

Child Abuse and Neglect Statutes and Procedure

South Dakota:

26-8A-2. Abused or neglected child defined. In this chapter and chapter 26-7A, the term, abused or neglected child, means a child:

(1) Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;

(2) Who lacks proper parental care through the actions or omissions of the child's parent, guardian, or custodian;

(3) Whose environment is injurious to the child's welfare;

(4) Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well-being;

(5) Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent, guardian, or custodian;

(6) Who is threatened with substantial harm;

(7) Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;

(8) Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the child's parent, guardian, custodian, or any other person responsible for the child's care;

(9) Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B; or

(10) Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance.

Source: SDC 1939, § 43.0301 (12) as enacted by SL 1968, ch 164, § 1; SL 1984, ch 192, § 1; SL 1990, ch 170, § 4; SL 1991, ch 217, § 111B; SDCL Supp, § 26-8-6; SL 1998, ch 204, § 2; SL 2004, ch 181, § 1; SL 2005, ch 141, § 1; SL 2008, ch 137, § 1.

Changes made:

1901: Created, technically speaking.

1939: Enrolled in South Dakota code.

1968: HB 554; overhauled laws related to juvenile court procedure, adopted language closer to present-day.

1984: SB 70; Child abuse and neglect laws revised, sexual abuse added to the statute.

1991: HB 1140; Juvenile code was enacted, changed statute from 26-8-6 to present code number. Shifted laws into different chapter.

1998: HB 1257; Prenatal exposure to alcohol or drugs added as a form of child abuse.

2004: SB 66; Exposure to the manufacturing of methamphetamine added as a form of child abuse or neglect.

2005: HB 1258; Amended the statute to add "or other controlled substance" to the substances manufactured as a form of child abuse or neglect.

2008: SB 69; Added marijuana exposure to the list of child abuse and neglect.

1939

26-8-6. **Dependent child and neglected child defined.**—For the purpose of this chapter and chapter 26-9 the phrase “dependent child” or “neglected child” shall mean:

- (1) Any child who is a county charge, or any orphan;
- (2) Any child deserted by both its parents, which orphan or deserted child has no suitable home or abode;
- (3) Any child of any infirm, indigent, or incompetent person;
- (4) Any child of any person who is supported in whole or in part by public charity;
- (5) Any child having no suitable home or abode, or who has not proper parental care or guardianship or who has a home which, by reason of neglect, cruelty, or depravity on the part of its parents, guardian, or any person in whose care it may be, is an unfit place for such child;
- (6) Any child having vicious, corrupt, or immoral parents or who is in the custody of vicious, corrupt, or immoral people, or who is surrounded by vicious, corrupt, or immoral influences;
- (7) Any child whose father, mother, or guardian is an habitual drunkard or a person of notorious or scandalous conduct or a reputed thief or prostitute or an habitual idler, or who habitually permits it to frequent places for the purpose of begging or securing alms, or to frequent the company or consort with reputed thieves or prostitutes with or without such mother, father, or guardian, or who by any other act, example, or by vicious training depraves the morals of such child;
- (8) Any child employed to lead blind persons on the streets or highways for the purpose of begging;
- (9) Any child playing any instrument of music or singing in saloons or other places where liquor is sold, or on the street or public highways;
- (10) Any child of any person confined in any penal or charitable institution of this state; or
- (11) Any child in the possession of any person not the parent or lawful guardian thereof or next of kin to such child.

Source: SL 1901, ch 71, § 1; RPolC 1903, § 3205; SL 1915, ch 119, § 1; RC 1919, § 9972; SDC 1939, § 43.0301.

31 AmJur, Juvenile Courts and Delinquent, Dependent and Neglected Children, §§ 22-34.

43 CJS, Infants, §§ 5-16.

Collateral References.

Infants—16-16.12, 18.

1991

Section 111B. That chapter 26-8A be amended by adding thereto a new section to read as follows:

In this chapter and chapter 26-7, the term "abused or neglected child" means a child:

- (1) Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;
- (2) Who lacks proper parental care through the actions or omissions of the child's parent, guardian or custodian;
- (3) Whose environment is injurious to the child's welfare;
- (4) Whose parent, guardian or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care or any other care necessary for the child's health, guidance or well-being;
- (5) Who is homeless, without proper care or not domiciled with the child's parent, guardian or custodian through no fault of the child's parent, guardian or custodian;
- (6) Who is threatened with substantial harm;
- (7) Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture; or
- (8) Who is subject to sexual abuse, sexual molestation or sexual exploitation by the child's parent, guardian, custodian or any other person responsible for the child's care.

