervision, defined.**
- 28-365 Registry, defined.**
- 28-366 Self-care, defined.**
- 28-367 Sexual abuse, defined.**
- 28-367.01.**
- 28-368 Substantial functional impairment, defined.**
- 28-369 Substantial mental impairment, defined.**
- 28-370 Unreasonable confinement, defined.**
- 28-371 Vulnerable adult, defined.**

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

**28-373 Report of abuse; law enforcement agency; duties.**

**28-374 Alleged abuse; department; duties.**

**28-374.01.**

**28-375 Immunity from liability; when.**

**28-376 Adult Protective Services Central Registry; established; access; name-change order; treatment.**

**28-377 Records relating to abuse; access.**

**28-378 Records relating to abuse; release of information; when.**

**28-379 Report of abuse; summary by department; when provided.**

**28-380 Amendment or expungement of records; inaccurate or inconsistent with act; procedure.**

**28-381 Amendment or expungement of records; good cause; notice.**

**28-382 Law concerning confidentiality; applicability.**

**28-383 Treatment by spiritual means alone; not considered abuse.**

**28-384 Failure to make report; penalty.**

**28-385 Release of confidential information; penalty.**

**28-386 Knowing and intentional abuse of a vulnerable adult; penalty.**

**28-387 Short-term protective services; temporary placement; authorized; when; procedure.**

**28-348. Act, how cited**

Sections 28-348 to 28-387 shall be known and may be cited as the Adult Protective Services Act.

**28-349. Legislative intent**

The Legislature recognizes the need for the investigation and provision of services to certain persons who are substantially impaired and are unable to protect themselves from abuse, neglect, or exploitation. Often such persons cannot find others able or willing to render assistance. The Legislature intends through the Adult Protective Services Act to establish a program designed to fill this need and to assure the availability of the program to all eligible persons. It is also the intent of the Legislature to authorize the least restriction possible on the exercise of personal and civil rights consistent with the person's need for services.

**28-350. Definitions, where found**

For purposes of the Adult Protective Services Act, unless the context otherwise requires, the definitions found in sections 28-351 to 28-371 shall be used.

**28-351. Abuse, defined**

Abuse means any knowing or intentional act on the part of a caregiver or any other person which results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, or sexual exploitation of a vulnerable adult.

**28-352. Adult protective services, defined**

Adult protective services means those services provided by the department for the prevention, correction, or discontinuance of abuse, neglect, or exploitation. Such services shall be those necessary and appropriate under the circumstances to protect an abused, neglected, or exploited vulnerable adult, ensure that the least restrictive alternative is provided, prevent further abuse, neglect, or exploitation, and promote self-care and independent living. Such services shall include, but not be limited to: (1) Receiving and investigating reports of alleged abuse, neglect, or exploitation; (2) developing social service plans; (3) arranging for the provision of services such as medical care, mental health care, legal services, fiscal management, housing, or home health care; (4) arranging for the provision of items such as food, clothing, or shelter; and (5) arranging or coordinating services for caregivers.

**28-353. Caregiver, defined**

Caregiver shall mean any person or entity which has assumed the responsibility for the care of a vulnerable adult voluntarily, by express or implied contract, or by order of a court of competent jurisdiction.

**28-354. Cruel punishment, defined**

Cruel punishment shall mean punishment which intentionally causes physical injury to a vulnerable adult.

**28-355. *[Renumbered 7/19/2012 - see note]* Denial of essential services, defined**

Denial of essential services shall mean that essential services are denied or neglected to such an extent that there is actual physical injury to a vulnerable adult or imminent danger of the vulnerable adult suffering physical injury or death.

**Note:** Renumbered 7/19/2012 as Section 28-361.01

**28-356. Department, defined**

Department shall mean the Department of Health and Human Services.

**28-357. Essential services, defined**

Essential services shall mean those services necessary to safeguard the person or property of a vulnerable adult. Such services shall include, but not be limited to, sufficient and appropriate food and clothing, temperate and sanitary shelter, treatment for physical needs, and proper supervision.

**28-358. Exploitation, defined**

Exploitation means the taking of property of a vulnerable adult by any person by means of undue influence, breach of a fiduciary relationship, deception, or extortion or by any unlawful means.

**28-359. Law enforcement agency, defined**

Law enforcement agency shall mean the police department or the town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol.

**28-360. Least restrictive alternative, defined**

Least restrictive alternative shall mean adult protective services provided in a manner no more restrictive of a vulnerable adult's liberty and no more intrusive than necessary to achieve and ensure essential services.

