

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 106**

Introduced by Brasch, 16.

Read first time January 06, 2017

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to parental rights; to amend sections 43-254,
- 2 43-283.01, 43-292.02, 43-1411.01, and 43-2933, Reissue Revised
- 3 Statutes of Nebraska; to change provisions relating to parental
- 4 rights of a child conceived as a result of sexual assault; to
- 5 harmonize provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-254, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 43-254 Pending the adjudication of any case, and subject to  
4 subdivision (5) of section 43-251.01, if it appears that the need for  
5 placement or further detention exists, the juvenile may be (1) placed or  
6 detained a reasonable period of time on order of the court in the  
7 temporary custody of either the person having charge of the juvenile or  
8 some other suitable person, (2) kept in some suitable place provided by  
9 the city or county authorities, (3) placed in any proper and accredited  
10 charitable institution, (4) placed in a state institution, except any  
11 adult correctional facility, when proper facilities are available and the  
12 only local facility is a city or county jail, at the expense of the  
13 committing county on a per diem basis as determined from time to time by  
14 the head of the particular institution, (5) placed in the temporary care  
15 and custody of the Department of Health and Human Services when it does  
16 not appear that there is any need for secure detention, except that  
17 beginning October 1, 2013, no juvenile alleged to be a juvenile described  
18 in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed  
19 in the care and custody or under the supervision of the Department of  
20 Health and Human Services, or (6) beginning October 1, 2013, offered  
21 supervision options as determined pursuant to section 43-260.01, through  
22 the Office of Probation Administration as ordered by the court and agreed  
23 to in writing by the parties, if the juvenile is alleged to be a juvenile  
24 described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and  
25 it does not appear that there is any need for secure detention. The court  
26 may assess the cost of such placement or detention in whole or in part to  
27 the parent of the juvenile as provided in section 43-290.

28 If a juvenile has been removed from his or her parent, guardian, or  
29 custodian pursuant to subdivision (2) of section 43-248, the court may  
30 enter an order continuing detention or placement upon a written  
31 determination that continuation of the juvenile in his or her home would

1 be contrary to the health, safety, or welfare of such juvenile and that  
2 reasonable efforts were made to preserve and reunify the family if  
3 required under ~~subsections (1) through (4)~~ of section 43-283.01.

4 Sec. 2. Section 43-283.01, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6 43-283.01 (1) In determining whether reasonable efforts have been  
7 made to preserve and reunify the family and in making such reasonable  
8 efforts, the juvenile's health and safety are the paramount concern.

9 (2) Except as provided in subsections ~~subsection~~ (4) and (5) of this  
10 section, reasonable efforts shall be made to preserve and reunify  
11 families prior to the placement of a juvenile in foster care to prevent  
12 or eliminate the need for removing the juvenile from the juvenile's home  
13 and to make it possible for a juvenile to safely return to the juvenile's  
14 home.

15 (3) If continuation of reasonable efforts to preserve and reunify  
16 the family is determined to be inconsistent with the permanency plan  
17 determined for the juvenile in accordance with a permanency hearing under  
18 section 43-1312, efforts shall be made to place the juvenile in a timely  
19 manner in accordance with the permanency plan and to complete whatever  
20 steps are necessary to finalize the permanent placement of the juvenile.

21 (4) Reasonable efforts to preserve and reunify the family are not  
22 required if a court of competent jurisdiction has determined that:

23 (a) The parent of the juvenile has subjected the juvenile or another  
24 minor child to aggravated circumstances, including, but not limited to,  
25 abandonment, torture, chronic abuse, or sexual abuse;

26 (b) The parent of the juvenile has (i) committed first or second  
27 degree murder to another child of the parent, (ii) committed voluntary  
28 manslaughter to another child of the parent, (iii) aided or abetted,  
29 attempted, conspired, or solicited to commit murder, or aided or abetted  
30 voluntary manslaughter of the juvenile or another child of the parent,  
31 (iv) committed a felony assault which results in serious bodily injury to

1 the juvenile or another minor child of the parent, or (v) been convicted  
2 of felony sexual assault of the other parent of the juvenile under  
3 section 28-319.01 or 28-320.01 or a comparable crime in another state; or

4 (c) The parental rights of the parent to a sibling of the juvenile  
5 have been terminated involuntarily.

