

LEGISLATIVE BILL 988

Approved by the Governor April 15, 1994

Introduced by Lindsay, 9; Abboud, 12; Ashford, 6; Avery, 3; Bernard-Stevens, 42; Beutler, 28; Bromm, 23; Byars, 30; Cudaback, 36; Day, 19; Engel, 17; Hillman, 48; Hudkins, 21; Janssen, 15; Matzke, 47; Monen, 4; Pirsch, 10; Rasmussen, 20; Robak, 22; Schmitt, 41; Vrtiska, 1; Wehrbein, 2; Wesely, 26; Wickersham, 49; Withem, 14; Preister, 5, at the request of the Governor

AN ACT relating to youth; to amend sections 28-1201, 43-252, 43-258, 43-299, 43-2, 109, 81-1826, and 83-364, Reissue Revised Statutes of Nebraska, 1943, sections 28-101, 43-286, 43-287, 43-2403, 43-2406, 71-901, and 83-911.01, Revised Statutes Supplement, 1992, and sections 28-1501, 29-2204, 43-3001, 83-465, 83-467, 83-469, 83-470, 83-472, 83-473, 83-487, 83-4, 101, 83-4, 104, 83-905, and 83-922, Revised Statutes Supplement, 1993; to define terms; to prohibit transfer and possession and provide for the confiscation and destruction of certain firearms involving juveniles and schools as prescribed; to provide penalties; to create the Office of Juvenile Services; to state intent; to provide powers and duties; to authorize court participation and transfer of certain juveniles; to eliminate the Division of Juvenile Services of the Department of Correctional Services and the Youth Services Planning Commission; to rename the youth development centers to the youth rehabilitation and treatment centers; to eliminate provisions relating to establishment of and placement in regimented inmate discipline units; to provide duties for the Department of Correctional Services, the Nebraska Commission on Law Enforcement and Criminal Justice, and the Department of Labor; to harmonize provisions; to provide a termination date for sections relating to the Youth Diagnostic and Rehabilitation Center; to provide severability; to repeal the original sections, and also section 83-929, Reissue Revised Statutes of Nebraska, 1943, sections 43-2801 to 43-2804, Revised Statutes Supplement, 1992, and sections 83-4, 140, 83-4, 141, 83-925 to 83-928, and 83-930, Revised Statutes Supplement, 1993; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-101, Revised Statutes Supplement, 1992, be amended to read as follows:

28-101. Sections 28-101 to 28-1348 and sections 3 to 6 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. That section 28-1201, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1201. ~~As used in~~ For purposes of sections 28-1201 to 28-1212 and sections 3 to 6 of this act, unless the context otherwise requires:

(1) Firearm shall mean any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon;

~~(1)~~ (2) Fugitive from justice shall mean any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;

~~(3)~~ (3) Juvenile shall mean any person under the age of eighteen years;

~~(2)~~ (4) Knife shall mean any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length, or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds;

~~(3)~~ (5) Knuckles and brass or iron knuckles shall mean any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles;

~~(4)~~ (6) Machine gun shall mean any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;

~~(5)~~ (7) Short rifle shall mean a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and

~~(6)~~ (8) Short shotgun shall mean a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

Sec. 3. Any firearm in the possession of a person in violation of section 28-1204 or section 4 of this act shall be confiscated by a peace officer or other authorized law enforcement officer. Such firearm shall be held by the agency employing such officer until it no longer is required as evidence.

Sec. 4. (1) Any person who knowingly and intentionally does or attempts to sell, provide, loan, deliver, or in any other way transfer the possession of a firearm to a juvenile commits the offense of unlawful transfer of a firearm to a juvenile. The county attorney shall have a copy of the petition served upon the owner of the firearm, if known, in person or by registered or certified mail at his or her last-known address.

(2) This section shall not apply to the transfer of a firearm other than the types specified in section 28-1204 to a juvenile:

(a) From a person related to such juvenile within the second degree of consanguinity or affinity if the transfer of physical possession of such firearm does not occur until such time as express permission has been obtained from the juvenile's parent or guardian;

(b) For a legitimate and lawful sporting purpose; or

(c) Who is under direct adult supervision in an appropriate educational program.

(3) This section shall apply to the transfer of any firearm described in section 28-1204, except as specifically provided in subsection (2) of section 28-1204.

(4) Unlawful transfer of a firearm to a juvenile is a Class IV felony.

Sec. 5. The Legislature finds that:

(1) Increased violence in schools has become a national, state, and local problem;

(2) Increased violence and the threat of violence has a grave and detrimental impact on the educational process in Nebraska schools;

(3) Increased violence has caused fear and concern among not only the schools and students but the public at large;

(4) Firearms have contributed greatly to the increase of fear and concern among our citizens;

(5) Schools have a duty to protect their students and provide an environment which promotes and provides an education in a nonthreatening manner;

(6) An additional danger of firearms in schools is the risk of accidental discharge and harm to students and staff;

(7) Firearms are an immediate and inherently dangerous threat to the safety and well-being of an educational setting; and

(8) The ability to confiscate and remove firearms quickly from school grounds is a legitimate and necessary tool to protect students and the educational process.

Sec. 6. (1) Any person who possesses a firearm in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event shall be guilty of the offense of unlawful possession of a firearm on school grounds. Unlawful possession of a firearm on school grounds is a Class IV misdemeanor. This subsection shall not apply to (a) the issuance of firearms to or possession by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training, (b) firearms which may lawfully be possessed by the person receiving instruction, for instruction under the immediate supervision of an adult instructor, or (c) firearms contained within a private vehicle operated by a nonstudent adult which are not loaded and (i) are encased or (ii) are in a locked firearm rack that is on a motor vehicle. For purposes of this subsection, encased shall mean enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied, or otherwise fastened with no part of the firearm exposed.

(2) Any firearm possessed in violation of subsection (1) of this section in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event shall be confiscated without warrant by a peace officer or may be confiscated without warrant by school administrative or teaching personnel. Any firearm confiscated by school administrative or teaching personnel shall be delivered to a peace officer as soon as practicable.

