

LEGISLATIVE BILL 595

Approved by the Governor May 17, 2019

Introduced by Albrecht, 17.

A BILL FOR AN ACT relating to alternative dispute resolution; to amend sections 25-2901, 25-2902, 25-2903, 25-2904, 25-2905, 25-2906, 25-2908, 25-2909, 25-2911, 25-2912, 25-2913, 25-2914, 25-2915, 25-2916, 25-2917, 25-2918, 25-2919, 25-2920, 25-2921, 43-245, 43-246, 43-247.03, 43-247.04, 43-260.06, 43-275, 43-276, 43-2,108.01, 43-2,108.04, 43-2922, 43-2937, 43-2938, 79-209, and 79-258, Reissue Revised Statutes of Nebraska, sections 43-274 and 43-286, Revised Statutes Cumulative Supplement, 2018, and sections 43-2,108.02 and 43-2,108.03, Reissue Revised Statutes of Nebraska, as amended by sections 3 and 4, respectively, Legislative Bill 354, One Hundred Sixth Legislature, First Session, 2019; to restate legislative findings; to define and redefine terms; to change provisions relating to the qualifications of the Director of the Office of Dispute Resolution, the membership of the Advisory Council on Dispute Resolution, and the office's and director's duties; to change provisions relating to approved centers, cases accepted for restorative justice and dispute resolution, and qualifications of mediators and restorative justice facilitators; to provide a privilege for communications made in restorative justice as prescribed; to provide for immunity and reparation plan agreements; to change provisions relating to tolling of statutes of limitations, an annual report, and legislative intent regarding a fund; to provide for restorative justice in juvenile cases as prescribed; to authorize referrals to restorative justice practices or services for compulsory attendance collaborative plans and under the Student Discipline Act; to provide for licensed attorneys to serve as parenting plan mediators; to eliminate obsolete provisions; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 25-2901, Reissue Revised Statutes of Nebraska, is amended to read:

25-2901 Sections 25-2901 to 25-2921 and sections 11, 12, and 15 of this act shall be known and may be cited as the Dispute Resolution Act.

Sec. 2. Section 25-2902, Reissue Revised Statutes of Nebraska, is amended to read:

25-2902 The Legislature finds that:

(1) The resolution of certain disputes and offenses can be costly and time consuming in the context of a formal judicial proceeding;

(2) Employing restorative justice and mediation to address Mediation of disputes can provide an avenue has a great potential for efficiently reducing the volume of matters which burden the court system in this state;

(3) Restorative justice practices and programs can meet the needs of Nebraska's residents by providing forums in which persons may participate in voluntary or court-ordered resolution of juvenile and adult offenses in an informal and less adversarial atmosphere;

(4) Employing restorative justice can provide an avenue for repair, healing, accountability, and community safety to address the harm experienced by victims as a result of an offense committed by youth or adult individuals;

(5) Restorative justice practices and programs are grounded in a wide body of research and evidence showing individuals who participate in restorative justice practices and programs are less likely to reoffend;

(6) (3) Unresolved disputes of those who do not have the resources for formal resolution may be of small social or economic magnitude individually but are collectively of enormous social and economic consequences;

(7) (4) Many seemingly minor conflicts between individuals may escalate into major social problems unless resolved early in an atmosphere in which the persons involved disputants can discuss the dispute or offense their differences through a private and informal yet structured process;

(8) (5) There is a need in our society to reduce acrimony and improve relationships between people in conflict which has a long-term benefit of a more peaceful community of people;

(9) (6) There is a compelling need in a complex society for dispute resolution and restorative justice whereby people can participate in creating comprehensive, lasting, and realistic resolutions to conflicts and offenses;

(10) (7) Mediation can increase the public's access of the public to dispute resolution and thereby increase public regard and usage of the legal system; and

(11) Office-approved nonprofit (8) Nonprofit dispute resolution centers can make a substantial contribution to the operation and maintenance of the courts of this state by preserving the court's scarce resources for those disputes and offenses which cannot be resolved by means other than litigation.

Sec. 3. Section 25-2903, Reissue Revised Statutes of Nebraska, is amended to read:

25-2903 For purposes of the Dispute Resolution Act:

be charged by approved centers;

(6) ~~(7)~~ Develop, initiate, or approve curricula and initiate training sessions for mediators and staff of approved centers and of courts;

(7) ~~(8)~~ Establish volunteer training programs;

(8) ~~(9)~~ Promote public awareness of the restorative justice and dispute resolution process;

(9) ~~(10)~~ Apply for and receive funds from public and private sources for carrying out the purposes and obligations of the act; ~~and~~

(10) ~~(11)~~ Develop and supervise a uniform system to create and maintain a roster of approved centers and victim youth conferencing and other restorative justice facilitators who are affiliated with approved centers mediators for juvenile offender and victim mediation, as provided in section 43-245, and centers approved under section 25-2909. The roster shall be made available to courts and county attorneys; -

(11) Enhance the sustainability of approved centers;

(12) Support approved centers in the implementation of restorative justice programs;

(13) Coordinate the development and implementation of new restorative justice programs;

(14) Develop and administer a uniform system for reporting and collecting statistical data regarding restorative justice programs from approved centers;

(15) Develop and administer a uniform system for evaluating restorative justice programs administered by approved centers;

(16) Develop and administer a uniform system for evaluating quality assurance and fidelity to established restorative justice principles;

(17) Coordinate software and data management system quality assurance for the office and the approved centers;

(18) Coordinate restorative justice training sessions for restorative justice facilitators and staff of approved centers and the courts;

(19) Review and provide analyses of state and federal laws and policies and judicial branch policies relating to restorative justice programs for juvenile populations and adult populations;

(20) Promote public awareness of the restorative justice and dispute resolution process under the Dispute Resolution Act; and

(21) Seek and identify funds from public and private sources for carrying out new and ongoing restorative justice programs.

Sec. 8. Section 25-2909, Reissue Revised Statutes of Nebraska, is amended to read:

25-2909 (1) The office shall annually award grants to approved centers. It is the intent of the Legislature that centers be established and grants distributed statewide.

(2) A center or an entity proposing a center may apply to the office for approval to provide services under ~~participate in the dispute resolution process pursuant to~~ the Dispute Resolution Act by submitting an application which includes:

(a) A strategic plan for the operation of the center;

(b) The center's objectives;

(c) The areas of population to be served;

(d) The administrative organization;

(e) Record-keeping procedures;

(f) Procedures for intake, for scheduling, and for conducting and terminating restorative justice programs and dispute resolution sessions;

(g) Qualifications for mediators and restorative justice facilitators for the center;

(h) An annual budget for the center; ~~and~~

(i) The results of an audit of the center for a period covering the previous year if the center was in operation for such period; and

(j) ~~(i)~~ Proof of 501(c)(3) status under the Internal Revenue Code or proof of establishment by a court.

(3) The office may specify additional criteria for approval and for grants as it deems necessary.

