

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1222

Introduced by Day, 49.

Read first time January 16, 2024

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend
2 section 43-292, Reissue Revised Statutes of Nebraska, and sections
3 43-283.01, 43-292.02, and 43-1411.01, Revised Statutes Cumulative
4 Supplement, 2022; to change provisions relating to termination of
5 parental rights and parental support; to harmonize provisions; and
6 to repeal the original sections.

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

1 Section 1. Section 43-283.01, Revised Statutes Cumulative
2 Supplement, 2022, is amended to read:

3 43-283.01 (1) In determining whether reasonable efforts have been
4 made to preserve and reunify the family and in making such reasonable
5 efforts, the juvenile's health and safety are the paramount concern.

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

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

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

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

22 (b) The parent of the juvenile has (i) committed first or second
23 degree murder to another child of the parent, (ii) committed voluntary
24 manslaughter to another child of the parent, (iii) aided or abetted,
25 attempted, conspired, or solicited to commit murder, or aided or abetted
26 voluntary manslaughter of the juvenile or another child of the parent,
27 (iv) committed a felony assault which results in serious bodily injury to
28 the juvenile or another minor child of the parent, or (v) been convicted
29 of felony sexual assault of the other parent of the juvenile under
30 section 28-319, 28-319.01, 28-320 or 28-320.01 or a comparable crime in
31 another state; or

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

3 (5) Except as otherwise provided in the Nebraska Indian Child
4 Welfare Act, if the family includes a child who was conceived by the
5 victim of a sexual assault and a biological parent is convicted of the
6 crime under section 28-319 or 28-320 or a law in another jurisdiction
7 similar to either section 28-319 or 28-320, the convicted biological
8 parent of such child shall not be considered a part of the child's family
9 for purposes of requiring reasonable efforts to preserve and reunify the
10 family.

11 (6) If reasonable efforts to preserve and reunify the family are not
12 required because of a court determination made under subsection (4) of
13 this section, a permanency hearing, as provided in section 43-1312, shall
14 be held for the juvenile within thirty days after the determination,
15 reasonable efforts shall be made to place the juvenile in a timely manner
16 in accordance with the permanency plan, and whatever steps are necessary
17 to finalize the permanent placement of the juvenile shall be made.

18 (7) Reasonable efforts to place a juvenile for adoption or with a
19 guardian may be made concurrently with reasonable efforts to preserve and
20 reunify the family, but priority shall be given to preserving and
21 reunifying the family as provided in this section.

22 Sec. 2. Section 43-292, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 43-292 The court may terminate all parental rights between the
25 parents or the mother of a juvenile born out of wedlock and such juvenile
26 when the court finds such action to be in the best interests of the
27 juvenile and it appears by the evidence that one or more of the following
28 conditions exist:

29 (1) The parents have abandoned the juvenile for six months or more
30 immediately prior to the filing of the petition;

31 (2) The parents have substantially and continuously or repeatedly

1 neglected and refused to give the juvenile or a sibling of the juvenile
2 necessary parental care and protection;

3 (3) The parents, being financially able, have willfully neglected to
4 provide the juvenile with the necessary subsistence, education, or other
5 care necessary for his or her health, morals, or welfare or have
6 neglected to pay for such subsistence, education, or other care when
7 legal custody of the juvenile is lodged with others and such payment
8 ordered by the court;

9 (4) The parents are unfit by reason of debauchery, habitual use of
10 intoxicating liquor or narcotic drugs, or repeated lewd and lascivious
11 behavior, which conduct is found by the court to be seriously detrimental
12 to the health, morals, or well-being of the juvenile;

13 (5) The parents are unable to discharge parental responsibilities
14 because of mental illness or mental deficiency and there are reasonable
15 grounds to believe that such condition will continue for a prolonged
16 indeterminate period;

17 (6) Following a determination that the juvenile is one as described
18 in subdivision (3)(a) of section 43-247, reasonable efforts to preserve
19 and reunify the family if required under section 43-283.01, under the
20 direction of the court, have failed to correct the conditions leading to
21 the determination;

22 (7) The juvenile has been in an out-of-home placement for fifteen or
23 more months of the most recent twenty-two months;

24 (8) The parent has inflicted upon the juvenile, by other than
25 accidental means, serious bodily injury;

26 (9) The parent of the juvenile has subjected the juvenile or another
27 minor child to aggravated circumstances, including, but not limited to,
28 abandonment, torture, chronic abuse, or sexual abuse;