(3) Any firearm confiscated by or given to a peace officer pursuant to subsection (2) of this section shall be declared a common nuisance and shall be held by the peace officer prior to his or her delivery of the firearm to the property division of the law enforcement agency which employs the peace

officer. The property division of such law enforcement agency shall hold such firearm for as long as the firearm is needed as evidence. After the firearm is no longer needed as evidence it shall be destroyed in such manner as the court may direct.

(4) Whenever a firearm is confiscated and held pursuant to this section or section 3 of this act, the peace officer who received such firearm shall cause to be filed within ten days after the confiscation a petition for destruction of such firearm. The petition shall be filed in the district court of the county in which the confiscation is made. The petition shall describe the firearm held, state the name of the owner, if known, allege the essential elements of the violation which caused the confiscation, and conclude with a prayer for disposition and destruction in such manner as the court may direct. At any time after the confiscation of the firearm and prior to court disposition, the owner of the firearm seized may petition the district court of the county in which the confiscation was made for possession of the firearm. The court shall release the firearm to such owner only if the claim of ownership can reasonably be shown to be true and either (a) the owner of the firearm can show that the firearm was taken from his or her property or place of business unlawfully or without the knowledge and consent of the owner and that such property or place of business is different from that of the person from whom the firearm was confiscated or (b) the owner of the firearm is acquitted of the charge of unlawful possession of a revolver in violation of section 28-1204, unlawful transfer of a firearm to a juvenile, or unlawful possession of a firearm on school grounds. No firearm having significant antique value or historical significance as determined by the Nebraska State Historical Society shall be destroyed. If a firearm has significant antique value or historical significance, it shall be sold at auction and the proceeds deposited in the permanent school fund.

Sec. 7. That section 28-1501, Revised Statutes Supplement, 1993, be amended to read as follows:

28-1501. (1) There is hereby established a task force consisting of the following members:

(a) The chairpersons of the Appropriations Committee and the Judiciary Committee of the Legislature;

(b) Two members of the Legislature appointed by the chairperson of the Executive Board of the Legislative Council in addition to the chairpersons listed in subdivision (a) of this subsection;

(c) The Director of Correctional Services or his or her designee;

(d) The Attorney General or his or her designee;

(e) The chairperson of the Board of Parole; and

(f) The members appointed by the Governor under subsection (2) of this section.

(2) The task force shall include the following members appointed by the Governor:

(a) One member of the Crime Victim's Reparations Committee;

(b) One judge of the district court;

(c) One county attorney or former county attorney;

(d) One public defender or one former public defender; and

(e) One probation officer.

(3) The chairperson of the Judiciary Committee of the Legislature shall be the chairperson of the task force. Members of the task force shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177. Members described in subsection (2) of this section shall be appointed by the Governor within thirty days after June 11, 1993. The task force shall cease to exist on December 31, 1994.

(4) The task force shall investigate the impact on crime rates and prison populations and the fiscal requirements to carry out the policies proposed in Legislative Bill 627 as introduced in the Ninety-third Legislature, First Session, 1993, and the report of the Governor's Task Force on Prison Alternatives and the recommendations contained in the report. The investigation shall include, but not be limited to, an assessment of mandatory minimum sentencing, drug-free zones, ~~beet camps~~, elimination of probation and parole, and the increase of penalties for certain crimes. The task force shall also review the recommendations of the Governor's Task Force on Prison Alternatives, including the role of community corrections, intensive probation, and parole and increased availability of education and treatment.

Sec. 8. That section 29-2204, Revised Statutes Supplement, 1993, be amended to read as follows:

29-2204. (1) Except as provided in subsection ~~(4)~~ (3) of this section and except when a term of life is required by law, in imposing an indeterminate sentence upon an offender, the court shall:

(a) Fix the minimum and maximum limits of the sentence to be served within the limits provided by law, except that when a maximum limit of life is imposed by the court for a Class IB felony, the minimum limit may be any term of years not less than the statutory mandatory minimum;

(b) Advise the offender on the record the time the offender will serve on his or her minimum term before attaining parole eligibility assuming that no good time for which the offender will be eligible is lost; and

(c) Advise the offender on the record the time the offender will serve on his or her maximum term before attaining mandatory release assuming that no good time for which the offender will be eligible is lost.

If any discrepancy exists between the statement of the minimum limit of the sentence and the statement of parole eligibility or between the statement of the maximum limit of the sentence and the statement of mandatory release, the statements of the minimum limit and the maximum limit shall control the calculation of the offender's term. If the court imposes more than one sentence upon an offender or imposes a sentence upon an offender who is at that time serving another sentence, the court shall state whether the sentences are to be concurrent or consecutive.

(2)(a) When the court is of the opinion that imprisonment may be appropriate but desires more detailed information as a basis for determining the sentence to be imposed than has been provided by the presentence report required by section 29-2261, the court shall commit an offender to the Department of Correctional Services for a period not exceeding ninety days. The department shall conduct a complete study of the offender during that time, inquiring into such matters as his or her previous delinquency or criminal experience, social background, capabilities, and mental, emotional, and physical health and the rehabilitative resources or programs which may be available to suit his or her needs. By the expiration of the period of commitment or by the expiration of such additional time as the court shall grant, not exceeding a further period of ninety days, the offender shall be returned to the court for sentencing and the court shall be provided with a written report of the results of the study, including whatever recommendations the department believes will be helpful to a proper resolution of the case. After receiving the report and the recommendations, the court shall proceed to sentence the offender in accordance with subsection (1) of this section. The term of the sentence shall run from the date of original commitment under this subsection.

(b) In order to encourage the use of this procedure in appropriate cases, all costs incurred during the period the defendant is held in a state institution under this subsection shall be a responsibility of the state and the county shall be liable only for the cost of delivering the defendant to the institution and the cost of returning him or her to the appropriate court for sentencing or such other disposition as the court may then deem appropriate.