(4) ~~(3)~~ Annual reports shall be required of each approved center. The reports shall include the number and types of cases handled in the year and a showing of continued compliance with the act. ~~Any programs existing on September 6, 1991, shall not be included in the act unless they apply and are approved under this section.~~

Sec. 9. Section 25-2911, Reissue Revised Statutes of Nebraska, is amended to read:

25-2911 (1) The following types of cases may be accepted for restorative justice programs and dispute resolution at an approved center:

(a) Civil claims and disputes, including, but not limited to, consumer and commercial complaints, disputes between neighbors, disputes between business associates, disputes between landlords and tenants, and disputes within communities;

(b) Disputes concerning child custody, parenting time, visitation, or other access and other areas of domestic relations;

(c) Juvenile offenses and disputes involving juveniles when appropriate, which shall be determined according to the policies and procedures provided for in section 25-2918; and

(d) Disputes involving youth that occur in families, in educational settings, and in the community at large;

(e) Adult criminal offenses and disputes involving juvenile, adult, or community victims when appropriate, which shall be determined according to the

policies and procedures provided for in section 25-2918; and

~~(f) (d)~~ Contested guardianship and contested conservatorship proceedings.

(2) Restorative justice practices at an approved center may be used in addition to any other condition, consequence, or sentence imposed by a court, a probation officer, a diversion program, a school, or another community program.

(3) (2) An approved center may accept cases referred by a court, an attorney, a law enforcement officer, a social service agency, a school, or any other interested person or agency or upon the request of the parties involved. A case may be referred prior to the commencement of formal judicial proceedings or may be referred as a pending court case. In order for a referral to be effective, all parties involved must consent to such referral. If a court refers a case to an approved center, the center shall provide information to the court as to whether an agreement was reached. If the court requests a copy of the agreement, the center shall provide it.

Sec. 10. Section 25-2912, Reissue Revised Statutes of Nebraska, is amended to read:

25-2912 Before the restorative justice or dispute resolution process begins, an approved center shall provide the parties with a written statement setting forth the procedures to be followed.

Sec. 11. Restorative justice practices, restorative justice services, or restorative justice programs include, but are not limited to, victim youth conferences, victim-offender mediation, family group conferences, circles, peer-to-peer mediation, truancy mediation, victim or community panels, and community conferences. Restorative justice programs may involve restorative projects or classes and facilitated meetings attended voluntarily by the victim, the victim's representatives, or a victim surrogate and the victim's supporters, as well as the youth or adult individual who caused harm and that individual's supporters, whether voluntarily or following a referral for assessment by court order. These meetings may also include community members, when appropriate. By engaging the parties to the offense or harm in voluntary dialogue, restorative justice provides an opportunity for healing for the victim and the individual who harmed the victim by:

(1) Holding the individual who caused harm accountable and providing the individual a platform to accept responsibility and gain empathy for the harm he or she caused to the victim and community;

(2) Providing the victim a platform to describe the impact that the harm had upon himself or herself or his or her family and to identify detriments experienced or any losses incurred;

(3) Providing the opportunity to enter into a reparation plan agreement;
and

(4) Enabling the victim and the individual who caused harm the opportunity to agree on consequences to repair the harm, to the extent possible. This includes, but is not limited to, apologies, community service, reparation, restitution, restoration, and counseling.

Sec. 12. The office and the approved centers shall strive to conduct restorative justice programs in accordance with best practices, including evidence-based programs, and shall adopt policies and procedures to accomplish this goal.

Sec. 13. Section 25-2913, Reissue Revised Statutes of Nebraska, is amended to read:

25-2913 (1) Mediators and restorative justice facilitators of approved centers shall have completed at least thirty hours of basic mediation training, including in conflict resolution techniques, neutrality, agreement writing, and ethics. For disputes involving marital dissolution, mediators of approved centers shall have an additional thirty hours in family mediation. An initial apprenticeship with an experienced mediator shall be required for at least three sessions for all mediators without prior mediation experience.

(2) In addition to the basic mediation training required under subsection (1) of this section:

(a) For disputes involving marital dissolution, parenting, or child custody, mediators of approved centers shall have additional training in family mediation; and

(b) For disputes involving harm done to others or the community, restorative justice facilitators of approved centers shall have additional restorative justice training that has been approved by the office. Such training should include, but not be limited to, topics such as restorative justice basics, trauma-informed practices, juvenile developmental characteristics, and crime victimization.

(3) (2) An approved center may provide for the compensation of mediators and restorative justice facilitators, or utilize the services of volunteer mediators and restorative justice facilitators, or utilize the services of both paid and volunteer mediators and restorative justice facilitators.

(4) (3) The mediator or restorative justice facilitator shall provide an opportunity for assist the parties to achieve in reaching a mutually acceptable resolution of their dispute, in joint or separate sessions, as appropriate, including a reparation plan agreement regarding reparations through dialogue discussion and negotiation. A The mediator shall be impartial, neutral, and unbiased and shall make no decisions for the parties.

(5) (4) The mediator or restorative justice facilitator shall officially terminate the process if the parties are unable to agree or if, in the judgment of the mediator, the agreement would be unconscionable. The termination shall be without prejudice to either party in any other proceeding.

(6) (5) The mediator or restorative justice facilitator has no authority

to make or impose any adjudicatory sanction or penalty upon the parties.

(7) ~~(6)~~ The mediator or restorative justice facilitator shall be aware of and recommend outside resources to the parties whenever appropriate. The mediator or restorative justice facilitator shall advise participants to obtain legal review of agreements as necessary.

Sec. 14. Section 25-2914, Reissue Revised Statutes of Nebraska, is amended to read:

25-2914 (1) Any verbal, written, or electronic communication made in or in connection with matters referred to mediation which relates to the controversy or dispute being mediated and agreements resulting from the mediation, whether made to the mediator, the staff of an approved center, a party, or any other person attending the mediation session, shall be confidential.

(2) Mediation proceedings shall be regarded as settlement negotiations, and no admission, representation, or statement made in mediation, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery.

(3) A mediator shall not be subject to process requiring the disclosure of any matter discussed during mediation proceedings unless all the parties consent to a waiver.

(4) Confidential communications and materials are subject to disclosure when all parties agree in writing to waive confidentiality regarding specific verbal, written, or electronic communications relating to the mediation session or the agreement.

(5) This section shall not apply if a party brings an action against the mediator or center, if the communication was made in furtherance of a crime or fraud, or if this section conflicts with other legal requirements.

Sec. 15. (1) Any verbal, written, or electronic communication made in or in connection with matters referred to a restorative justice program which relates to the controversy or dispute undergoing restorative justice and agreements resulting from the restorative justice program, whether made to the restorative justice facilitator, the staff of an approved center, a party, or any other person attending the restorative justice program, shall be confidential and privileged.

(2) No admission, confession, or incriminating information obtained from a juvenile in the course of any restorative justice program that is conducted in conjunction with proceedings under the Dispute Resolution Act or as directed by a court, including, but not limited to, school-based disciplinary proceedings, juvenile diversion, court-ordered detention, or probation, shall be admitted into evidence against such juvenile, except as rebuttal or impeachment evidence, in any future adjudication hearing under the Nebraska Juvenile Code or in any criminal proceeding. Such admission, confession, or incriminating information may be considered by a court at sentencing or by a juvenile court during disposition proceedings.