6 (5) If the family includes a child whom a court determines by clear  
7 and convincing evidence was conceived as a result of a sexual assault,  
8 the biological parent who committed the sexual assault on the other  
9 biological parent shall not be considered a part of the child's family  
10 for purposes of requiring reasonable efforts to preserve and reunify the  
11 family, unless the child's biological parent who was the victim of the  
12 sexual assault or the child's guardian consents otherwise and a court  
13 determines that considering the biological parent who committed the  
14 sexual assault as part of the child's family for purposes of requiring  
15 reasonable efforts to preserve and reunify the family is in the best  
16 interests of the child.

17 ~~(6)~~ (5) If reasonable efforts to preserve and reunify the family are  
18 not required because of a court determination made under subsection (4)  
19 of this section, a permanency hearing, as provided in section 43-1312,  
20 shall be held for the juvenile within thirty days after the  
21 determination, reasonable efforts shall be made to place the juvenile in  
22 a timely manner in accordance with the permanency plan, and whatever  
23 steps are necessary to finalize the permanent placement of the juvenile  
24 shall be made.

25 ~~(7)~~ (6) Reasonable efforts to place a juvenile for adoption or with  
26 a guardian may be made concurrently with reasonable efforts to preserve  
27 and reunify the family, but priority shall be given to preserving and  
28 reunifying the family as provided in this section.

29 Sec. 3. Section 43-292.02, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 43-292.02 (1) A petition shall be filed on behalf of the state to

1 terminate the parental rights of the juvenile's parents or, if such a  
2 petition has been filed by another party, the state shall join as a party  
3 to the petition, and the state shall concurrently identify, recruit,  
4 process, and approve a qualified family for an adoption of the juvenile,  
5 if:

6 (a) A juvenile has been in foster care under the responsibility of  
7 the state for fifteen or more months of the most recent twenty-two  
8 months; or

9 (b) A court of competent jurisdiction has determined the juvenile to  
10 be an abandoned infant or has made a determination that the parent has  
11 committed murder of another child of the parent, committed voluntary  
12 manslaughter of another child of the parent, aided or abetted, attempted,  
13 conspired, or solicited to commit murder, or aided or abetted voluntary  
14 manslaughter of the juvenile or another child of the parent, or committed  
15 a felony assault that has resulted in serious bodily injury to the  
16 juvenile or another minor child of the parent. For purposes of this  
17 subdivision, infant means a child eighteen months of age or younger.

18 (2) A petition shall not be filed on behalf of the state to  
19 terminate the parental rights of the juvenile's parents or, if such a  
20 petition has been filed by another party, the state shall not join as a  
21 party to the petition if the sole factual basis for the petition is that  
22 (a) the parent or parents of the juvenile are financially unable to  
23 provide health care for the juvenile or (b) the parent or parents of the  
24 juvenile are incarcerated. The fact that a qualified family for an  
25 adoption of the juvenile has been identified, recruited, processed, and  
26 approved shall have no bearing on whether parental rights shall be  
27 terminated.

28 (3) The petition is not required to be filed on behalf of the state  
29 or if a petition is filed the state shall not be required to join in a  
30 petition to terminate parental rights or to concurrently find a qualified  
31 family to adopt the juvenile under this section if:

1 (a) The child is being cared for by a relative;

2 (b) The Department of Health and Human Services has documented in  
3 the case plan or permanency plan, which shall be available for court  
4 review, a compelling reason for determining that filing such a petition  
5 would not be in the best interests of the juvenile; or

6 (c) The family of the juvenile has not had a reasonable opportunity  
7 to avail themselves of the services deemed necessary in the case plan or  
8 permanency plan approved by the court if reasonable efforts to preserve  
9 and reunify the family are required under section 43-283.01.

10 (4) If a court determines by clear and convincing evidence that a  
11 child was conceived as the result of a sexual assault, the county  
12 attorney shall file a petition on behalf of the state to terminate the  
13 parental rights of the biological parent who committed the sexual assault  
14 on the other biological parent and the court determination shall be  
15 conclusive evidence that the parental rights of the biological parent who  
16 committed the sexual assault shall be terminated, unless the child's  
17 biological parent who was the victim of the sexual assault or the child's  
18 guardian consents otherwise and a court determines that not terminating  
19 the parental rights of the biological parent who committed the sexual  
20 assault is in the best interests of the child.