(3)(*) Commencing July 1, 1996, when the court is of the opinion that imprisonment may be appropriate, but that a brief and intensive period of incarceration may serve the interests of society by promoting the rehabilitation of the offender and by deterring the offender from engaging in further criminal activity, the court may commit an offender to the Department of Correctional Services for a period not exceeding one hundred eighty days for placement in a regimented inmate discipline unit followed by one year of intense parole supervision. The court may consider such commitment if the offender (i) has been found guilty of a nonviolent crime, (ii) is seventeen years of age or older but younger than twenty-five years and has no physical or mental handicap that precludes strenuous physical activity, and (iii) has never before been sentenced to a period of incarceration for a felony offense in this or any other state or federal jurisdiction.

(b) Upon successful completion of the term of commitment, the offender shall be placed under the jurisdiction of the Board of Parole for a period of one year. All provisions of Chapter 83, article 1, relating to parole, except eligibility for parole, shall apply to the offender. If the parole of the offender is revoked, the offender shall be returned to the sentencing court for resentencing on the original conviction.

(c) If the offender for any reason fails to complete the program of regimented inmate discipline, the offender shall immediately be returned to the sentencing court for resentencing on the original conviction. Credit shall be given for time actually served in the program.

(d) All costs incurred during the period the offender is held in a regimented inmate discipline unit shall be the responsibility of the state, and the county shall be liable only for the cost of returning him or her to the appropriate court for resentencing or such other disposition as the court may then deem appropriate.

(4) Whenever the defendant was under eighteen years of age at the time he or she committed the crime for which he or she was convicted, the court may in its discretion, instead of imposing the penalty provided for the crime, make such disposition of the defendant as the court deems proper under the Nebraska Juvenile Code.

Sec. 9. It is the intent of the Legislature that the juvenile justice system provide individualized supervision, care, accountability, and treatment in a manner consistent with public safety to those juveniles who violate the law. The juvenile justice system shall also promote prevention efforts through the support of programs and services designed to meet the needs of those juveniles who are identified as being at risk of violating the law and those whose behavior is such that they endanger themselves or others. The goal of the juvenile justice system shall be to provide a range of programs and services which:

(1) Retain and support juveniles within their homes whenever possible and appropriate;

(2) Provide the least restrictive and most appropriate setting for juveniles while adequately protecting them and the community;

(3) Are community-based and are provided in as close proximity to the juvenile's community as possible and appropriate;

(4) Provide humane, secure, and therapeutic confinement to those juveniles who present a danger to the community;

(5) Provide follow-up and aftercare services to juveniles when returned to their families or communities to ensure that progress made and behaviors learned are integrated and continued;

(6) Hold juveniles accountable for their unlawful behavior in a manner consistent with their long-term needs;

(7) Base treatment planning and service provision upon an individual assessment of the juvenile's needs;

(8) Are family focused and include the juvenile's family in assessment, treatment planning, and service provision as appropriate;

(9) Provide supervision and service coordination, as appropriate, to implement and monitor treatment plans and to prevent reoffending;

(10) Provide integrated service delivery through appropriate linkages to other human service agencies; and

(11) Promote the development and implementation of community-based programs designed to prevent unlawful behavior and to effectively minimize the depth and duration of the juvenile's involvement in the juvenile justice system.

Sec. 10. There is hereby created within the Department of Correctional Services the Office of Juvenile Services. The office shall be established within the department for administrative purposes. The office shall have separate budgeting procedures and shall develop and report budget information separately from the department's adult programs. For purposes of efficiency, some functions of the office shall be carried out collaboratively, through a sharing of administrative staff, between the office and the department, as determined by the Director of Correctional Services.

Sec. 11. The Juvenile Services Director shall be appointed by the Governor with the approval of a majority of the Legislature. All employees of the Division of Juvenile Services of the Department of Correctional Services on the effective date of this act shall become employees of the Office of Juvenile Services. The Juvenile Services Director shall supervise and administer the Office of Juvenile Services and shall hire any additional staff necessary to carry out the duties of the office. The office shall administer and deliver services on a regional basis, with a minimum of three regions to be established.

Sec. 12. The Office of Juvenile Services shall provide the functions formerly provided by the Division of Juvenile Services of the Department of Correctional Services. Equipment, books, files, records, and other property in the possession of the Division of Juvenile Services agreed to be transferred by mutual decision of the Director of Correctional Services and the Juvenile Services Director shall be transferred to the Office of Juvenile Services when the Juvenile Services Director authorizes the transfer. All policies and procedures of the Division of Juvenile Services shall remain in effect unless changed or eliminated by the Office of Juvenile Services.

Sec. 13. The Office of Juvenile Services shall:

(1) Coordinate the programs and services of the juvenile justice system with other governmental agencies and political subdivisions;

(2) Develop and use intake and assessment procedures for the evaluation of juveniles;

(3) Provide case management for juveniles;

(4) Provide secure facility and other alternative programs;

- (5) Coordinate educational, vocational, and social counseling;
 (6) Coordinate community-based services for juveniles and their families;
 (7) Administer the youth rehabilitation and treatment centers and any secure facilities developed in the future;
 (8) Supervise and coordinate juvenile parole and aftercare services;
 and
 (9) Provide any other programs and services necessary to the juvenile justice system.