(3) Confidential communications and materials are subject to disclosure when all parties to the restorative justice program agree in writing to waive confidentiality regarding specific verbal, written, or electronic communications relating to the restorative justice program or the agreement.

(4) This section shall not apply if:

(a) A party brings an action against the restorative justice facilitator or approved center;

(b) The communication was made in furtherance of a crime or fraud;

(c) The communication is required to be reported under section 28-711 and is a new allegation of child abuse or neglect which was not previously known or reported; or

(d) This section conflicts with other legal requirements.

Sec. 16. Section 25-2915, Reissue Revised Statutes of Nebraska, is amended to read:

25-2915 No mediator, restorative justice facilitator, staff member, or member of a governing board of an approved center may be held liable for civil damages for any statement or decision made in the process of restorative justice or dispute resolution unless such person acted in a manner exhibiting willful or wanton misconduct.

Sec. 17. Section 25-2916, Reissue Revised Statutes of Nebraska, is amended to read:

25-2916 (1) If the parties involved in mediation ~~the dispute~~ reach an agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the settlement of the issues and the future responsibilities of each party. If a court referred the case, the agreement as signed and approved by the parties may be presented to the court as a stipulation and, if approved by the court, shall be enforceable as an order of the court.

(2) If the parties involved in a restorative justice program reach a reparation plan agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the reparations agreed upon by the parties to repair the specific circumstances of the offense. These may include, but are not limited to, service to the victim, an apology to the victim, financial restitution, services for the individual who caused the harm, community service, or any other reparation agreed upon by the parties. The agreement shall specify the time period during which such individual must comply with the requirements specified therein.

Sec. 18. Section 25-2917, Reissue Revised Statutes of Nebraska, is amended to read:

25-2917 During the period of the restorative justice or dispute resolution process, any applicable civil statute of limitations shall be tolled as to the parties. The tolling shall commence on the date the approved center accepts the case and shall end on the date of the last restorative justice or mediation session. This period shall be no longer than sixty days without consent of all the parties.

Sec. 19. Section 25-2918, Reissue Revised Statutes of Nebraska, is amended to read:

25-2918 (1) The Supreme Court, upon recommendation by the director in consultation with the council, shall adopt and promulgate rules and regulations to carry out the Dispute Resolution Act.

(2) The office may adopt and promulgate policies and procedures to carry out the Dispute Resolution Act.

Sec. 20. Section 25-2919, Reissue Revised Statutes of Nebraska, is amended to read:

25-2919 The Dispute Resolution Act shall apply only to approved centers and mediators and restorative justice facilitators of such centers.

Sec. 21. Section 25-2920, Reissue Revised Statutes of Nebraska, is amended to read:

25-2920 ~~The director shall provide an annual report regarding report annually to the Chief Justice, the Governor, and the Legislature on the implementation of the Dispute Resolution Act. The report shall be available to the public on the Supreme Court's web site. The report submitted to the Legislature shall be submitted electronically. The report shall include the number and types of disputes received, the disposition of the disputes, any problems encountered, and any recommendations to address problems, and a comparison of the cost of mediation and litigation.~~

Sec. 22. Section 25-2921, Reissue Revised Statutes of Nebraska, is amended to read:

25-2921 The Dispute Resolution Cash Fund is created. The State Court Administrator shall administer the fund. The fund shall consist of proceeds received pursuant to subdivision (9) ~~(10)~~ of section 25-2908 and section 33-155. ~~The Except as otherwise directed by the Supreme Court during the period from November 21, 2009, until June 30, 2013, the fund shall be used to supplement the administration of the office and the support of the approved centers. It is the intent of the Legislature that any General Fund money supplanted by the Dispute Resolution Cash Fund may be used for the support and maintenance of the State Library.~~ Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 23. Section 43-245, Reissue Revised Statutes of Nebraska, is amended to read:

43-245 For purposes of the Nebraska Juvenile Code, unless the context otherwise requires:

(1) Abandonment means a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, and maintenance and the opportunity for the display of parental affection for the child;

(2) Age of majority means nineteen years of age;

(3) Alternative to detention means a program or directive that increases supervision of a youth in the community in an effort to ensure the youth attends court and refrains from committing a new law violation. Alternative to detention includes, but is not limited to, electronic monitoring, day and evening reporting centers, house arrest, tracking, family crisis response, and temporary shelter placement. Except for the use of manually controlled delayed egress of not more than thirty seconds, placements that utilize physical construction or hardware to restrain a youth's freedom of movement and ingress and egress from placement are not considered alternatives to detention;

(4) Approved center means a center that has applied for and received approval from the Director of the Office of Dispute Resolution under section 25-2909;

(5) Civil citation means a noncriminal notice which cannot result in a criminal record and is described in section 43-248.02;

(6) Cost or costs means (a) the sum or equivalent expended, paid, or charged for goods or services, or expenses incurred, or (b) the contracted or negotiated price;

(7) Criminal street gang means a group of three or more people with a common identifying name, sign, or symbol whose group identity or purposes include engaging in illegal activities;

(8) Criminal street gang member means a person who willingly or voluntarily becomes and remains a member of a criminal street gang;

(9) Custodian means a nonparental caretaker having physical custody of the juvenile and includes an appointee described in section 43-294;

(10) Guardian means a person, other than a parent, who has qualified by law as the guardian of a juvenile pursuant to testamentary or court appointment, but excludes a person who is merely a guardian ad litem;

(11) Juvenile means any person under the age of eighteen;

(12) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common-law, or chancery jurisdiction or the county courts and district courts of jurisdiction of domestic relations matters as defined in section

25-2740;

(13) Juvenile detention facility has the same meaning as in section 83-4,125;

(14) Legal custody has the same meaning as in section 43-2922;

~~(15) Mediator for juvenile offender and victim mediation means a person who (a) has completed at least thirty hours of training in conflict resolution techniques, neutrality, agreement writing, and ethics set forth in section 25-2913, (b) has an additional eight hours of juvenile offender and victim mediation training, and (c) meets the apprenticeship requirements set forth in section 25-2913;~~

(15) ~~(16)~~ Mental health facility means a treatment facility as defined in section 71-914 or a government, private, or state hospital which treats mental illness;

(16) ~~(17)~~ Nonoffender means a juvenile who is subject to the jurisdiction of the juvenile court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3)(a) of section 43-247;

(17) ~~(18)~~ Parent means one or both parents or stepparents when the stepparent is married to a parent who has physical custody of the juvenile as of the filing of the petition;

(18) ~~(19)~~ Parties means the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;

(19) ~~(20)~~ Physical custody has the same meaning as in section 43-2922;

(20) ~~(21)~~ Except in proceedings under the Nebraska Indian Child Welfare Act, relative means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