**28-361. Living independently, defined**

Living independently shall include, but not be limited to, using the telephone, shopping, preparing food, housekeeping, and administering medications.

**28-361.01. Denial of essential services, defined**

Neglect means any knowing or intentional act or omission on the part of a caregiver to provide essential services or the failure of a vulnerable adult, due to physical or mental impairments, to perform self-care or obtain essential services to such an extent that there is actual physical injury to a vulnerable adult or imminent danger of the vulnerable adult suffering physical injury or death.

**28-362. Permit, defined**

Permit shall mean to allow a vulnerable adult over whom one has a proximate or direct degree of control to perform an act or acts or be in a situation which the controlling person could have prevented by the reasonable exercise of such control.

**28-363. Physical injury, defined**

Physical injury shall mean damage to bodily tissue caused by nontherapeutic conduct, including, but not limited to, fractures, bruises, lacerations, internal injuries, or dislocations, and shall include, but not be limited to, physical pain, illness, or impairment of physical function.

**28-364. Proper supervision, defined**

Proper supervision shall mean care and control of a vulnerable adult which a reasonable and prudent person would exercise under similar facts and circumstances.

**28-365. Registry, defined**

Registry shall mean the Adult Protective Services Central Registry established by section 28-376.

**28-366. Self-care, defined**

Self-care shall include, but not be limited to, personal hygiene, eating, and dressing.

**28-367. Sexual abuse, defined**

Sexual abuse shall include sexual assault as described in section 28-319 or 28-320 and incest as described in section 28-703.

**28-367.01.**

Sexual exploitation includes, but is not limited to, unlawful intrusion as described in section 28-311.08 and causing, allowing, permitting, inflicting, or encouraging a vulnerable adult to engage in voyeurism, in exhibitionism, in prostitution, or in the lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult.

**28-368. Substantial functional impairment, defined**

Substantial functional impairment shall mean a substantial incapability, because of physical limitations, of living independently or providing self-care as determined through observation, diagnosis, investigation, or evaluation.

**28-369. Substantial mental impairment, defined**

Substantial mental impairment shall mean a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or ability to live independently or provide self-care as revealed by observation, diagnosis, investigation, or evaluation.

**28-370. Unreasonable confinement, defined**

Unreasonable confinement means confinement which intentionally causes physical injury to a vulnerable adult or false imprisonment as described in section 28-314 or 28-315.

**28-371. Vulnerable adult, defined**

Vulnerable adult shall mean any person eighteen years of age or older who has a substantial mental or functional impairment or for whom a guardian has been appointed under the Nebraska Probate Code.

**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.

#### **28-373. Report of abuse; law enforcement agency; duties**

(1) Upon the receipt of a report concerning abuse, neglect, or exploitation pursuant to section 28-372, it shall be the duty of the law enforcement agency (a) to make an investigation if deemed warranted because of alleged violations of section 28-386, (b) to take immediate steps, if necessary, to protect the vulnerable adult, and (c) to institute legal proceedings if appropriate. The law enforcement agency shall notify the department if an investigation is undertaken. Such notification shall be made no later than the next working day following receipt of the report.

(2) The law enforcement agency shall make a written report or a case summary to the department of all investigated cases of abuse, neglect, or exploitation and action taken with respect to all such cases.

#### **28-374. Alleged abuse; department; duties**

(1) The department shall investigate each case of alleged abuse, neglect, or exploitation and shall provide such adult protective services as are necessary and appropriate under the circumstances.



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

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

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

#### **28-374.01.**

(1) Upon completion of the investigation pursuant to sections 28-373 and 28-374, the person who allegedly abused, neglected, or exploited a vulnerable adult shall be given written notice of the determination of the investigation and whether the person who allegedly abused, neglected, or exploited a vulnerable adult will be entered into the registry.

(2) If the person who allegedly abused, neglected, or exploited a vulnerable adult will be entered into the registry, the notice shall be sent by certified mail with return receipt requested or first-class mail to the last-known address of the person who allegedly abused, neglected, or exploited a vulnerable adult and shall include:

(a) The nature of the report;

(b) The classification of the report; and

(c) The right of the person who allegedly abused, neglected, or exploited a vulnerable adult to request the department to amend or expunge identifying information from the report or to remove the substantiated report from the registry in accordance with section 28-380.

(3) If the person who allegedly abused, neglected, or exploited a vulnerable adult will not be entered into the registry, the notice shall be sent by first-class mail and shall include:

(a) The nature of the report; and

(b) The classification of the report.