Sec. 14. The Office of Juvenile Services shall design and make available programs and treatment services at the youth rehabilitation and treatment centers and any secure confinement facility for juvenile offenders. The programs and treatment services shall be based upon the individual or family assessment and evaluation process and treatment plan. Programs and treatment services shall address:

- (1) Behavioral impairments, severe emotional disturbances, and other mental health or psychiatric disorders;
 (2) Drug and alcohol addiction;
 (3) Health and medical needs;
 (4) Education, special education, and related services;
 (5) Individual, group, and family counseling services as appropriate with any treatment plan related to subdivisions (1) through (4) of this section. Services shall also be made available for juveniles who have been physically or sexually abused;

(6) A case management and coordination process shall be designed which will assure appropriate reintegration of the juvenile to his or her family, school, and community. This process shall follow individualized planning which shall begin at intake and assessment. Structured programming shall be scheduled for all juveniles committed to secure confinement. This programming shall include a strong academic program as well as classes in health education, living skills, vocational training, behavior management and modification, money management, family and parent responsibilities, substance abuse awareness, physical education, job skills training, and job placement assistance. Participation shall be required of all juveniles committed to a secure confinement facility. The goal of such structured programming shall be to provide the academic and life skills necessary for a juvenile to successfully return to his or her home and community upon release from the secure confinement facility; and

(7) The design and delivery of treatment programs within the youth rehabilitation and treatment centers as well as any licensing or certification requirements, and the office shall follow the requirements as stated within Title XIX and Title IV-E of the federal Social Security Act, as amended, the Special Education Act, or other funding guidelines as appropriate. It is the intent of the Legislature that these funding sources shall be utilized to support service needs of eligible juveniles in residence at the youth rehabilitation and treatment centers.

Sec. 15. In developing its programs, the Office of Juvenile Services shall:

(1) Design the table of organization for the office by designing the functional specifications for the operation of the office and managing the process of change as programs, functions, and services are transferred to the office;

(2) Develop risk and need assessment instruments for use in determining the need for detention or other placement at the time a juvenile enters the system. This shall include validating and pilot testing the instruments in selected jurisdictions;

(3) Develop a case classification process to include the establishment of classification program levels and case management standards for each program level. This shall include pilot testing the classification process with juveniles committed for placement;

(4) Plan for the construction of a secure confinement facility to serve juvenile offenders identified as in need of secure confinement in a city of the metropolitan class. A secure confinement facility shall mean a physically secure coeducational facility designed to provide secure confinement, education, and treatment for serious and chronic juvenile offenders who have been committed to the Office of Juvenile Services or the Department of Correctional Services for secure care;

(5) Develop a purchase-of-care system which will facilitate the development of a statewide community-based continuum of care with the involvement of the private sector and the local public sector. Care services may be purchased from private providers to provide a wider diversity of services. This system shall include accessing existing Title IV-E funds of

the federal Social Security Act, as amended, new medicaid funds, and other funding sources to support eligible community-based services. Such services developed and purchased shall include, but not be limited to, evaluation services which shall be available on a geographically accessible basis across the state. The evaluation services available at the Youth Diagnostic and Rehabilitation Center pursuant to sections 83-4.100 to 83-4.104 shall be replaced with purchased community-based evaluation services. The replacement shall be completed by December 31, 1996. All costs incurred during the period in which the juvenile is being evaluated shall be the responsibility of the state.

(6) Develop a community-based assessment and evaluation process. A prototype community-based evaluation process shall be developed and pilot-tested in several jurisdictions. A residential evaluation program shall be established in a city of the metropolitan class;

(7) Develop functional specifications for juvenile service centers and identify several demonstration sites. The risk assessment and community-based assessment and evaluation procedures may be pilot-tested at the juvenile service center demonstration sites; and

(8) Identify and recommend the functional requirements for a management information system. The system shall be a unified, interdepartmental client information system which supports assessment.

Sec. 16. The courts may participate in the pilot testing developed by the Office of Juvenile Services which is within their jurisdiction.

Sec. 17. The Office of Juvenile Services may adopt and promulgate rules and regulations to carry out its duties pursuant to sections 9 to 16 of this act.

Sec. 18. A juvenile adjudicated as an adult and sentenced to the Department of Correctional Services may be transferred by the Director of Correctional Services to the Office of Juvenile Services for placement in a secure confinement facility. Such juvenile (1) shall receive good time, parole reviews, and hearings conducted by the Board of Parole and all other privileges and rights afforded an inmate confined in an adult correctional facility of the department and (2) shall be transferred to an adult correctional facility of the department no sooner than thirty days prior to his or her nineteenth birthday to complete the remainder of the court-imposed sentence.

Sec. 19. That section 43-252, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-252. (1) The fingerprints of any juvenile less than fourteen years of age, who has been taken into custody in the investigation of a suspected unlawful act, shall not be taken unless the consent of any district, county, associate county, associate separate juvenile court, or separate juvenile court judge has first been obtained.

(2) If the judge permits the fingerprinting, the fingerprints must be filed by law enforcement officers in files kept separate from those of persons of the age of majority.

(3) The fingerprints of any juvenile shall not be sent to a state or federal depository by a law enforcement agency of this state unless: (a) The juvenile has been convicted of or adjudged to have committed a felony; (b) the juvenile has unlawfully terminated his or her commitment to a youth development rehabilitation and treatment center; or (c) the juvenile is a runaway and a fingerprint check is needed for identification purposes to return the juvenile to his or her parent.

Sec. 20. That section 43-258, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-258. (1) Pending the adjudication of any case under the Nebraska Juvenile Code, the court may order the juvenile examined by a physician, surgeon, psychiatrist, duly authorized community mental health service program, or psychologist to aid the court in determining (a) a material allegation in the petition relating to the juvenile's physical or mental condition, (b) the juvenile's competence to participate in the proceedings, (c) the juvenile's responsibility for his or her acts, or (d) whether or not to provide emergency medical treatment.

(2) Pending the adjudication of any case under the Nebraska Juvenile Code and after a showing of probable cause that the juvenile is within the court's jurisdiction, for the purposes of subsection (1) of this section, the court may order such juvenile to be placed in one of the facilities or institutions of the State of Nebraska. Such juvenile shall not be placed in an adult penal institution, either of the youth development rehabilitation and treatment centers, or the Nebraska Center for Children and Youth, except as provided in section 43-913. Any placement for evaluation may be made on an inpatient or outpatient basis for a period not to exceed thirty days. The

head of any facility or institution shall make a complete evaluation of the juvenile, including any authorized area of inquiry requested by the court.