(21) Restorative justice means practices, programs, or services that emphasize repairing the harm caused to victims and the community by persons who have caused the harm or committed an offense. Restorative justice practices may include, but are not limited to, victim youth conferencing, victim-offender mediation, youth or community dialogue, panels, circles, and truancy mediation;

(22) Restorative justice facilitator means a qualified individual who has been trained to facilitate restorative justice practices. A qualified individual shall be approved by the referring county attorney, city attorney, or juvenile or county court judge. Factors for approval may include, but are not limited to, an individual's education and training in restorative justice principles and practices; experience in facilitating restorative justice sessions; understanding of the necessity to do no harm to either the victim or the person who harmed the victim; and proven commitment to ethical practices;

(23) ~~(22)~~ Seal a record means that a record shall not be available to the public except upon the order of a court upon good cause shown;

(24) ~~(23)~~ Secure detention means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;

(25) ~~(24)~~ Staff secure juvenile facility means a juvenile residential facility operated by a political subdivision (a) which does not include construction designed to physically restrict the movements and activities of juveniles who are in custody in the facility, (b) in which physical restriction of movement or activity of juveniles is provided solely through staff, (c) which may establish reasonable rules restricting ingress to and egress from the facility, and (d) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. Staff secure juvenile facility does not include any institution operated by the Department of Correctional Services;

(26) ~~(25)~~ Status offender means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult, including, but not limited to, juveniles charged under subdivision (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02;

(27) ~~(26)~~ Traffic offense means any nonfelonious act in violation of a law or ordinance regulating vehicular or pedestrian travel, whether designated a misdemeanor or a traffic infraction; and

(28) ~~(27)~~ Young adult means an individual older than eighteen years of age but under twenty-one years of age.

Sec. 24. Section 43-246, Reissue Revised Statutes of Nebraska, is amended to read:

43-246 Acknowledging the responsibility of the juvenile court to act to preserve the public peace and security, the Nebraska Juvenile Code shall be construed to effectuate the following:

(1) To assure the rights of all juveniles to care and protection and a safe and stable living environment and to development of their capacities for a healthy personality, physical well-being, and useful citizenship and to protect the public interest;

(2) To provide for the intervention of the juvenile court in the interest of any juvenile who is within the provisions of the Nebraska Juvenile Code, with due regard to parental rights and capacities and the availability of nonjudicial resources;

(3) To remove juveniles who are within the Nebraska Juvenile Code from the criminal justice system whenever possible and to reduce the possibility of their committing future law violations through the provision of social and rehabilitative services to such juveniles and their families;

(4) To offer selected juveniles the opportunity to take direct personal

responsibility for their individual actions by reconciling with the victims, or victim surrogates when appropriate, through restorative justice practices ~~juvenile offender and victim mediation~~ and fulfilling the terms of the resulting reparation plan agreement which may require apologies, restitution, and community service, or other agreed-upon means of making amends;

(5) To achieve the purposes of subdivisions (1) through (3) of this section in the juvenile's own home whenever possible, separating the juvenile from his or her parent when necessary for his or her welfare, the juvenile's health and safety being of paramount concern, or in the interest of public safety and, when temporary separation is necessary, to consider the developmental needs of the individual juvenile in all placements, to consider relatives as a preferred potential placement resource, and to make reasonable efforts to preserve and reunify the family if required under section 43-283.01;

(6) To promote adoption, guardianship, or other permanent arrangements for children in the custody of the Department of Health and Human Services who are unable to return home;

(7) To provide a judicial procedure through which these purposes and goals are accomplished and enforced in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced;

(8) To assure compliance, in cases involving Indian children, with the Nebraska Indian Child Welfare Act; and

(9) To make any temporary placement of a juvenile in the least restrictive environment consistent with the best interests of the juvenile and the safety of the community.

Sec. 25. Section 43-247.03, Reissue Revised Statutes of Nebraska, is amended to read:

43-247.03 (1) In any juvenile case, the court may provide the parties the opportunity to address issues involving the child's care and placement, services to the family, ~~restorative justice,~~ and other concerns through restorative justice practices. Restorative justice practices facilitated conferencing or mediation. Facilitated conferencing may include, but are is not limited to, prehearing conferences, family group conferences, expedited family group conferences, child welfare mediation, permanency prehearing conferences, termination of parental rights prehearing conferences, and juvenile victim-offender dialogue, victim youth conferencing, victim-offender mediation, youth or community dialogue, panels, circles, and truancy mediation. The Office of Dispute Resolution shall be responsible for funding and management for such services provided by approved centers ~~will be part of the office of the State Court Administrator.~~ All discussions taking place during such restorative justice practices facilitated conferences, including plea negotiations, shall be considered confidential and privileged communications as provided in section 15 of this act, ~~except communications required by mandatory reporting under section 28-711 for new allegations of child abuse or neglect which were not previously known or reported.~~

(2) For purposes of this section:

(a) Expedited family group conference means an expedited and limited-scope facilitated planning meeting which engages a child's or juvenile's parents, the child or juvenile when appropriate, other critical family members, services providers, and staff members from either the Department of Health and Human Services or the Office of Probation Administration to address immediate placement issues for the child or juvenile;

(b) Family group conference means a facilitated meeting involving a child's or juvenile's family, the child or juvenile when appropriate, available extended family members from across the United States, other significant and close persons to the family, service providers, and staff members from either the Department of Health and Human Services or the Office of Probation Administration to develop a family-centered plan for the best interests of the child and to address the essential issues of safety, permanency, and well-being of the child;

(c) Juvenile victim-offender dialogue means a court-connected process in which a facilitator meets with the juvenile offender and the victim in an effort to convene a dialogue in which the offender takes responsibility for his or her actions and the victim is able to address the offender and request an apology and restitution, with the goal of creating an agreed-upon written plan; ~~and~~

(d) Prehearing conference means a facilitated meeting prior to appearing in court and held to gain the cooperation of the parties, to offer services and treatment, and to develop a problem-solving atmosphere in the best interests of children involved in the juvenile court system. A prehearing conference may be scheduled at any time during the child welfare or juvenile court process, from initial removal through permanency, termination of parental rights, and juvenile delinquency court processes; ~~and -~~

(e) Victim youth conferencing means a process in which a restorative justice facilitator meets with the juvenile and the victim, when appropriate, in an effort to convene a dialogue in which the juvenile takes responsibility for his or her actions and the victim or victim surrogate is able to address the juvenile and create a reparation plan agreement, which may include apologies, restitution, community services, or other agreed-upon means of amends.

Sec. 26. Section 43-247.04, Reissue Revised Statutes of Nebraska, is amended to read:

43-247.04 (1) It is the intent of the Legislature to transfer four hundred fifty thousand dollars in General Funds from the Department of Health and Human

Services' 2014-15 budget to the office of the State Court Administrator's budget for the purpose of making the State Court Administrator directly responsible for contracting and paying for court-connected prehearing conferences, family group conferences, expedited family group conferences, child welfare mediation, permanency prehearing conferences, termination of parental rights prehearing conferences, victim youth conferencing, juvenile victim-offender dialogue, and other restorative justice practices related services. Such funds shall be transferred on or before October 15, 2014.

