

File

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

May 2, 1988

ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

Mr. Kermit R. McMurray, Director
Nebraska Department of Social
Services
301 Centennial Mall So., 5th Fl
P.O. Box 95026
Lincoln, NE 68509-5026

RE: Foster Care Review Board Access to CPS Records

Dear Mr. McMurray:

You have asked whether you should disclose to the Foster Care Review Board the reports to the department of child abuse or neglect and the records of the department generated as a result of such reports. We have concluded that you should, with limitations, as discussed below.

Neb.Rev.Stat. §28-725 provides that all such records "shall be confidential and shall not be disclosed except as specifically authorized by this act or other applicable law."

Disclosure Authorized by this Act

Neb.Rev.Stat. §28-719 of the act requires the disclosure of such records, on request, to any person authorized to have access to them by §§28-722, 28-726 or 28-727 "[u]pon complying with identification requirements established by regulation of the department, or when ordered by a court of competent jurisdiction."

Neb.Rev.Stat. §28-722 requires that, upon request, such reports be disclosed to the subject of that report or to such subject's guardian or guardian ad litem except data that would be harmful or detrimental or would disclose the identity of persons who reported such abuse or neglect or cooperated in the investigation of it.

Under Neb.Rev.Stat. §28-726 no other person, official or agency shall have access to such records except in furtherance of purposes directly connected with the administration of this act. Such an agency includes one having legal responsibility or authorization to care for, treat or supervise an abused or neglected child or person responsible for such child who is the

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subject of such report, with the same limitations set out in §28-722, above.

Under Neb.Rev.Stat. §43-284 the court cannot commit the care of a juvenile determined to be abused or neglected under Neb.Rev.Stat. §43-247(3) directly to the Foster Care Review Board. However, that board must be notified as provided in Neb.Rev.Stat. §43-1303 of the placement of any such child in foster care. Under Neb.Rev.Stat. §43-1307 that board receives from the court a copy of the plan for each child placed in a foster home, as required by Neb.Rev.Stat. §43-1312, and the progress reports as they relate to that plan.

The board itself is authorized by Neb.Rev.Stat. §43-1303 to visit and observe foster care facilities "to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met."

By Neb.Rev.Stat. §43-1308(1) that board is required to review at least once every six months the case of each child in foster care placement to determine what efforts have been made to carry out the plan. By Neb.Rev.Stat. §43-1308(2) that board is then required to submit its findings and recommendations regarding the efforts and progress made to carry out the plan together with any other recommendations regarding the child to the court having jurisdiction over such child for the purposes of placement. Under Neb.Rev.Stat. §43-1313 the court must review its dispositional order for that child after one year and then every six months. We infer that the board is an integral part of such continuing supervision by the court. Thus disclosure to the Foster Care Review Board of reports of abuse and neglect about any child placed in a foster home is authorized by §28-726.

Neb.Rev.Stat. §43-1309 provides in part: "Upon the request of the state board or the designated local board, any records pertaining to a case assigned to such board shall be furnished to the board by the agency charged with the child."

The "agency charged with the child," as defined in Neb.Rev.Stat. §43-1301(5), may be the Department of Social Services as provided in Neb.Rev.Stat. §43-284(5). Under the statutory provisions cited above, "a case assigned to such board" cannot mean a case committed to the board for care by the court under Neb.Rev.Stat. §43-284. We conclude it refers to all cases in which a child is placed in a foster home; that is the scope of the board's jurisdiction and responsibilities. Thus this section would require your department to disclose to the board only the abuse and neglect reports on children committed to your care who are placed in foster homes.

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Disclosure Authorized by Other Applicable Law

The general rule under Neb.Rev.Stat. §84-712.01 is that all records of this state are public records except where any other statute expressly provides that particular records or documents shall not be made public.

In this case, as discussed above, the same act which makes the reports of child abuse and neglect confidential also provides for disclosure of them to certain persons with stated limitations.

Conclusion

On request by the Foster Care Review Board for copies of reports you have pursuant to §§28-710 to 28-727 about abused and neglected children who are in foster homes, you should provide the board with copies of such reports providing you shall not release data that would be harmful or detrimental 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. Such records in the possession of the board shall be deemed confidential as provided in Neb.Rev.Stat. §43-1310.

Sincerely yours,

ROBERT M. SPIRE
Attorney General

Marilyn B. Hutchinson
Assistant Attorney General