

AMENDMENTS TO LB 972

Introduced by Judiciary

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 43-251.01, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 43-251.01 All placements and commitments of juveniles for
6 evaluations or as temporary or final dispositions are subject to
7 the following:

8 (1) No juvenile shall be confined in an adult
9 correctional facility as a disposition of the court;

10 (2) A juvenile who is found to be a juvenile as described
11 in subdivision (3) of section 43-247 shall not be placed in an
12 adult correctional facility, the secure youth confinement facility
13 operated by the Department of Correctional Services, or a youth
14 rehabilitation and treatment center or committed to the Office of
15 Juvenile Services;

16 (3) A juvenile who is found to be a juvenile as described
17 in subdivision (1), (2), or (4) of section 43-247 shall not be
18 assigned or transferred to an adult correctional facility or the
19 secure youth confinement facility operated by the Department of
20 Correctional Services; and

21 (4) A juvenile under the age of ~~twelve~~ fourteen years
22 shall not be placed with or committed to a youth rehabilitation and
23 treatment center except as provided in section 43-286.

1 Sec. 2. Section 43-276, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 43-276 In cases coming within subdivision (1) of section
4 43-247, when there is concurrent jurisdiction, or subdivision
5 (2) or (4) of section 43-247, when the juvenile is under the
6 age of sixteen years, the county attorney shall, in making
7 the determination whether to file a criminal charge, file a
8 juvenile court petition, offer juvenile pretrial diversion, or
9 offer mediation, consider: (1) The type of treatment such juvenile
10 would most likely be amenable to; (2) whether there is evidence
11 that the alleged offense included violence or was committed in
12 an aggressive and premeditated manner; (3) the motivation for the
13 commission of the offense; (4) the age of the juvenile and the ages
14 and circumstances of any others involved in the offense; (5) the
15 previous history of the juvenile, including whether he or she had
16 been convicted of any previous offenses or adjudicated in juvenile
17 court, and, if so, whether such offenses were crimes against the
18 person or relating to property, and other previous history of
19 antisocial behavior, if any, including any patterns of physical
20 violence; (6) the sophistication and maturity of the juvenile as
21 determined by consideration of his or her home, school activities,
22 emotional attitude and desire to be treated as an adult, pattern
23 of living, and whether he or she has had previous contact with law
24 enforcement agencies and courts and the nature thereof; (7) whether
25 there are facilities particularly available to the juvenile court
26 for treatment and rehabilitation of the juvenile; (8) whether the
27 best interests of the juvenile and the security of the public may

1 require that the juvenile continue in secure detention or under
2 supervision for a period extending beyond his or her minority and,
3 if so, the available alternatives best suited to this purpose;
4 (9) whether the victim agrees to participate in mediation; (10)
5 whether there is a juvenile pretrial diversion program established
6 pursuant to sections 43-260.02 to 43-260.07; (11) whether the
7 juvenile has been convicted of or has acknowledged unauthorized use
8 or possession of a firearm; (12) whether a juvenile court order
9 has been issued for the juvenile pursuant to section 43-2,106.03;
10 (13) whether the juvenile is a criminal street gang member; (14)
11 whether the juvenile has been previously committed to a youth
12 rehabilitation and treatment center; and ~~(14)~~ (15) such other
13 matters as the county attorney deems relevant to his or her
14 decision.

15 Sec. 3. Section 43-286, Revised Statutes Supplement,
16 2011, is amended to read:

17 43-286 (1) When any juvenile is adjudicated to be a
18 juvenile described in subdivision (1), (2), or (4) of section
19 43-247:

20 (a) The court may continue the dispositional portion of
21 the hearing, from time to time upon such terms and conditions as
22 the court may prescribe, including an order of restitution of any
23 property stolen or damaged or an order requiring the juvenile to
24 participate in community service programs, if such order is in
25 the interest of the juvenile's reformation or rehabilitation, and,
26 subject to the further order of the court, may:

27 (i) Place the juvenile on probation subject to the

1 supervision of a probation officer;

2 (ii) Permit the juvenile to remain in his or her own home
3 or be placed in a suitable family home, subject to the supervision
4 of the probation officer; or

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

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

19 (b) The court may commit such juvenile to the Office
20 of Juvenile Services, but a juvenile under the age of ~~twelve~~
21 fourteen years shall not be placed at the Youth Rehabilitation and
22 Treatment Center-Geneva or the Youth Rehabilitation and Treatment
23 Center-Kearney unless he or she has violated the terms of probation
24 or has committed an additional offense and the court finds that the
25 interests of the juvenile and the welfare of the community demand
26 his or her commitment. This minimum age provision shall not apply
27 if the act in question is murder or manslaughter.

1 (2) When any juvenile is found by the court to be a
2 juvenile described in subdivision (3)(b) of section 43-247, the
3 court may enter such order as it is empowered to enter under
4 subdivision (1)(a) of this section or enter an order committing or
5 placing the juvenile to the care and custody of the Department of
6 Health and Human Services.

7 (3) When any juvenile is adjudicated to be a juvenile
8 described in subdivision (1), (2), (3)(b), or (4) of section 43-247
9 because of a nonviolent act or acts and the juvenile has not
10 previously been adjudicated to be such a juvenile because of a
11 violent act or acts, the court may, with the agreement of the
12 victim, order the juvenile to attend juvenile offender and victim
13 mediation with a mediator or at an approved center selected from
14 the roster made available pursuant to section 25-2908.

15 (4) When a juvenile is placed on probation and a
16 probation officer has reasonable cause to believe that such
17 juvenile has committed or is about to commit a substance abuse
18 violation, a noncriminal violation, or a violation of a condition
19 of his or her probation, the probation officer shall take
20 appropriate measures as provided in section 43-286.01.

21 (5)(a) When a juvenile is placed on probation or under
22 the supervision of the court and it is alleged that the juvenile is
23 again a juvenile described in subdivision (1), (2), (3)(b), or (4)
24 of section 43-247, a petition may be filed and the same procedure
25 followed and rights given at a hearing on the original petition. If
26 an adjudication is made that the allegations of the petition are
27 true, the court may make any disposition authorized by this section

1 for such adjudications.

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

9 (i) The motion shall set forth specific factual
10 allegations of the alleged violations and a copy of such motion
11 shall be served on all persons required to be served by sections
12 43-262 to 43-267;

13 (ii) The juvenile shall be entitled to a hearing before
14 the court to determine the validity of the allegations. At such
15 hearing the juvenile shall be entitled to those rights relating
16 to counsel provided by section 43-272 and those rights relating
17 to detention provided by sections 43-254 to 43-256. The juvenile
18 shall also be entitled to speak and present documents, witnesses,
19 or other evidence on his or her own behalf. He or she may confront
20 persons who have given adverse information concerning the alleged
21 violations, may cross-examine such persons, and may show that he
22 or she did not violate the conditions of his or her probation
23 or supervision or an order of the court or, if he or she did,
24 that mitigating circumstances suggest that the violation does not
25 warrant revocation of probation or supervision or a change of
26 disposition. The hearing shall be held within a reasonable time
27 after the juvenile is taken into custody;

1 (iii) The hearing shall be conducted in an informal
2 manner and shall be flexible enough to consider evidence, including
3 letters, affidavits, and other material, that would not be
4 admissible in an adversarial criminal trial;

5 (iv) The juvenile shall be given a preliminary hearing
6 in all cases when the juvenile is confined, detained, or otherwise
7 significantly deprived of his or her liberty as a result of his
8 or her alleged violation of probation, supervision, or court order.
9 Such preliminary hearing shall be held before an impartial person
10 other than his or her probation officer or any person directly
11 involved with the case. If, as a result of such preliminary
12 hearing, probable cause is found to exist, the juvenile shall be
13 entitled to a hearing before the court in accordance with this
14 subsection;

15 (v) If the juvenile is found by the court to have
16 violated the terms of his or her probation or supervision or an
17 order of the court, the court may modify the terms and conditions
18 of the probation, supervision, or other court order, extend the
19 period of probation, supervision, or other court order, or enter
20 any order of disposition that could have been made at the time the
21 original order was entered; and

22 (vi) In cases when the court revokes probation,
23 supervision, or other court order, it shall enter a written
24 statement as to the evidence relied on and the reasons for
25 revocation.