(2) The Department of Health and Human Services shall continue to be responsible for contracting with mediation centers approved by the Office of Dispute Resolution to provide family group conferences, mediation, and related services for non-court-involved and voluntary child welfare or juvenile cases through June 30, 2017, unless extended by the Legislature.

Sec. 27. Section 43-260.06, Reissue Revised Statutes of Nebraska, is amended to read:

43-260.06 A juvenile diversion agreement shall include, but not be limited to, one or more of the following:

- (1) A letter of apology;
- (2) Community service, not to be performed during school hours if the juvenile offender is attending school;
- (3) Restitution;
- (4) Attendance at educational or informational sessions at a community agency;
- (5) Requirements to remain during specified hours at home, school, and work and restrictions on leaving or entering specified geographical areas; and
- (6) Participation in an appropriate restorative justice practice or service ~~Upon agreement of the victim, participation in juvenile offender and victim mediation.~~

Sec. 28. Section 43-274, Revised Statutes Cumulative Supplement, 2018, is amended to read:

43-274 (1) The county attorney or city attorney, having knowledge of a juvenile within his or her jurisdiction who appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and taking into consideration the criteria in section 43-276, may proceed as provided in this section.

(2) The county attorney or city attorney may offer pretrial diversion to the juvenile in accordance with a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07.

(3)(a) If a juvenile appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, the county attorney or city attorney may utilize restorative justice practices or services as a form of, or condition of, diversion or plea bargaining or as a recommendation as a condition of disposition, through a referral to a restorative justice facilitator.

(b) For victim-involved offenses, a restorative justice facilitator shall conduct a separate individual intake and assessment session with each juvenile and victim to determine which, if any, restorative justice practice is appropriate. All participation by the victim shall be voluntary. If the victim declines to participate in any or all parts of the restorative justice practice, a victim surrogate may be invited to participate with the juvenile. If, after assessment, participation by the juvenile is deemed inappropriate, the restorative justice facilitator shall return the referral to the referring county attorney or city attorney.

(c) A victim or his or her parent or guardian shall not be charged a fee. A juvenile or his or her parent or guardian may be charged a fee according to the policies and procedures of the restorative justice facilitator and the referring county attorney or city attorney. Restorative justice facilitators shall use a sliding fee scale based on income and shall not deny services based upon the inability of a juvenile or his or her parent or guardian to pay, if funding is otherwise available.

(d) Prior to participating in any restorative justice practice or service under this section, the juvenile, the juvenile's parent or guardian, and the victim, if he or she is participating, shall sign a consent to participate form.

(e) If a reparation plan agreement is reached, the restorative justice facilitator shall forward a copy of the agreement to the referring county attorney or city attorney. The terms of the reparation plan agreement shall specify provisions for reparation, monitoring, completion, and reporting. An agreement may include, but is not limited to, one or more of the following:

- (i) Participation by the juvenile in certain community service programs;
 - (ii) Payment of restitution by the juvenile to the victim;
 - (iii) Reconciliation between the juvenile and the victim;
 - (iv) Apology, when appropriate, between the juvenile and the victim; and
 - (v) Any other areas of agreement.
- (f) The restorative justice facilitator shall give notice to the county attorney or city attorney regarding the juvenile's compliance with the terms of the reparation plan agreement. If the juvenile does not satisfactorily complete the terms of the agreement, the county attorney or city attorney may:
- (i) Refer the matter back to the restorative justice facilitator for further restorative justice practices or services; or
 - (ii) Proceed with filing a juvenile court petition or criminal charge.
- (g) If a juvenile meets the terms of the reparation plan agreement, the county attorney or city attorney shall either:

(i) Not file a juvenile court petition or criminal charge against the juvenile for the acts for which the juvenile was referred for restorative justice practice or services when referred as a diversion or an alternative to diversion; or

(ii) File a reduced charged as previously agreed when referred as a part of a plea negotiation.

~~(3)(a) If a juvenile appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 because of a nonviolent act or acts, the county attorney or city attorney may offer mediation to the juvenile and the victim of the juvenile's act. If both the juvenile and the victim agree to mediation, the juvenile, his or her parent, guardian, or custodian, and the victim shall sign a mediation consent form and select a mediator or approved center from the roster made available pursuant to section 25-2908. The county attorney or city attorney shall refer the juvenile and the victim to such mediator or approved center. The mediation sessions shall occur within thirty days after the date the mediation referral is made unless an extension is approved by the county attorney or city attorney. The juvenile or his or her parent, guardian, or custodian shall pay the mediation fees. The fee shall be determined by the mediator in private practice or by the approved center. A juvenile shall not be denied services at an approved center because of an inability to pay.~~

~~(b) Terms of the mediation agreement shall specify monitoring, completion, and reporting requirements. The county attorney or city attorney, the court, or the probation office shall be notified by the designated monitor if the juvenile does not complete the agreement within the agreement's specified time.~~

~~(c) Terms of the agreement may include one or more of the following:~~

~~(i) Participation by the juvenile in certain community service programs;~~

~~(ii) Payment of restitution by the juvenile to the victim;~~

~~(iii) Reconciliation between the juvenile and the victim; and~~

~~(iv) Any other areas of agreement.~~

~~(d) If no mediation agreement is reached, the mediator or approved center will report that fact to the county attorney or city attorney within forty-eight hours of the final mediation session excluding nonjudicial days.~~

~~(e) If a mediation agreement is reached and the agreement does not violate public policy, the agreement shall be approved by the county attorney or city attorney. If the agreement is not approved and the victim agrees to return to mediation (i) the juvenile may be referred back to mediation with suggestions for changes needed in the agreement to meet approval or (ii) the county attorney or city attorney may proceed with the filing of a criminal charge or juvenile court petition. If the juvenile agrees to return to mediation but the victim does not agree to return to mediation, the county attorney or city attorney may consider the juvenile's willingness to return to mediation when determining whether or not to file a criminal charge or a juvenile court petition.~~

~~(f) If the juvenile meets the terms of an approved mediation agreement, the county attorney or city attorney shall not file a criminal charge or juvenile court petition against the juvenile for the acts for which the juvenile was referred to mediation.~~

~~(4) The county attorney or city attorney shall file the petition in the court with jurisdiction as outlined in section 43-246.01.~~

~~(5) When a transfer from juvenile court to county court or district court is authorized because there is concurrent jurisdiction, the county attorney or city attorney may move to transfer the proceedings. Such motion shall be filed with the juvenile court petition unless otherwise permitted for good cause shown. The juvenile court shall schedule a hearing on such motion within fifteen days after the motion is filed. The county attorney or city attorney has the burden by a preponderance of the evidence to show why such proceeding should be transferred. The juvenile shall be represented by counsel at the hearing and may present the evidence as to why the proceeding should be retained. After considering all the evidence and reasons presented by both parties, the juvenile court shall retain the proceeding unless the court determines that a preponderance of the evidence shows that the proceeding should be transferred to the county court or district court. The court shall make a decision on the motion within thirty days after the hearing. The juvenile court shall set forth findings for the reason for its decision.~~