#### **28-375. Immunity from liability; when**

Any person participating in an investigation or the making of a report pursuant to the Adult Protective Services Act or participating in a judicial proceeding resulting therefrom shall be immune from any liability except (1) as otherwise provided in the Adult Protective Services Act, (2) for malfeasance in office or willful or wanton neglect of duty, or (3) for false statements of fact made with malicious intent.

**28-376. Adult Protective Services Central Registry; established; access; name-change order; treatment**

- (1) The department shall establish and maintain an Adult Protective Services Central Registry which shall contain any substantiated report regarding a person who has allegedly abused, neglected, or exploited a vulnerable adult.
- (2) Upon request, a vulnerable adult who is the subject of a report or, if the vulnerable adult is legally incapacitated, the guardian or guardian ad litem of the vulnerable adult and the person who has allegedly abused, neglected, or exploited the vulnerable adult shall be entitled to receive a copy of all information contained in the registry pertaining to such report. The department shall not release data that would be harmful or detrimental to the vulnerable adult 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.
- (3) The department shall establish classifications for all cases in the registry.
- (4) The department shall determine whether a name-change order received from the clerk of a district court pursuant to section 25-21,271 is for a person on the Adult Protective Services Central Registry and, if so, shall include the changed name with the former name in the registry and file or cross-reference the information under both names.

**28-377. Records relating to abuse; access**

Except as otherwise provided in sections 28-376 to 28-380, no person, official, or agency shall have access to the records relating to abuse unless in furtherance of purposes directly connected with the administration of the Adult Protective Services Act and section 28-726. 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;
- (2) A county attorney in preparation of an abuse petition;
- (3) A physician who has before him or her a person whom he or she reasonably suspects may be abused;

(4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused vulnerable adult;

(5) Defense counsel in preparation of the defense of a person charged with abuse;

(6) Any person engaged in bona fide research or auditing, except that no information identifying the subjects of the report shall be made available to the researcher or auditor. The researcher shall be charged for any costs of such research incurred by the department at a rate established by rules and regulations adopted and promulgated by the department;

(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; and

(8) For purposes of licensing providers of child care programs, the department.

#### **28-378. Records relating to abuse; release of information; when**

The department or appropriate law enforcement agency shall provide requested information to any person legally authorized by sections 28-376 to 28-380 to have access to records relating to abuse when ordered by a court of competent jurisdiction or upon compliance by such person with identification requirements established by rules and regulations of the department or law enforcement agency. Such information shall not include the name and address of the person making the report, except that the county attorney's office may request and receive the name and address of the person making the report with such person's written consent. The name and other identifying data of any person requesting or receiving information from the registry and the dates and the circumstances under which requests are made or information is released shall be entered in the registry.

#### **28-379. Report of abuse; summary by department; when provided**

Upon request, a physician or the person in charge of an institution, facility, or agency making a legally mandated report shall receive a summary of the findings of and actions taken by the department in response to such report. The amount of detail such summary contains and the purposes for which it may be used shall depend on the source of the report and shall be established by rules and regulations adopted and promulgated by the department.

#### **28-380. Amendment or expungement of records; inaccurate or inconsistent with act; procedure**

At any time subsequent to the completion of the department's investigation, if a vulnerable adult, the guardian of a vulnerable adult, or a person who allegedly abused a vulnerable adult and who is mentioned in a report believes the information in the report is inaccurate or being maintained in a manner inconsistent with the Adult Protective Services Act, such person may request the department to amend or expunge identifying information from the report or remove the record of such report from the registry. If the department refuses to do so or does not act within thirty days, the vulnerable adult or person who allegedly abused a vulnerable adult shall have the right to a hearing 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 such act. Such hearing shall be held within a reasonable time after a request is made and at a reasonable place and hour. At the hearing the burden of proving the accuracy and consistency of the record shall be on the department. The hearing shall be conducted by the chief executive officer of the department or his or her designated representative, who is hereby authorized and empowered to order the amendment, expunction, or removal of the record to make such record accurate or consistent with the requirements of the Adult Protective Services Act. The decision shall be made in writing within thirty days of the close of the hearing and shall state the reasons upon which it is based. Decisions of the department may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

#### **28-381. Amendment or expungement of records; good cause; notice**

At any time, the department may amend, expunge, or remove from the registry any record upon good cause. Upon request, written notice of any amendment, expunction, or removal of any record made pursuant to the Adult Protective Services Act shall be served upon the vulnerable adult who is the subject of the report or the person who allegedly abused the vulnerable adult. The department shall advise any other individuals or agencies who received a copy of the record pursuant to the Adult Protective Services Act to amend, expunge, or destroy such record. All information identifying the subjects of unsubstantiated reports shall be expunged from the registry.