28-713. Reports of child abuse or neglect; law enforcement agency; department; duties.

Unless an intake is assigned to alternative response, upon the receipt of a call reporting child abuse and neglect as required by section 28-711:

(1) It is the duty of the law enforcement agency to investigate the report, to take immediate steps to protect the child, and to institute legal proceedings if appropriate. In situations of alleged out-of-home child abuse or neglect if the person or persons to be notified have not already been notified and the person to be notified is not the subject of the report of child abuse or neglect, the law enforcement agency shall immediately notify the person or persons having custody of each child who has allegedly been abused or neglected that such report of alleged child abuse or neglect has been made and shall provide such person or persons with information of the nature of the alleged child abuse or neglect. The law enforcement agency may request assistance from the department during the investigation and shall, by the next working day, notify either the hotline or the department of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency. A copy of all reports, whether or not an investigation is being undertaken, shall be provided to the department;

(2) In situations of alleged out-of-home child abuse or neglect if the person or persons to be notified have not already been notified and the person to be notified is not the subject of the report of child abuse or neglect, the department shall immediately notify the person or persons having custody of each child who has allegedly been abused or neglected that such report of alleged child abuse or neglect has been made and shall provide such person or persons with information of the nature of the alleged child abuse or neglect and any other information that the department deems necessary. The department shall investigate for the purpose of assessing each report of child abuse or neglect to determine the risk of harm to the child involved. The department shall also provide such social services as are necessary and appropriate under the circumstances to protect and assist the child and to preserve the family;

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

(4) The department shall, by the next working day after receiving a report of child abuse or neglect under subdivision (1) of this section, make a written report or a summary on forms provided by the department to the proper law enforcement agency in the county and enter in the tracking system of child protection cases maintained pursuant to section 28-715 all reports of child abuse or neglect opened for investigation and any action taken; and

(5) The department shall, upon request, make available to the appropriate investigating law enforcement agency and the county attorney a copy of all reports relative to a case of suspected child abuse or neglect.

Source: Laws 1977, LB 38, § 152; Laws 1979, LB 505, § 4; Laws 1982, LB 522, § 5; Laws 1988, LB 463, § 45; Laws 1992, LB 1184, § 10; Laws 1996, LB 1044, § 72; Laws 1997, LB 119, § 2; Laws 1997, LB 307, § 13; Laws 2005, LB 116, § 3; Laws 2007, LB296, § 37; Laws 2014, LB853, § 5.

28-728. Legislative findings and intent; child abuse and neglect investigation team; child advocacy center; child abuse and neglect treatment team; powers and duties.

(1) The Legislature finds that child abuse and neglect are community problems requiring a coordinated response by law enforcement, child advocacy centers, prosecutors, the Department of Health and Human Services, and other agencies or entities designed to protect children. It is the intent of the Legislature to create a child abuse and neglect investigation team in each county or contiguous group of counties and to create a child abuse and neglect treatment team in each county or contiguous group of counties.

(2) Each county or contiguous group of counties will be assigned by the Department of Health and Human Services to a child advocacy center. The purpose of a child advocacy center is to provide a child-focused location for conducting forensic interviews and medical evaluations for alleged child victims of abuse and neglect and for coordinating a multidisciplinary team response that supports the physical, emotional, and psychological needs of children who are alleged victims of abuse or neglect. Each child advocacy center shall meet accreditation criteria set forth by the National Children's Alliance. Nothing in this section shall prevent a child from receiving treatment or other services at a child advocacy center which has received or is in the process of receiving accreditation.