~~An order granting or denying transfer of the case from juvenile court to county or district court shall be considered a final order for the purposes of appeal. Upon the entry of an order, any party may appeal to the Court of Appeals within ten days. Such review shall be advanced on the court docket without an extension of time granted to any party except upon a showing of exceptional cause. Appeals shall be submitted, assigned, and scheduled for oral argument as soon as the appellee's brief is due to be filed. The Court of Appeals shall conduct its review in an expedited manner and shall render the judgment and opinion, if any, as speedily as possible. During the pendency of any such appeal, the juvenile court may continue to enter temporary orders in the best interests of the juvenile pursuant to section 43-295.~~

~~If the proceeding is transferred from juvenile court to the county court or district court, the county attorney or city attorney shall file a criminal information in the county court or district court, as appropriate, and the accused shall be arraigned as provided for a person eighteen years of age or older in subdivision (1)(b) of section 29-1816.~~

~~Sec. 29. Section 43-275, Reissue Revised Statutes of Nebraska, is amended to read:~~

43-275 Whenever a juvenile is detained or placed in custody under the provisions of section 43-253, a petition, complaint, or restorative justice program mediation consent form must be filed within forty-eight hours excluding nonjudicial days.

Sec. 30. Section 43-276, Reissue Revised Statutes of Nebraska, 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 restorative justice 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) The type of treatment such juvenile would most likely be amenable to; (b) whether there is evidence that the alleged offense included violence; (c) the motivation for the commission of the offense; (d) the age of the juvenile and the ages and circumstances of any others involved in the offense; (e) the previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court; (f) the best interests of the juvenile; (g) consideration of public safety; (h) consideration of the juvenile's ability to appreciate the nature and seriousness of his or her conduct; (i) 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) whether the victim or juvenile agree agrees to participate in restorative justice mediation; (k) whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07; (l) whether the juvenile has been convicted of or has acknowledged unauthorized use or possession of a firearm; (m) whether a juvenile court order has been issued for the juvenile pursuant to section 43-2,106.03; (n) whether the juvenile is a criminal street gang member; and (o) 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. 31. Section 43-286, Revised Statutes Cumulative Supplement, 2018, is amended to read:

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

(a)(i) This subdivision applies until October 1, 2013. 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 or an order requiring the juvenile to participate in community service programs, if such order 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 or be placed in a suitable family 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 Health and Human 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)(i) 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.

(ii) This subdivision applies beginning October 1, 2013. 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 or an order requiring the juvenile to participate in restorative justice programs or community service programs, if such order 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; or

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

(b)(i) This subdivision applies to all juveniles committed to the Office of Juvenile Services prior to July 1, 2013. The court may commit such juvenile to the Office of Juvenile Services, but a juvenile under the age of fourteen years shall not be placed at the Youth Rehabilitation and Treatment Center-Geneva or the Youth 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.

(ii) This subdivision applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center on or after July 1, 2013.

When it is alleged that the juvenile has exhausted all levels of probation supervision and options for community-based services and section 43-251.01 has been satisfied, a motion for commitment to a youth rehabilitation and treatment center may be filed and proceedings held as follows:

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

(B) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations. At such hearing the burden is upon the state by a preponderance of the evidence to show that:

(I) All levels of probation supervision have been exhausted;

(II) All options for community-based services have been exhausted; and

(III) Placement at a youth rehabilitation and treatment center is a matter of immediate and urgent necessity for the protection of the juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.

After the hearing, the court may commit such juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center as a condition of an order of intensive supervised probation. Upon commitment by the court to the Office of Juvenile Services, the court shall immediately notify the Office of Juvenile Services of the commitment. Intensive supervised probation for purposes of this subdivision means that the Office of Juvenile Services shall be responsible for the care and custody of the juvenile until the Office of Juvenile Services discharges the juvenile from commitment to the Office of Juvenile Services. Upon discharge of the juvenile, the court shall hold a review hearing on the conditions of probation and enter any order allowed under subdivision (1)(a) of this section.

The Office of Juvenile Services shall notify those required to be served by sections 43-262 to 43-267, all interested parties, and the committing court of the pending discharge of a juvenile from the youth rehabilitation and treatment center sixty days prior to discharge and again in every case not less than thirty days prior to discharge. Upon notice of pending discharge by the Office of Juvenile Services, the court shall set a continued disposition hearing in anticipation of reentry. The Office of Juvenile Services shall work in collaboration with the Office of Probation Administration in developing an individualized reentry plan for the juvenile as provided in section 43-425. The Office of Juvenile Services shall provide a copy of the individualized reentry plan to the juvenile, the juvenile's attorney, and the county attorney or city attorney prior to the continued disposition hearing. At the continued disposition hearing, the court shall review and approve or modify the individualized reentry plan, place the juvenile under probation supervision, and enter any other order allowed by law. No hearing is required if all interested parties stipulate to the individualized reentry plan by signed motion. In such a case, the court shall approve the conditions of probation, approve the individualized reentry plan, and place the juvenile under probation supervision.

The Office of Juvenile Services is responsible for transportation of the juvenile to and from the youth rehabilitation and treatment center. The Office of Juvenile Services may contract for such services. A plan for a juvenile's transport to return to the community shall be a part of the individualized reentry plan. The Office of Juvenile Services may approve family to provide such transport when specified in the individualized reentry plan; or

(c) Beginning July 1, 2013, and until October 1, 2013, the court may commit such juvenile to the Office of Juvenile Services for community supervision.

(2) When any juvenile is found by the court to be a juvenile described in subdivision (3)(b) of section 43-247, the court may enter such order as it is empowered to enter under subdivision (1)(a) of this section or until October 1, 2013, enter an order committing or placing the juvenile to the care and custody of the Department of Health and Human Services.

(3) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 ~~because of a nonviolent act or acts and the juvenile has not previously been adjudicated to be such a juvenile because of a violent act or acts,~~ the court may order the juvenile to be assessed for referral to participate in a restorative justice program. Factors that the judge may consider for such referral include, but are not limited to: The juvenile's age, intellectual capacity, and living environment; the ages of others who were part of the offense; the age and capacity of the victim; and the nature of the case , with the agreement of the victim, order the juvenile to attend juvenile offender and victim mediation with a mediator or at an approved center selected from the roster made available pursuant to section 25-2908.

(4) When a juvenile is placed on probation and a probation officer has reasonable cause to believe that such juvenile has committed a violation of a condition of his or her probation, the probation officer shall take appropriate measures as provided in section 43-286.01.

(5)(a) 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 described in

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 and the county attorney may file a motion to revoke the juvenile's probation.