#### **28-382. Law concerning confidentiality; applicability**

(1) No rule of evidence or other provision of law concerning confidential communications shall apply to prevent reports made pursuant to the Adult Protective Services Act unless otherwise specifically mentioned in the act.

(2) Evidence shall not be excluded from any judicial proceeding resulting from a report made pursuant to the Adult Protective Services Act on the ground that it is a confidential communication protected by the privilege granted to husband and wife, patient and physician, or client and professional counselor.

#### **28-383. Treatment by spiritual means alone; not considered abuse**

No person shall be considered to be abused for the sole reason that such person relies upon spiritual means alone for treatment in accordance with the tenets and practices of a recognized church or religious denomination in lieu of medical treatment.

**28-384. Failure to make report; penalty**

Any person who willfully fails to make any report required by the Adult Protective Services Act shall be guilty of a Class III misdemeanor.

**28-385. Release of confidential information; penalty**

Any person who knowingly releases information required to be kept confidential by the Adult Protective Services Act, except as provided in the act, shall be guilty of a Class III misdemeanor.

**28-386. Knowing and intentional abuse of a vulnerable adult; penalty**

(1) A person commits knowing and intentional abuse, neglect, or exploitation of a vulnerable adult if he or she through a knowing and intentional act causes or permits a vulnerable adult to be:

- (a) Physically injured;
- (b) Unreasonably confined;
- (c) Sexually abused;
- (d) Exploited;
- (e) Cruelly punished;
- (f) Neglected; or
- (g) Sexually exploited.

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

**28-387. Short-term protective services; temporary placement; authorized; when; procedure**

(1) A county court may issue an ex parte order authorizing the provision of short-term involuntary adult protective services or temporary placement for a vulnerable adult for up to forty-eight hours, excluding nonjudicial days, pending the hearing for a need for continuing services, after finding on the record that:

- (a) The person is a vulnerable adult;
- (b) An emergency exists; and
- (c) There are compelling reasons for ordering protective services or temporary placement.

(2) An ex parte order shall be issued only if other protective custody services are unavailable or other services provide insufficient protection.

(3) The department shall contact the appropriate county attorney to file an application for short-term involuntary adult protective services or temporary placement if an investigation indicates probable cause to believe that an emergency exists for a vulnerable adult. The department shall not be given legal custody nor be made guardian of such vulnerable adult. A vulnerable adult shall be responsible for the costs of services provided either through his or her own income or other programs for which he or she may be eligible.

(4) A law enforcement officer accompanied by a representative of the department may enter the premises where the vulnerable adult is located after obtaining the court order and announcing his or her authority and purpose. Forcible entry may be made only after the court order has been obtained unless there is probable cause to believe that the delay of such entry would cause the vulnerable adult to be in imminent danger of life-threatening physical injury or neglect.

(5) When, from the personal observations of a representative of the department and a law enforcement officer, it appears probable that the vulnerable adult is likely to be in imminent danger of life-threatening physical injury or neglect if he or she is not immediately removed from the premises, the law enforcement agency shall, when authorized by the court order, take into custody and transport the vulnerable adult to an appropriate medical or protective placement facility.

(6) When action is taken under this section, a hearing shall be held within forty-eight hours of the signing of the court order, excluding nonjudicial days, to establish probable cause for short-term involuntary adult protective services or for protective placement. Unless the vulnerable adult has counsel of his or her own choice or has indicated a desire for an attorney of his or her own choice, the court shall appoint an attorney to represent him or her in the proceeding, who shall have the powers and duties of a guardian ad litem.

(7) Notice of the hearing shall be served personally on the vulnerable adult. Waiver of notice by the vulnerable adult shall not be effective unless he or she attends the hearing or such notice is waived by the guardian ad litem. Notice of the hearing shall be given to the following parties whose whereabouts can be readily ascertained: (a) The spouse of the vulnerable adult; (b) children of the vulnerable adult; and (c) any other party specified by the court.

(8) A judgment authorizing continuance of short-term involuntary adult protective services shall prescribe those specific adult protective services which are to be provided, the duration of the services which shall not exceed sixty days, and the person or persons who are authorized or ordered to provide them.