29 (10) The parent has (a) committed murder of another child of the
30 parent, (b) committed voluntary manslaughter of another child of the
31 parent, (c) aided or abetted, attempted, conspired, or solicited to

1 commit murder, or aided or abetted voluntary manslaughter of the juvenile
2 or another child of the parent, or (d) committed a felony assault that
3 resulted in serious bodily injury to the juvenile or another minor child
4 of the parent; or

5 (11) One parent has been convicted of felony sexual assault of the
6 other parent under section 28-319, 28-319.01, or 28-320, or 28-320.01 or
7 a comparable crime in another state.

8 Sec. 3. Section 43-292.02, Revised Statutes Cumulative Supplement,
9 2022, is amended to read:

10 43-292.02 (1) A petition shall be filed on behalf of the state to
11 terminate the parental rights of the juvenile's parents or, if such a
12 petition has been filed by another party, the state shall join as a party
13 to the petition, and the state shall concurrently identify, recruit,
14 process, and approve a qualified family for an adoption of the juvenile,
15 if:

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

19 (b) A court of competent jurisdiction has determined the juvenile to
20 be an abandoned infant or has made a determination that the parent has
21 committed murder of another child of the parent, committed voluntary
22 manslaughter of another child of the parent, aided or abetted, attempted,
23 conspired, or solicited to commit murder, or aided or abetted voluntary
24 manslaughter of the juvenile or another child of the parent, or committed
25 a felony assault that has resulted in serious bodily injury to the
26 juvenile or another minor child of the parent. For purposes of this
27 subdivision, infant means a child eighteen months of age or younger.

28 (2) A petition shall not be filed on behalf of the state to
29 terminate the parental rights of the juvenile's parents or, if such a
30 petition has been filed by another party, the state shall not join as a
31 party to the petition if the sole factual basis for the petition is that

1 (a) the parent or parents of the juvenile are financially unable to
2 provide health care for the juvenile or (b) the parent or parents of the
3 juvenile are incarcerated. The fact that a qualified family for an
4 adoption of the juvenile has been identified, recruited, processed, and
5 approved shall have no bearing on whether parental rights shall be
6 terminated.

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

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

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

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

20 (4) Except as otherwise provided in the Nebraska Indian Child
21 Welfare Act, if a child is conceived by the victim of a sexual assault, a
22 petition for termination of parental rights of the perpetrator shall be
23 granted if such termination is in the best interests of the child and (a)
24 the perpetrator has been convicted of or pled guilty or nolo contendere
25 to sexual assault of the child's birth parent under section 28-319,
26 28-319.01, ~~or 28-320,~~ or 28-320.01 or a law in another jurisdiction
27 similar to ~~either~~ section 28-319, 28-319.01, ~~or 28-320,~~ or 28-320.01 or
28 (b) the perpetrator has fathered the child or given birth to the child as
29 a result of such sexual assault.

30 Sec. 4. Section 43-1411.01, Revised Statutes Cumulative Supplement,
31 2022, is amended to read:

1 43-1411.01 (1) An action for paternity or parental support under
2 sections 43-1401 to 43-1418 may be initiated by filing a complaint with
3 the clerk of the district court as provided in section 25-2740. Such
4 proceeding may be heard by the county court or the district court as
5 provided in section 25-2740. A paternity determination under sections
6 43-1411 to 43-1418 may also be decided in a county court or separate
7 juvenile court if the county court or separate juvenile court already has
8 jurisdiction over the child whose paternity is to be determined.

9 (2) Whenever termination of parental rights is placed in issue in
10 any case arising under sections 43-1401 to 43-1418, the Nebraska Juvenile
11 Code and the Parenting Act shall apply to such proceedings.

12 (3) The court may stay the paternity action if there is a pending
13 criminal allegation of sexual assault under section 28-319, 28-319.01, ~~or~~
14 28-320, or 28-320.01 or a law in another jurisdiction similar to either
15 section 28-319, 28-319.01, ~~or~~ 28-320, or 28-320.01 against the alleged
16 father with regard to the conception of the child.

17 Sec. 5. Original section 43-292, Reissue Revised Statutes of
18 Nebraska, and sections 43-283.01, 43-292.02, and 43-1411.01, Revised
19 Statutes Cumulative Supplement, 2022, are repealed.