(b) 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:

(i) 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;

(ii) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations. 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 supervision or an order of the court or, if he or she did, that mitigating circumstances suggest that the violation does not warrant revocation of probation or supervision or a change of disposition. The hearing shall be held within a reasonable time after the juvenile is taken into custody;

(iii) 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 adversarial criminal trial;

(iv) The juvenile shall not be confined, detained, or otherwise significantly deprived of his or her liberty pursuant to the filing of a motion described in this section unless the requirements of subdivision (5) of section 43-251.01 and section 43-260.01 have been met. In all cases when the requirements of subdivision (5) of section 43-251.01 and section 43-260.01 have been met and 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, supervision, or a court order, the juvenile shall be given a preliminary hearing. 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 this subsection;

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

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

(6) Costs incurred on behalf of a juvenile under this section shall be paid as provided in section 43-290.01.

(7) When any juvenile is adjudicated to be a juvenile described in subdivision (4) of section 43-247, the juvenile court shall within thirty days of adjudication transmit to the Director of Motor Vehicles an abstract of the court record of adjudication.

Sec. 32. Section 43-2,108.01, Reissue Revised Statutes of Nebraska, is amended to read:

43-2,108.01 Sections 43-2,108.01 to 43-2,108.05 apply only to persons who were under the age of eighteen years when the offense took place and, after being taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation, the county attorney or city attorney (1) released the juvenile without filing a juvenile petition or criminal complaint, (2) offered juvenile pretrial diversion, ~~or mediation,~~ or restorative justice to the juvenile under the Nebraska Juvenile Code, (3) filed a juvenile court petition describing the juvenile as a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, (4) filed a criminal complaint in county court against the juvenile under state statute or city or village ordinance for misdemeanor or infraction possession of marijuana or misdemeanor or infraction possession of drug paraphernalia, or (5) filed a criminal complaint in county court against the juvenile for any other misdemeanor or infraction under state statute or city or village ordinance, other than for a traffic offense that may be waived.

Sec. 33. Section 43-2,108.02, Reissue Revised Statutes of Nebraska, as amended by section 3, Legislative Bill 354, One Hundred Sixth Legislature, First Session, 2019, is amended to read:

43-2,108.02 (1) By January 1, 2020, the Supreme Court shall promulgate a written notice that:

(a) States in developmentally appropriate language that, for a juvenile described in section 43-2,108.01, the juvenile's record will be automatically sealed if (i) no charges are filed as a result of the determination of the prosecuting attorney, (ii) the charges are dismissed, (iii) the juvenile has

satisfactorily completed the diversion, mediation, restorative justice, probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code, or (iv) the juvenile has satisfactorily completed the county court diversion program, probation ordered by the court, or sentence ordered by the court;

(b) States in developmentally appropriate language that, if the record is not sealed as provided in subdivision (1)(a) of this section, the juvenile or the juvenile's parent or guardian may file a motion to seal the record with the court when the juvenile reaches the age of majority or six months have passed since the case was closed, whichever occurs sooner; and

(c) Explains in developmentally appropriate language what sealing the record means.

(2) For a juvenile described in section 43-2,108.01, the county attorney or city attorney shall attach a copy of the notice to any juvenile petition or criminal complaint.

Sec. 34. Section 43-2,108.03, Reissue Revised Statutes of Nebraska, as amended by section 4, Legislative Bill 354, One Hundred Sixth Legislature, First Session, 2019, is amended to read:

43-2,108.03 (1)(a) If a juvenile described in section 43-2,108.01 was taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation but no juvenile petition or criminal complaint was filed against the juvenile with respect to the arrest or custody, the county attorney or city attorney shall notify the government agency responsible for the arrest, custody, citation in lieu of arrest, or referral for prosecution without citation that no criminal charge or juvenile court petition was filed. The county attorney or city attorney shall provide written notification to the juvenile that no juvenile petition or criminal complaint was filed and provide the juvenile with the notice described in section 43-2,108.02.

(b) If a juvenile described in subdivision (1)(a) of this section discovers that his or her record was not automatically sealed, such juvenile may notify the county attorney, who shall cause the record to be sealed by providing the notice required by subdivision (1)(a) of this section.

(2)(a) If the county attorney or city attorney offered and a juvenile described in section 43-2,108.01 has agreed to pretrial diversion, ~~or mediation, or restorative justice~~, the county attorney or city attorney shall notify the government agency responsible for the arrest or custody when the juvenile has satisfactorily completed the resulting diversion, ~~or mediation, or restorative justice~~. At the time the juvenile is offered diversion, ~~mediation, or restorative justice or mediation~~, the county attorney or city attorney shall provide the notice described in section 43-2,108.02 to the juvenile. The county attorney or city attorney shall also provide written notification to the juvenile of his or her satisfactory or unsatisfactory completion of diversion, ~~or mediation, or restorative justice~~.

(b) If a juvenile who was satisfactorily discharged from diversion, ~~or mediation, or restorative justice~~ discovers that his or her record was not automatically sealed, the juvenile may notify the county attorney, who shall cause the record to be sealed by providing the notice required by subdivision (2)(a) of this section.

(3)(a) If the juvenile was taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation and charges were filed but the case was dismissed by the court, the court shall seal the record as set forth in section 43-2,108.05.

(b) If a juvenile described in subdivision (3)(a) discovers that his or her record was not automatically sealed, the juvenile may notify the court, which shall seal the record as set forth in section 43-2,108.05.

(4)(a) If a juvenile described in section 43-2,108.01 has satisfactorily completed the probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or if the juvenile has satisfactorily completed the probation or sentence ordered by a county court, the court shall seal the records as set forth in section 43-2,108.05.

(b) If a juvenile described in subdivision (4)(a) discovers that his or her record was not automatically sealed, the juvenile may notify the court, which shall seal the record as set forth in section 43-2,108.05.

(5) A government agency or court that receives notice under subdivision (1)(a) or (2)(a) of this section shall, upon such receipt, immediately seal all records housed at that government agency or court pertaining to the citation, arrest, record of custody, complaint, disposition, diversion, ~~or mediation, or restorative justice~~.

(6) When a juvenile described in section 43-2,108.01 whose records have not been automatically sealed as provided in subsection (1), (2), (3), or (4) of this section reaches the age of majority or six months have passed since the case was closed, whichever occurs sooner, such juvenile or his or her parent or guardian may file a motion in the court of record asking the court to seal the record pertaining to the offense which resulted in disposition, adjudication, or diversion in juvenile court or diversion or sentence of the county court. The motion shall set forth the facts supporting the argument that the individual who is the subject of the juvenile petition or criminal complaint has been satisfactorily rehabilitated.

Sec. 35. Section 43-2,108.04, Reissue Revised Statutes of Nebraska, is amended to read:

43-2,108.04 (1) When a proceeding to seal the record is initiated, the court shall promptly notify the county attorney or city attorney involved in the case that is the subject of the proceeding to seal the record of the

proceedings, and shall promptly notify the Department of Health and Human Services of the proceedings if the juvenile whose record is the subject of the proceeding is a ward of the state at the time the proceeding is initiated or if the department was a party in the proceeding.