26 Sec. 4. Section 43-401, Reissue Revised Statutes of
27 Nebraska, is amended to read:

1 43-401 Sections 43-401 to 43-423 and section 6 of this
2 act shall be known and may be cited as the Health and Human
3 Services, Office of Juvenile Services Act.

4 Sec. 5. Section 43-405, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 43-405 The administrative duties of the Office of
7 Juvenile Services are to:

8 (1) Manage, establish policies for, and administer the
9 office, including all facilities and programs operated by the
10 office or provided through the office by contract with a provider;

11 (2) Supervise employees of the office, including
12 employees of the facilities and programs operated by the office;

13 (3) Have separate budgeting procedures and develop and
14 report budget information separately from the Department of Health
15 and Human Services;

16 (4) Adopt and promulgate rules and regulations for
17 the levels of treatment and for management, control, screening,
18 evaluation, treatment, rehabilitation, parole, transfer, and
19 discharge of juveniles placed with or committed to the Office of
20 Juvenile Services;

21 (5) Ensure that statistical information concerning
22 juveniles placed with or committed to facilities or programs of
23 the office is collected, developed, and maintained for purposes of
24 research and the development of treatment programs;

25 (6) Monitor commitments, placements, and evaluations at
26 facilities and programs operated by the office or through contracts
27 with providers and report its findings annually to the Legislature.

1 The report shall include an assessment of the administrative costs
2 of operating the facilities, the cost of programming, ~~and~~ the
3 savings realized through reductions in commitments, placements, and
4 evaluations, and information regarding the collaboration required
5 by section 7 of this act;

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

9 (8) Coordinate educational, vocational, and social
10 counseling;

11 (9) Coordinate community-based services for juveniles and
12 their families;

13 (10) Supervise and coordinate juvenile parole and
14 aftercare services; and

15 (11) Exercise all powers and perform all duties necessary
16 to carry out its responsibilities under the Health and Human
17 Services, Office of Juvenile Services Act.

18 Sec. 6. If a juvenile assaults an employee of a youth
19 rehabilitation and treatment center or another juvenile who has
20 been committed to the youth rehabilitation and treatment center
21 or escapes or attempts to escape from a youth rehabilitation
22 and treatment center, the chief executive officer of the youth
23 rehabilitation and treatment center shall document the assault,
24 escape, or attempt to escape and send a copy of such documentation
25 to the committing court and the county attorney of the county in
26 which the committing court is located as soon as possible after the
27 determination that such assault, escape, or attempt to escape has

1 occurred. Such documentation may be offered as evidence presented
2 at any hearing conducted pursuant to section 43-2,106.03.

3 Sec. 7. The Office of Juvenile Services shall collaborate
4 with the Department of Correctional Services regarding the training
5 of all employees and the safety and security of the youth
6 rehabilitation and treatment centers. The office shall include
7 information regarding such collaboration in the annual report
8 required by subdivision (6) of section 43-405.

9 Sec. 8. The Revisor of Statutes shall assign section 7 of
10 this act to Chapter 83, article 1.

11 Sec. 9. Original sections 43-251.01, 43-401, and 43-405,
12 Reissue Revised Statutes of Nebraska, sections 29-1816 and 43-276,
13 Revised Statutes Cumulative Supplement, 2010, and section 43-286,
14 Revised Statutes Supplement, 2011, are repealed.