

LEGISLATIVE BILL 482

Approved by the Governor April 29, 2015

Introduced by Krist, 10.

A BILL FOR AN ACT relating to juveniles; to amend section 43-252, Reissue Revised Statutes of Nebraska, and sections 43-251.01, 43-276, and 43-2,129, Revised Statutes Cumulative Supplement, 2014; to change provisions relating to placements, commitments, fingerprints, and petitions; to provide for assistance for certain juveniles; to regulate the use of restraints; to define a term; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 43-251.01, Revised Statutes Cumulative Supplement, 2014, is amended to read:

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

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

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

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

(4) A juvenile under the age of fourteen years shall not be placed with or committed to a youth rehabilitation and treatment center; ~~and~~

(5) A juvenile shall not be detained in secure detention or placed at a youth rehabilitation and treatment center unless detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court; ~~-~~

(6) A juvenile alleged to be a juvenile as described in subdivision (3)(b) of section 43-247 shall not be placed in a juvenile detention facility, including a wing labeled as staff secure at such facility, unless the designated staff secure portion of the facility fully complies with subdivision (3) of section 83-4,125 and the ingress and egress to the facility are restricted solely through staff supervision; and

(7) A juvenile alleged to be a juvenile as described in subdivision (3)(b) of section 43-247 shall not be placed out of his or her home as a dispositional order of the court unless:

(a) All available community-based resources have been exhausted to assist the juvenile and his or her family; and

(b) Maintaining the juvenile in the home presents a significant risk of harm to the juvenile or community.

Sec. 2. A peace officer, upon making contact with a child who has not committed a criminal offense but who appears to be a juvenile as described in subdivision (3)(b) of section 43-247 and who is in need of assistance, may refer the child and child's parent or parents or guardian to a clinically credentialed community-based provider for immediate crisis intervention, de-escalation, and respite care services.

Sec. 3. (1) Restraints shall not be used on a juvenile during a juvenile court proceeding and shall be removed prior to the juvenile's appearance before the juvenile court, unless the juvenile court makes a finding of probable cause that:

(a) The use of restraints is necessary:

(i) To prevent physical harm to the juvenile or another person;

(ii) Because the juvenile:

(A) Has a history of disruptive courtroom behavior that has placed others in potentially harmful situations; or

(B) Presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior; or

(iii) Because the juvenile presents a substantial risk of flight from the courtroom; and

(b) There is no less restrictive alternative to restraints that will prevent flight or physical harm to the juvenile or another person, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs.

(2) The court shall provide the juvenile's attorney an opportunity to be heard before the court orders the use of restraints. If restraints are ordered, the court shall make written findings of fact in support of the order.

(3) For purposes of this section, restraints includes, but is not limited to, handcuffs, chains, irons, straitjackets, and electronic restraint devices.

Sec. 4. Section 43-252, Reissue Revised Statutes of Nebraska, is amended

to read:

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) The fingerprints of any juvenile alleged or found to be a juvenile as described in subdivision (3)(b) of section 43-247 shall not be taken.

(3 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.

(4 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 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. 5. Section 43-276, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-276 (1) The county attorney or city attorney, in making the determination whether to file a criminal charge, file a juvenile court petition, offer juvenile pretrial diversion or mediation, or transfer a case to or from juvenile court, and the juvenile court, county court, or district court in making the determination whether to transfer a case, shall consider: (a 1) The type of treatment such juvenile would most likely be amenable to; (b 2) whether there is evidence that the alleged offense included violence; (c 3) the motivation for the commission of the offense; (d 4) the age of the juvenile and the ages and circumstances of any others involved in the offense; (e 5) the previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court; (f 6) the best interests of the juvenile; (g 7) consideration of public safety; (h 8) consideration of the juvenile's ability to appreciate the nature and seriousness of his or her conduct; (i 9) whether the best interests of the juvenile and the security of the public may require that the juvenile continue in secure detention or under supervision for a period extending beyond his or her minority and, if so, the available alternatives best suited to this purpose; (j 10) whether the victim agrees to participate in mediation; (k 11) whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07; (l 12) whether the juvenile has been convicted of or has acknowledged unauthorized use or possession of a firearm; (m 13) whether a juvenile court order has been issued for the juvenile pursuant to section 43-2,106.03; (n 14) whether the juvenile is a criminal street gang member; and (o 15) such other matters as the parties deem relevant to aid in the decision.

(2) Prior to filing a petition alleging that a juvenile is a juvenile as described in subdivision (3)(b) of section 43-247, the county attorney shall make reasonable efforts to refer the juvenile and family to community-based resources available to address the juvenile's behaviors, provide crisis intervention, and maintain the juvenile safely in the home. Failure to describe the efforts required by this subsection shall be a defense to adjudication.

Sec. 6. Section 43-2,129, Revised Statutes Cumulative Supplement, 2014, is amended to read:

43-2,129 Sections 43-245 to 43-2,129 and sections 2 and 3 of this act shall be known and may be cited as the Nebraska Juvenile Code.

Sec. 7. Original section 43-252, Reissue Revised Statutes of Nebraska, and sections 43-251.01, 43-276, and 43-2,129, Revised Statutes Cumulative Supplement, 2014, are repealed.