(3) Upon the expiration of the commitment period or such additional periods as the court may authorize, which shall not exceed thirty days each, the juvenile shall be returned to the court together with a written report of the results of the evaluation. Such evaluation shall include an assessment of the basic needs of the juvenile and recommendations for continuous and long-term care and shall be made to effectuate the purposes in subdivision (1) of section 43-246.

(4) In order to encourage the use of the procedure provided in this section, all costs incurred during the period the juvenile is being evaluated at a state facility or institution shall be the responsibility of the state unless otherwise ordered by the court pursuant to section 43-290. The county in which the case is pending shall be liable only for the cost of delivering the juvenile to the facility or institution and the cost of returning him or her to the court for disposition.

Sec. 21. That section 43-286, Revised Statutes Supplement, 1992, be amended to read as follows:

43-286. Notwithstanding the provisions of sections 43-251 and 43-253 to 43-257, no juvenile shall be confined in any jail as a disposition of the court. When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247:

(1) The court may continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged when the same is in the interest of the juvenile's reformation or rehabilitation, and, subject to the further order of the court, may:

(a) Place the juvenile on probation subject to the supervision of a probation officer;

(b) Permit the juvenile to remain in his or her own home, subject to the supervision of the probation officer; or

(c) Cause the juvenile to be placed in a suitable family home or institution, subject to the supervision of the probation officer. If the court has committed the juvenile to the care and custody of the Department of Social Services, the department shall pay the costs of the suitable family home or institution which are not otherwise paid by the juvenile's parents.

Under subdivision (1)(a), (1)(b), or (1)(c) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until a suitable provision may be made for the juvenile without such payment;

(2) Except as provided in section 43-287, the court may commit such juvenile to the care and custody of the Office of Juvenile Services or the Department of Correctional Services, but a juvenile under the age of twelve years shall not be committed to the Youth Development Rehabilitation and Treatment Center-Geneva or to the Youth Development Rehabilitation and Treatment Center-Kearney unless he or she has violated the terms of probation or has committed an additional offense and the court finds that the interests of the juvenile and the welfare of the community demand his or her commitment. This minimum age provision shall not apply if the act in question is murder or manslaughter;

(3) When a juvenile is placed on probation or under the supervision of the court and it is alleged that the juvenile is again a juvenile as defined by subdivision (1), (2), (3)(b), or (4) of section 43-247, a petition may be filed and the same procedure followed and rights given at a hearing on the original petition. If an adjudication is made that the allegations of the petition are true, the court may make any disposition authorized by this section for such adjudications; or

(4) When a juvenile is placed on probation or under the supervision of the court for conduct under subdivision (1), (2), (3)(b), or (4) of section 43-247 and it is alleged that the juvenile has violated a term of probation or supervision or that the juvenile has violated an order of the court, a motion to revoke probation or supervision or to change the disposition may be filed and proceedings held as follows:

(a) The motion shall set forth specific factual allegations of the alleged violations and a copy of such motion shall be served on all persons required to be served by sections 43-262 to 43-267;

(b) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations set forth pursuant to subdivision (4)(a) of this section. At such hearing the juvenile shall be entitled to

those rights relating to counsel provided by section 43-272 and those rights relating to detention provided by sections 43-254 to 43-256. The juvenile shall also be entitled to speak and present documents, witnesses, or other evidence on his or her own behalf. He or she may confront persons who have given adverse information concerning the alleged violations, may cross-examine such persons, and may show that he or she did not violate the conditions of his or her probation or, if he or she did, that mitigating circumstances suggest that the violation does not warrant revocation. The revocation hearing shall be held within a reasonable time after the juvenile is taken into custody;

(c) The hearing shall be conducted in an informal manner and shall be flexible enough to consider evidence, including letters, affidavits, and other material, that would not be admissible in an adversary criminal trial;

(d) The juvenile shall be given a preliminary hearing in all cases when the juvenile is confined, detained, or otherwise significantly deprived of his or her liberty as a result of his or her alleged violation of probation. Such preliminary hearing shall be held before an impartial person other than his or her probation officer or any person directly involved with the case. If as a result of such preliminary hearing probable cause is found to exist, the juvenile shall be entitled to a hearing before the court in accordance with subdivisions (4)(b) and (4)(c) of this section;

(e) If the juvenile is found by the court to have violated the terms of his or her probation, the court may modify the terms and conditions of the probation order, extend the period of probation, or enter any order of disposition that could have been made at the time the original order of probation was entered or, in the case of the juvenile adjudicated to be within the definitions of subdivision (3)(b) of section 43-247, the court, after considering the dispositions available, may in addition commit such juvenile to the Department of Public Institutions, the Office of Juvenile Services, or the Department of Correctional Services under section 43-287; and

(f) In cases when the court revokes probation, it shall enter a written statement as to the evidence relied on and the reasons for revocation.

Sec. 22. That section 43-287, Revised Statutes Supplement, 1992, be amended to read as follows:

43-287. Notwithstanding the provisions of subdivision (2) of section 43-286, when any juvenile is found by the court to be a juvenile defined by subdivision (3)(b) of section 43-247, the court may (1) enter such order as it is empowered to enter in the case of a juvenile described in subdivision (1) or (2) of section 43-247, except that no such juvenile shall be committed to the Youth Development Rehabilitation and Treatment Center at Kearney or Geneva, or (2) enter an order committing or placing the juvenile to the care and custody of the Department of Social Services.

Sec. 23. That section 43-299, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-299. Nothing in the Nebraska Juvenile Code shall be construed to repeal any portion of the act to aid the youth development rehabilitation and treatment centers for girls and boys juveniles.

