


TO: Dr. Susan Fritz
Interim Executive Vice President and Provost

FROM: Turan Odabasi 
Associate General Counsel

DATE: February 7, 2014

RE: Nebraska Statutory Provisions Concerning Mandatory Reporting of Child Abuse,
Duty to Report Child Abuse Disclosed by Research Participants

This memorandum was developed in consultation with the Nebraska Department of Health and Human Services and is intended to provide information to University researchers regarding the duty to report child abuse under Nebraska law. This memorandum does not address the duty to report child abuse that may arise in either a professional counseling or clinical context.

The following topics are addressed in this memorandum:

- 1) The definition of “child abuse” under Nebraska law;
- 2) Individuals identified as “mandatory reporters” under Nebraska law;
- 3) Any legal privileges applicable to reporting child abuse;
- 4) Penalties for failure to report child abuse;
- 5) Nebraska’s statute of limitations applicable to any failure to prosecution for child abuse; and
- 6) Reporting past instances of child abuse.

1) Definition of “child abuse” under Nebraska law.

The term “child abuse” is defined in Neb. Rev. Stat. § 28-707 (1) as follows:

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;*
- (e) Placed in a situation to be sexually abused as defined in section 28-319, 28-319.01, or 28-320.01; or*
- (f) Placed in a situation to be a trafficking victim as defined in section 28-830.*

2) Individuals identified as “mandatory reporters” under Nebraska law.

In general, mandatory reporters are identified as professionals who, in the ordinary course of their work and because they have regular contact with children, (or other vulnerable populations as the case may be) are required by law to report their observations or suspicions concerning possible child abuse. Nebraska law, however, is quite broad in its definition of the individuals who have a duty to report such abuse, which is found in Neb. Rev. Stat. § 28-711:

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 43-4317, 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.

Although this statute specifically identifies “any physician, any medical institution, any nurse, any school employee, (and) any social worker” as having a duty to report child abuse, it also states that any “other person” that has reasonable cause to believe that child abuse has occurred has a duty to report such abuse. This places an affirmative duty on any individual, not merely the professionals generally acknowledged as mandatory reporters. To underscore this point, the Nebraska Department of Health and Human Service’s web page on child abuse states the following:

*State law requires **any person** who suspects that a child has been physically or sexually abused or neglected to report it promptly to the Nebraska Department of Health and Human Services. (Emphasis added)*

Source: <http://www.hhs.state.ne.us/cha/chaindex.htm>

Therefore, any University employee who, through the course of their activities at the University, has reasonable cause to believe that a minor 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, is required by law to report this information to the Nebraska Department of Health and Human Services at their Abuse/Neglect Hotline, 1-800-652-1999.

3) Legal privileges applicable to reporting child abuse.

Nebraska law specifically excludes any legal privilege with regard to the reporting of child abuse. This exclusion is found in Neb. Rev. Stat. § 28-707 (2):

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

...

(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.

4) Penalties for failure to report child abuse.

Pursuant to Neb. Rev. Stat. § 28-717, failure to report child abuse is a class III misdemeanor, carrying a maximum sentence of three months imprisonment or a fine of five hundred dollars, or both. This criminal penalty would specifically apply to researchers in their individual capacity.

28-717 Violation; penalty.

Any person who willfully fails to make any report of child abuse or neglect required by section 28-711 shall be guilty of a Class III misdemeanor.

5) Statute of limitations applicable to prosecution for child abuse.

Nebraska law provides a general limitation against prosecution for child abuse requiring that any prosecution for child abuse be brought within seven years of the victim's 16th birthday. This is found in Neb. Rev. Stat. § 29-110 (3):

29-110 Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.

...

(3) Except as otherwise provided by law, no person shall be prosecuted for kidnapping under section 28-313, false imprisonment under section 28-314 or 28-315, child abuse under section 28-707, pandering under section 28-802, debauching a minor under section 28-805, or an offense under section 28-813, 28-813.01, or 28-1463.03 when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

6) Reporting past instances of child abuse.

The duty to report past instances of child abuse disclosed by participants during the conduct of research will depend on the specific information made known to the researcher. The Nebraska Department of Health and Human Services has indicated that no matter how long ago the abuse occurred, past instances of child abuse disclosed to researchers should be reported to authorities if the information disclosed indicates that the abuse may be ongoing or that the alleged abuser is in a position to continue abusing children.

Questions regarding research covered by this memorandum should be addressed to the Chair of the campus Institutional Review Board. Questions related to the general duty to report child abuse should be addressed to the appropriate campus compliance officer or to the campus Vice Chancellor for Academic Affairs.