(3) Each county attorney or the county attorney representing a contiguous group of counties is responsible for convening the child abuse and neglect investigation team and ensuring that protocols are established and implemented. A representative of the child advocacy center assigned to the team shall assist the county attorney in facilitating case review, developing and updating protocols, and arranging training opportunities for the team. Each team must have protocols which, at a minimum, shall include procedures for:

(a) Mandatory reporting of child abuse and neglect as outlined in section 28-711 to include training to professionals on identification and reporting of abuse;

(b) Assigning roles and responsibilities between law enforcement and the Department of Health and Human Services for the initial response;

(c) Outlining how reports will be shared between law enforcement and the Department of Health and Human Services under sections 28-712.01 and 28-713;

(d) Coordinating the investigative response including, but not limited to:

(i) Defining cases that require a priority response;

(ii) Contacting the reporting party;

(iii) Arranging for a video-recorded forensic interview at a child advocacy center for children who are three to eighteen years of age and are alleged to be victims of sexual abuse or serious physical abuse or neglect, have witnessed a violent crime, are found in a drug-endangered environment, or have been recovered from a kidnapping;

(iv) Assessing the need for and arranging, when indicated, a medical evaluation of the alleged child victim;

(v) Assessing the need for and arranging, when indicated, appropriate mental health services

for the alleged child victim or nonoffender caregiver;

(vi) Conducting collateral interviews with other persons with information pertinent to the investigation including other potential victims;

(vii) Collecting, processing, and preserving physical evidence including photographing the crime scene as well as any physical injuries as a result of the alleged child abuse and neglect; and

(viii) Interviewing the alleged perpetrator;

(e) Reducing the risk of harm to alleged child abuse and neglect victims;

(f) Ensuring that the child is in safe surroundings, including removing the perpetrator when necessary or arranging for temporary custody of the child when the child is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the child's protection as provided in section 43-248;

(g) Sharing of case information between team members; and

(h) Outlining what cases will be reviewed by the investigation team including, but not limited to:

(i) Cases of sexual abuse, serious physical abuse and neglect, drug-endangered children, and serious or ongoing domestic violence;

(ii) Cases determined by the Department of Health and Human Services to be high or very high risk for further maltreatment; and

(iii) Any other case referred by a member of the team when a system-response issue has been identified.

(4) Each county attorney or the county attorney representing a contiguous group of counties is responsible for convening the child abuse and neglect treatment team and ensuring that protocols are established and implemented. A representative of the child advocacy center appointed to the team shall assist the county attorney in facilitating case review, developing and updating protocols, and arranging training opportunities for the team. Each team must have protocols which, at a minimum, shall include procedures for:

(a) Case coordination and assistance, including the location of services available within the area;

(b) Case staffings and the coordination, development, implementation, and monitoring of treatment or safety plans particularly in those cases in which ongoing services are provided by the Department of Health and Human Services or a contracted agency but the juvenile court is not involved;

(c) Reducing the risk of harm to child abuse and neglect victims;

(d) Assisting those child abuse and neglect victims who are abused and neglected by perpetrators who do not reside in their homes; and

(e) Working with multiproblem status offenders and delinquent youth.

(5) For purposes of this section, forensic interview means a video-recorded interview of an alleged child victim conducted at a child advocacy center by a professional with specialized training designed to elicit details about alleged incidents of abuse or neglect, and such interview may result in intervention in criminal or juvenile court.

Source: Laws 1992, LB 1184, § 1; Laws 1996, LB 1044, § 73; Laws 1999, LB 594, § 6; Laws 2006, LB 1113, § 24; Laws 2007, LB296, § 40; Laws 2012, LB993, § 1; Laws 2014, LB853, § 17.

28-710. Act, how cited; terms, defined.

(1) Sections 28-710 to 28-727 shall be known and may be cited as the Child Protection and Family Safety Act.