Sec. 24. That section 43-2,109, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-2,109. In each county, the judge presiding over the juvenile court may appoint a board of four reputable residents, who shall serve without compensation, to constitute a board of visitation, whose duty it shall be to visit at least once a year all institutions, societies, and associations within the county receiving juveniles under the Nebraska Juvenile Code. Visits shall be made by not less than two of the members of the board, who shall go together or make a joint report. The board of visitors shall report to the court, from time to time, the condition of juveniles received by or in the charge of such associations and institutions and shall make an annual report to the Department of Social Services, Office of Juvenile Services or Department of Correctional Services, and Department of Public Institutions in such form as each of the departments or the office may prescribe. The county board may, in its discretion, make appropriations for the payment of the actual and necessary expenses incurred by the visitors in the discharge of their official duties.

Sec. 25. That section 43-2403, Revised Statutes Supplement, 1992, be amended to read as follows:

43-2403. The Legislature hereby finds that the incarceration of juveniles in adult jails, lockups, and correctional facilities is contrary to the best interests and well-being of juveniles and frequently inconsistent with state and federal law requiring intervention by the least restrictive method. The Legislature further finds that the lack of available alternatives within local communities is a significant factor in the incarceration of

juveniles in such adult jails, lockups, and correctional facilities.

To address such lack of available alternatives to the incarceration of juveniles, the Legislature declares it to be the policy of the State of Nebraska to aid local communities in the establishment of programs or services for juveniles under the jurisdiction of the juvenile or criminal justice system and to finance such programs or services on a continuing basis with appropriations from the General Fund. The purposes of the Juvenile Services Act shall be to (1) develop statewide criteria for programs or services for juveniles, including a description of factors to be considered in making placement decisions and a description of necessary components of programs or services, (2) assist in the provision of appropriate preventive, diversionary, and dispositional alternatives for juveniles, (3) encourage coordination of the elements of the juvenile services system, and (4) provide an opportunity for local involvement in developing community programs for juveniles so that the following objectives may be obtained:

(a) Preservation of the family unit whenever the best interests of the juvenile require it;

(b) Limitation on intervention to those actions which are necessary and the utilization of the least restrictive yet most effective and appropriate resources;

(c) Encouragement of active family participation in whatever treatment is afforded a juvenile whenever the best interests of the juvenile require it;

(d) Treatment in the community rather than commitment to a youth development rehabilitation and treatment center whenever the best interests of the juvenile require it; and

(e) Encouragement of and assistance to communities in the development of alternatives to secure temporary custody for juveniles who do not require secure detention.

All state agencies providing direct services to juveniles shall coordinate their efforts and work with the commission, members of the judiciary, and local political subdivisions in the establishment and provision of such programs. Programs established pursuant to the act shall conform to the family policy tenets prescribed in sections 43-532 to 43-534.

Sec. 26. That section 43-2406, Revised Statutes Supplement, 1992, be amended to read as follows:

43-2406. (1) From amounts appropriated to the commission for programs by the Legislature, the commission shall award grants on a competitive basis to eligible applicants based upon criteria to be determined by the committee. Such criteria shall include, but not be limited to, the following:

(a) Availability of programs or services in the geographic area to be served;

(b) A description of the juvenile crime problems and the needs of juveniles within the geographic area to be served, including an analysis of the leading causes of juvenile crime in the geographic area to be served, trends in juvenile crime in the geographic area to be served, and proposals for addressing juvenile crime and juvenile needs in the geographic area to be served;

(c) An analysis of how well the plan will address the needs of the geographic area to be served; and

(d) An analysis of the overall commitment of the eligible applicant and other participants to the plan, including the commitment of matching funds.

(2) In awarding competitive grants, the committee shall give priority to those plans that fulfill the following minimum criteria:

(a) In rural areas, plans that are multicounty, multicounty, or regional in scope or that utilize interlocal agreements or contracts for the provision of services;

(b) Plans that demonstrate collaboration and cooperation between interested agencies or parties in the geographic area to be served;

(c) Plans that comprehensively address the needs of juveniles in the geographic area to be served as defined in the plan; and

(d) Plans that aid in reducing the number of commitments to the youth development rehabilitation and treatment centers or placements in other long-term, out-of-home care for juvenile offenders.

The committee may specify additional criteria as it deems necessary. It is the intent of the Legislature that competitive grants shall be distributed statewide from available funds.

(3) An eligible applicant who has received a grant may apply for continued funding by submitting a proposed budget along with an annual performance report which describes the progress of the eligible applicant in

implementing programs contained in the original plan to the commission by August 1 of each year. The commission shall review the budget in consultation with the committee and determine whether the grant shall be continued.

Sec. 27. That section 43-3001, Revised Statutes Supplement, 1993, be amended to read as follows:

43-3001. (1) Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, as amended, juvenile court records and any other pertinent information that may be in the possession of school districts, county attorneys, law enforcement agencies, state probation personnel, state parole personnel, youth detention facilities, medical personnel, treatment or placement programs, the Department of Social Services, the Office of Juvenile Services, the Department of Correctional Services, the State Foster Care Review Board, child abuse and neglect investigation teams, child abuse and neglect treatment teams, or other multidisciplinary teams for abuse, neglect, or delinquency concerning a child who is in the custody of the state may be shared with individuals and agencies who have been identified in a court order authorized by this section.

(2) In any judicial proceeding concerning a child who is currently, or who may become at the conclusion of the proceeding, a ward of the court or state or under the supervision of the court, an order may be issued which identifies individuals and agencies who shall be allowed to receive otherwise confidential information concerning the juvenile for legitimate and official purposes. The individuals and agencies who may be identified in the court order are the child's attorney or guardian ad litem, the parents' attorney, foster parents, appropriate school personnel, county attorneys, authorized court personnel, law enforcement agencies, state probation personnel, state parole personnel, youth detention facilities, medical personnel, treatment or placement programs, the Department of Social Services, the Office of Juvenile Services, the Department of Correctional Services, the State Foster Care Review Board, child abuse and neglect investigation teams, child abuse and neglect treatment teams, and other multidisciplinary teams for abuse, neglect, or delinquency. Unless the order otherwise states, the order shall be effective until the child leaves the custody of the state or until a new order is issued.