21 Sec. 4. Section 43-1411.01, Reissue Revised Statutes of Nebraska, is  
22 amended to read:

23 43-1411.01 (1) An action for paternity or parental support under  
24 sections 43-1401 to 43-1418 may be initiated by filing a complaint with  
25 the clerk of the district court as provided in section 25-2740. Such  
26 proceeding may be heard by the county court or the district court as  
27 provided in section 25-2740. A paternity determination under sections  
28 43-1411 to 43-1418 may also be decided in a county court or separate  
29 juvenile court if the county court or separate juvenile court already has  
30 jurisdiction over the child whose paternity is to be determined.

31 (2) Whenever termination of parental rights is placed in issue in

1 any case arising under sections 43-1401 to 43-1418, the Nebraska Juvenile  
2 Code and the Parenting Act shall apply to such proceedings.

3 (3) If a court determines by clear and convincing evidence that a  
4 child was conceived as the result of a sexual assault, the paternity of  
5 the child shall be established by DNA evidence and the parental rights of  
6 the biological parent who committed the sexual assault shall be  
7 terminated, unless the child's biological parent who was the victim of  
8 the sexual assault or the child's guardian consents otherwise and a court  
9 determines that not terminating the parental rights of the biological  
10 parent who committed the sexual assault is in the best interests of the  
11 child.

12 Sec. 5. Section 43-2933, Reissue Revised Statutes of Nebraska, is  
13 amended to read:

14 43-2933 (1)(a) No person shall be granted custody of, or  
15 unsupervised parenting time, visitation, or other access with, a child if  
16 the person is required to be registered as a sex offender under the Sex  
17 Offender Registration Act for an offense that would make it contrary to  
18 the best interests of the child for such access or for an offense in  
19 which the victim was a minor or if the person has been convicted under  
20 section 28-311, 28-319.01, 28-320, 28-320.01, or 28-320.02, unless the  
21 court determines ~~finds~~ that there is no significant risk to the child and  
22 states its reasons in writing or on the record.

23 (b) No person shall be granted custody of, or unsupervised parenting  
24 time, visitation, or other access with, a child if anyone residing in the  
25 person's household is required to register as a sex offender under the  
26 Sex Offender Registration Act as a result of a felony conviction in which  
27 the victim was a minor or for an offense that would make it contrary to  
28 the best interests of the child for such access unless the court  
29 determines ~~finds~~ that there is no significant risk to the child and  
30 states its reasons in writing or on the record.

31 (c) The fact that a child is permitted unsupervised contact with a

1 person who is required, as a result of a felony conviction in which the  
2 victim was a minor, to be registered as a sex offender under the Sex  
3 Offender Registration Act shall be prima facie evidence that the child is  
4 at significant risk. When making a determination regarding significant  
5 risk to the child, the prima facie evidence shall constitute a  
6 presumption affecting the burden of producing evidence. However, this  
7 presumption shall not apply if there are factors mitigating against its  
8 application, including whether the other party seeking custody, parenting  
9 time, visitation, or other access is also required, as the result of a  
10 felony conviction in which the victim was a minor, to register as a sex  
11 offender under the Sex Offender Registration Act.

12 (2) No person shall be granted custody, parenting time, visitation,  
13 or other access with a child if the person has been convicted under  
14 section 28-319 and the child was conceived as a result of that violation.

15 (3) No biological parent whom a court determines by clear and  
16 convincing evidence sexually assaulted the other biological parent which  
17 resulted in the conception of a child shall be granted custody, parenting  
18 time, visitation, or other access with the child, unless the child's  
19 biological parent who was the victim of the sexual assault or the child's  
20 guardian consents to the custody, parenting time, visitation, or other  
21 access with the child and a court determines it is in the best interests  
22 of the child.

23 (4) Nothing in this section shall be construed to relieve the  
24 biological parent, whom a court determined by clear and convincing  
25 evidence sexually assaulted the other biological parent which resulted in  
26 the conception of a child, from the duty of providing child support for  
27 the child.

28 (5) ~~(3)~~ A change in circumstances relating to subsection (1) or (2)  
29 of this section is sufficient grounds for modification of a previous  
30 order.

31 Sec. 6. Original sections 43-254, 43-283.01, 43-292.02, 43-1411.01,

1 and 43-2933, Reissue Revised Statutes of Nebraska, are repealed.