(2) For purposes of the Child Protection and Family Safety Act:

(a) Alternative response means a comprehensive assessment of (i) child safety, (ii) the risk of future child abuse or neglect, (iii) family strengths and needs, and (iv) the provision of or referral for necessary services and support. Alternative response is an alternative to traditional response and does not include an investigation or a formal determination as to whether child abuse or neglect has occurred, and the subject of the report shall not be entered into the central registry of child protection cases maintained pursuant to section 28-718;

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

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

(ii) Cruelly confined or cruelly punished;

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

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

(v) Sexually abused; or

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

(c) Comprehensive assessment means an analysis of child safety, risk of future child abuse or neglect, and family strengths and needs on a report of child abuse or neglect. Comprehensive assessment does not include a determination as to whether the child abuse or neglect occurred but does determine the need for services and support to address the safety of children and the risk of future abuse or neglect;

(d) Department means the Department of Health and Human Services;

(e) Investigation means fact gathering related to the current safety of a child and the risk of future child abuse or neglect that determines whether child abuse or neglect has occurred and whether child protective services are needed;

(f) Law enforcement agency means the police department or town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol;

(g) Out-of-home child abuse or neglect means child abuse or neglect occurring in day care homes, foster homes, day care centers, residential child-caring agencies as defined in section 71-1926, and other child care facilities or institutions;

(h) Review, Evaluate, and Decide Team means an internal team of staff within the department and shall include no fewer than two supervisors or administrators and two staff

members knowledgeable on the policies and practices of the department, including, but not limited to, the structured review process. County attorneys, child advocacy centers, or law enforcement agency personnel may attend team reviews upon request of a party;

(i) Traditional response means an investigation by a law enforcement agency or the department pursuant to section 28-713 which requires a formal determination of whether child abuse or neglect has occurred; and

(j) Subject of the report of child abuse or neglect means the person or persons identified in the report as responsible for the child abuse or neglect.

Source: Laws 1977, LB 38, § 149; Laws 1979, LB 505, § 1; Laws 1982, LB 522, § 3; Laws 1985, LB 447, § 10; Laws 1988, LB 463, § 42; Laws 1992, LB 1184, § 9; Laws 1994, LB 1035, § 2; Laws 1996, LB 1044, § 71; Laws 1997, LB 119, § 1; Laws 2005, LB 116, § 1; Laws 2013, LB265, § 29; Laws 2014, LB853, § 1.

81-3136. Department of Health and Human Services; develop model for alternative response to reports of child abuse or neglect; contents; report.

(1) It is the intent of the Legislature that the alternative response to reports of child abuse or neglect model developed pursuant to subsection (2) of this section be implemented in designated sites under the Child Protection and Family Safety Act no earlier than July 2014.

(2) The Department of Health and Human Services shall convene interested stakeholders and families to develop a model for alternative response to reports of child abuse or neglect under the act. The model shall include:

- (a) Methodology for determining the location of sites for initial implementation of alternative response;
- (b) An estimate of the percentage of reports of child abuse or neglect eligible for alternative response;
- (c) Eligibility criteria for alternative response;
- (d) The process to determine eligibility for alternative response;
- (e) The assessment protocol and tools to be used for alternative response;
- (f) The role of child abuse and neglect investigative teams and child abuse and neglect treatment teams in implementation sites;
- (g) How, with whom, and what alternative response data will be shared;
- (h) The criteria and process for transition of families from an alternative response to a traditional investigation;
- (i) The criteria and process for families who refuse an alternative response;
- (j) The plan to address the continuum of services needed for families receiving an alternative response;
- (k) An overview of critical training elements for both staff who implement and stakeholders involved with alternative response implementation;
- (l) A description of the evaluation component;
- (m) The relationship of alternative response to Title IV-E waiver applications of the Department of Health and Human Services under the federal Social Security Act;
- (n) A plan to communicate and update interested stakeholders and families with regard to the alternative response planning process;
- (o) The identification of statutory and policy changes necessary to implement the alternative response model, including a procedure that provides that reports of child abuse and neglect which receive an alternative response shall not receive a formal determination and the subject of the report shall not be entered into the central registry of child protection cases maintained pursuant to section 28-718;

- (p) A budget for implementing and sustaining an alternative response model;
- (q) The mechanisms of oversight and accountability in the alternative response model; and
- (r) A determination of how alternative response service providers will be selected.

(3) The Department of Health and Human Services shall provide the model developed under subsection (2) of this section in a report to the Nebraska Children's Commission by November 1, 2013, for the commission's review. The Nebraska Children's Commission shall electronically submit the report and review to the Legislature by December 15, 2013.

Source: Laws 2013, LB561, § 71; Laws 2014, LB853, § 50.

Cross References

Child Protection and Family Safety Act, see section 28-710.