(3) All information acquired by an individual or agency pursuant to this section shall be confidential and shall not be disclosed except to other persons who have a legitimate and official interest in the information and are identified in the court order issued pursuant to this section with respect to the child in question. A person who receives such information or who cooperates in good faith with other individuals and agencies identified in the appropriate court order by providing information or records about a child shall be immune from any civil or criminal liability. The provisions of this section granting immunity from liability shall not be extended to any person alleged to have committed an act of child abuse or neglect.

(4) Any person who publicly discloses information received pursuant to this section shall be guilty of a Class III misdemeanor.

Sec. 28. That section 71-901, Revised Statutes Supplement, 1992, be amended to read as follows:

71-901. (1) The Department of Health shall inquire into the whole system of public charities and methods and practices in the public and correctional institutions of the state, counties, and cities to ascertain the condition thereof from time to time by inspection or otherwise, especially of prisons, jails, infirmaries, public hospitals, including hospitals for persons with a mental disorder and persons with mental retardation, all correctional institutions, including the Youth Development Rehabilitation and Treatment Center-Kearney and the Youth Development Rehabilitation and Treatment Center-Geneva, and industrial schools.

(2) The Department of Health shall make at least one inspection every year of each state public and correctional institution, which inspection may be unannounced, and such inspections shall not require the permission of any director of the department or of the institution to be inspected. The inspection of state public and correctional institutions shall include an inspection of the dietary facilities at the institution.

(3) The Department of Health shall enforce this section and all other statutes pertaining to public health and sanitation with respect to the public and correctional institutions of the state, counties, and cities. The department shall adopt, promulgate, and enforce necessary rules and regulations for carrying out this section. It may also adopt and promulgate rules and regulations supplementing but not inconsistent with this section.

(4) The Department of Health shall make an investigation and report to the Department of Social Services, within thirty days after receipt of the

request by the Department of Social Services, of all facilities and programs of licensed providers of early childhood programs as defined in section 71-1910 or child care programs subject to section 71-1903 or applicants for licenses to provide such programs to determine if the place or places to be covered by such licenses meet standards of health and sanitation set by the Department of Social Services for the care and protection of the child or children who may be placed in such facilities and programs. The Department of Health may delegate this authority to qualified local environmental health personnel.

Sec. 29. That section 81-1826, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1826. The Department of Correctional Services shall, as far as possible, provide for the employment, eight hours per day, of confined persons by private businesses, except those youths committed to the Youth Development Center-Kearney, the Youth Development Center-Geneva, and other similar institutions. The employment may be provided under section 81-1827, 83-183, or 83-184.

Sec. 30. That section 83-364, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-364. When any person is admitted to a state institution, or receives treatment prescribed by an institution following release or without being admitted as a resident patient, the patient and his or her relatives shall be liable for the cost of the care, support, maintenance, and treatment of such person to the extent and in the manner provided by this act sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380. The provisions of this act such sections also shall apply to persons admitted to a state institution as transferees from any state penal institution or the Youth Development Rehabilitation and Treatment Center-Kearney or Youth Development Rehabilitation and Treatment Center-Geneva, but only after the expiration of the time for which the transferees were originally sentenced or committed.

Sec. 31. That section 83-465, Revised Statutes Supplement, 1993, be amended to read as follows:

83-465. When a juvenile of sane mind, twelve years of age or older but under the age of eighteen years, has been found guilty of any crime except murder or manslaughter in any court of record in this state, the court may order that the juvenile be committed to the Youth Development Rehabilitation and Treatment Center-Kearney or the Youth Development Rehabilitation and Treatment Center-Geneva. A copy of the order under the seal of the court shall be sufficient warrant for delivering the juvenile to the center and committing him or her to the custody of the superintendent.

Sec. 32. That section 83-467, Revised Statutes Supplement, 1993, be amended to read as follows:

83-467. When a juvenile of sane mind under the age of sixteen years has been convicted of any crime, the court pursuant to the Nebraska Juvenile Code may issue an order to the parent, guardian, or person in charge of the juvenile or with whom the juvenile last resided, to any close relative of the juvenile, or if the juvenile is alone and friendless, to the person whom the judge shall appoint as guardian ad litem, requiring the juvenile to appear at a time and place stated in the order to show cause why the juvenile should not be committed to the Youth Development Rehabilitation and Treatment Center-Kearney or the Youth Development Rehabilitation and Treatment Center-Geneva.

Sec. 33. That section 83-469, Revised Statutes Supplement, 1993, be amended to read as follows:

83-469. Either the party to whom the order provided for in section 83-467 was addressed or a guardian ad litem shall be present at the hearing, at which time the judge shall make a voluntary examination of the juvenile and hear the testimony in relation to the case that is produced. If the judge finds that the juvenile should be committed to the Youth Development Rehabilitation and Treatment Center-Kearney or the Youth Development Rehabilitation and Treatment Center-Geneva, then the judge shall issue a warrant of commitment.

Sec. 34. That section 83-470, Revised Statutes Supplement, 1993, be amended to read as follows:

83-470. The judge shall certify in the warrant of commitment the juvenile's residence and age at the time of arrest, as nearly as can be ascertained, and shall command the officer to take and deliver the juvenile without delay to the superintendent of the Youth Development Rehabilitation and Treatment Center-Kearney or the Youth Development Rehabilitation and Treatment Center-Geneva. The certificate, for purposes of sections 83-465 to 83-473, shall be conclusive evidence of the juvenile's residence and age. The judge shall transmit to the superintendent, by the officer executing the

warrant, a statement of the nature of the complaint, together with such other particulars concerning the juvenile as the judge is able to ascertain. The expense of conveying a juvenile to the Youth Development Rehabilitation and Treatment Center-Kearney or the Youth Development Rehabilitation and Treatment Center-Geneva or returning him or her to his or her parent or guardian after release shall be paid by the county.

Sec. 35. That section 83-472, Revised Statutes Supplement, 1993, be amended to read as follows:

83-472. Every juvenile committed to the Youth Development Rehabilitation and Treatment Center-Kearney or Youth Development Rehabilitation and Treatment Center-Geneva under sections 83-465 to 83-470 shall remain there until he or she attains the age of nineteen unless sooner paroled or legally discharged. The assistant director of the Division of Juvenile Office of Juvenile Services shall adopt and promulgate rules and regulations for the promotion, parole, and final discharge of juveniles such as shall be considered mutually beneficial for the institution and the juveniles. The discharge of any juvenile pursuant to the rules and regulations or upon his or her attainment of the age of nineteen shall be a complete release from all penalties incurred by conviction of the offense for which he or she was committed.

Sec. 36. That section 83-473, Revised Statutes Supplement, 1993, be amended to read as follows:

83-473. Any person who entices or attempts to entice away from the Youth Development Rehabilitation and Treatment Center-Kearney or Youth Development Rehabilitation and Treatment Center-Geneva any juvenile legally committed to the facility, or who knowingly harbors, conceals, or aids in harboring or concealing any juvenile who has escaped from the facility, shall be guilty of a Class IV felony. Any sheriff or other officer authorized to make arrests or any officer or employee of the facility shall arrest any juvenile who has escaped from the facility and shall return him or her to the facility. The assistant director of the Division of Juvenile Office of Juvenile Services shall use all proper means for the apprehension of any escaped juvenile, and for this purpose he or she may offer a reward.

Sec. 37. That section 83-487, Revised Statutes Supplement, 1993, be amended to read as follows:

83-487. The Youth Development Rehabilitation and Treatment Center-Geneva shall be recognized and shall continue as a state-operated facility for the detention, education, industrial training, and reformation of juveniles committed to the Office of Juvenile Services or the Department of Correctional Services.

Sec. 38. That section 83-4.101, Revised Statutes Supplement, 1993, be amended to read as follows:

83-4.101. (1) The juvenile court may commit any juvenile to the Youth Diagnostic and Rehabilitation Center upon the same terms and conditions and subject to all provisions of law as govern commitments to the Youth Development Rehabilitation and Treatment Center-Kearney or the Youth Development Rehabilitation and Treatment Center-Geneva.

(2) The juvenile court may, without formal commitment, refer any juvenile found in need thereof to the Youth Diagnostic and Rehabilitation Center for detention for purposes of observation, testing, and examination, both mental and physical.

Sec. 39. That section 83-4.104, Revised Statutes Supplement, 1993, be amended to read as follows:

83-4.104. (1) Any juvenile committed to the Youth Diagnostic and Rehabilitation Center may be released therefrom upon the same terms and conditions and subject to all provisions of law as govern the release of juveniles committed to the Youth Development Rehabilitation and Treatment Center-Kearney or the Youth Development Rehabilitation and Treatment Center-Geneva.

(2) Any juvenile referred to the Youth Diagnostic and Rehabilitation Center may be released therefrom upon order of the court by which he or she was referred or when the purposes of the referral have been accomplished.

Sec. 40. That section 83-905, Revised Statutes Supplement, 1993, be amended to read as follows:

83-905. The Department of Correctional Services shall have oversight and general control of all state adult and juvenile correctional institutions. The Office of Juvenile Services shall have oversight and general control of all state juvenile correctional facilities.

Sec. 41. That section 83-911.01, Revised Statutes Supplement, 1992, be amended to read as follows:

83-911.01. The Department of Correctional Office of Juvenile Services shall monitor commitments, placements, and evaluations at the youth

development rehabilitation and treatment centers and report its findings annually to the Legislature. The report shall include an assessment of the administrative costs of operating the facilities, the cost of programming, and the savings realized through reduction in commitments, placements, and evaluations.

Sec. 42. That section 83-922, Revised Statutes Supplement, 1993, be amended to read as follows:

83-922. The Department of Correctional Services shall fulfill those functions of state government relating to the custody, study, care, discipline, training, and treatment of persons in correctional and detention institutions. There shall be separate divisions and offices within the department to assist in fulfilling these functions. The divisions shall be the Division of Community-Centered Services, the Division of Juvenile Services, the Division of Administrative Services, and the Division of Adult Services, and the office shall be the Office of Juvenile Services. The Director of Correctional Services shall appoint an assistant director as head of each division and may remove or change the powers and responsibilities of the assistant director of any of the divisions at his or her discretion. The Juvenile Services Director shall be appointed by the Governor pursuant to section 11 of this act.

Sec. 43. Sections 83-4.100, 83-4.101, 83-4.102, and 83-4.104 shall terminate on December 31, 1996.

Sec. 44. The Department of Labor shall review current programs, policies, and funding sources to identify available resources that may provide educational opportunities for youth. Such opportunities shall include training and job experience in the repair and alteration of public buildings as may be necessary to comply with the requirements of the federal Americans with Disabilities Act of 1990.

Sec. 45. The Nebraska Commission on Law Enforcement and Criminal Justice shall establish a public education program for calendar year 1994 that will provide the general public with the knowledge of the changes made in Nebraska statutes pursuant to this legislative bill.

Sec. 46. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 47. That original sections 28-1201, 43-252, 43-258, 43-299, 43-2,109, 81-1826, and 83-364, Reissue Revised Statutes of Nebraska, 1943, sections 28-101, 43-286, 43-287, 43-2403, 43-2406, 71-901, and 83-911.01, Revised Statutes Supplement, 1992, and sections 28-1501, 29-2204, 43-3001, 83-465, 83-467, 83-469, 83-470, 83-472, 83-473, 83-487, 83-4,101, 83-4,104, 83-905, and 83-922, Revised Statutes Supplement, 1993, and also section 83-929, Reissue Revised Statutes of Nebraska, 1943, sections 43-2801 to 43-2804, Revised Statutes Supplement, 1992, and sections 83-4,140, 83-4,141, 83-925 to 83-928, and 83-930, Revised Statutes Supplement, 1993, are repealed.

Sec. 48. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.