(2) A party notified under subsection (1) of this section may file a response with the court within thirty days after receiving such notice.

(3) If a party notified under subsection (1) of this section does not file a response with the court or files a response that indicates there is no objection to the sealing of the record, the court may: (a) Order the record of the juvenile under consideration be sealed without conducting a hearing on the motion; or (b) decide in its discretion to conduct a hearing on the motion. If the court decides in its discretion to conduct a hearing on the motion, the court shall conduct the hearing within sixty days after making that decision and shall give notice, by regular mail, of the date, time, and location of the hearing to the parties receiving notice under subsection (1) of this section and to the juvenile who is the subject of the record under consideration.

(4) If a party receiving notice under subsection (1) of this section files a response with the court objecting to the sealing of the record, the court shall conduct a hearing on the motion within sixty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the parties receiving notice under subsection (1) of this section and to the juvenile who is the subject of the record under consideration.

(5) After conducting a hearing in accordance with this section, the court may order the record of the juvenile that is the subject of the motion be sealed if it finds that the juvenile has been rehabilitated to a satisfactory degree. In determining whether the juvenile has been rehabilitated to a satisfactory degree, the court may consider all of the following:

- (a) The age of the juvenile;
- (b) The nature of the offense and the role of the juvenile in the offense;
- (c) The behavior of the juvenile after the disposition, adjudication, diversion, or sentence and the juvenile's response to diversion, mediation, restorative justice, probation, supervision, other treatment or rehabilitation program, or sentence;
- (d) The education and employment history of the juvenile; and
- (e) Any other circumstances that may relate to the rehabilitation of the juvenile.

(6) If, after conducting the hearing in accordance with this section, the juvenile is not found to be satisfactorily rehabilitated such that the record is not ordered to be sealed, a juvenile who is a person described in section 43-2,108.01 or such juvenile's parent or guardian may not move the court to seal the record for one year after the court's decision not to seal the record is made, unless such time restriction is waived by the court.

Sec. 36. Section 43-2922, Reissue Revised Statutes of Nebraska, is amended to read:

43-2922 For purposes of the Parenting Act:

(1) Appropriate means reflective of the developmental abilities of the child taking into account any cultural traditions that are within the boundaries of state and federal law;

(2) Approved mediation center means a mediation center approved by the Office of Dispute Resolution;

(3) Best interests of the child means the determination made taking into account the requirements stated in section 43-2923 or the Uniform Deployed Parents Custody and Visitation Act if such act applies;

(4) Child means a minor under nineteen years of age;

(5) Child abuse or neglect has the same meaning as in section 28-710;

(6) Court conciliation program means a court-based conciliation program under the Conciliation Court Law;

(7) Custody includes legal custody and physical custody;

(8) Domestic intimate partner abuse means an act of abuse as defined in section 42-903 and a pattern or history of abuse evidenced by one or more of the following acts: Physical or sexual assault, threats of physical assault or sexual assault, stalking, harassment, mental cruelty, emotional abuse, intimidation, isolation, economic abuse, or coercion against any current or past intimate partner, or an abuser using a child to establish or maintain power and control over any current or past intimate partner, and, when they contribute to the coercion or intimidation of an intimate partner, acts of child abuse or neglect or threats of such acts, cruel mistreatment or cruel neglect of an animal as defined in section 28-1008, or threats of such acts, and other acts of abuse, assault, or harassment, or threats of such acts against other family or household members. A finding by a child protection agency shall not be considered res judicata or collateral estoppel regarding an act of child abuse or neglect or a threat of such act, and shall not be considered by the court unless each parent is afforded the opportunity to challenge any such determination;

(9) Economic abuse means causing or attempting to cause an individual to be financially dependent by maintaining total control over the individual's financial resources, including, but not limited to, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the victim's resources for personal gain of the abuser, or withholding physical resources such as food, clothing, necessary medications, or shelter;

(10) Emotional abuse means a pattern of acts, threats of acts, or coercive

tactics, including, but not limited to, threatening or intimidating to gain compliance, destruction of the victim's personal property or threats to do so, violence to an animal or object in the presence of the victim as a way to instill fear, yelling, screaming, name-calling, shaming, mocking, or criticizing the victim, possessiveness, or isolation from friends and family. Emotional abuse can be verbal or nonverbal;

(11) Joint legal custody means mutual authority and responsibility of the parents for making mutual fundamental decisions regarding the child's welfare, including choices regarding education and health;

(12) Joint physical custody means mutual authority and responsibility of the parents regarding the child's place of residence and the exertion of continuous blocks of parenting time by both parents over the child for significant periods of time;

(13) Legal custody means the authority and responsibility for making fundamental decisions regarding the child's welfare, including choices regarding education and health;

(14) Mediation means a method of nonjudicial intervention in which a trained, neutral third-party mediator, who has no decisionmaking authority, provides a structured process in which individuals and families in conflict work through parenting and other related family issues with the goal of achieving a voluntary, mutually agreeable parenting plan or related resolution;

(15) Mediator means a mediator authorized to provide mediation under meeting the qualifications of section 43-2938 and acting in accordance with the Parenting Act;

(16) Office of Dispute Resolution means the office established under section 25-2904;

(17) Parenting functions means those aspects of the relationship in which a parent or person in the parenting role makes fundamental decisions and performs fundamental functions necessary for the care and development of a child. Parenting functions include, but are not limited to:

(a) Maintaining a safe, stable, consistent, and nurturing relationship with the child;

(b) Attending to the ongoing developmental needs of the child, including feeding, clothing, physical care and grooming, health and medical needs, emotional stability, supervision, and appropriate conflict resolution skills and engaging in other activities appropriate to the healthy development of the child within the social and economic circumstances of the family;

(c) Attending to adequate education for the child, including remedial or other special education essential to the best interests of the child;

(d) Assisting the child in maintaining a safe, positive, and appropriate relationship with each parent and other family members, including establishing and maintaining the authority and responsibilities of each party with respect to the child and honoring the parenting plan duties and responsibilities;

(e) Minimizing the child's exposure to harmful parental conflict;

(f) Assisting the child in developing skills to maintain safe, positive, and appropriate interpersonal relationships; and

(g) Exercising appropriate support for social, academic, athletic, or other special interests and abilities of the child within the social and economic circumstances of the family;

(18) Parenting plan means a plan for parenting the child that takes into account parenting functions;

(19) Parenting time, visitation, or other access means communication or time spent between the child and parent or stepparent, the child and a court-appointed guardian, or the child and another family member or members including stepbrothers or stepsisters;

(20) Physical custody means authority and responsibility regarding the child's place of residence and the exertion of continuous parenting time for significant periods of time;

(21) Provisions for safety means a plan developed to reduce risks of harm to children and adults who are victims of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict;

(22) Remediation process means the method established in the parenting plan which maintains the best interests of the child and provides a means to identify, discuss, and attempt to resolve future circumstantial changes or conflicts regarding the parenting functions and which minimizes repeated litigation and utilizes judicial intervention as a last resort;

(23) Specialized alternative dispute resolution means a method of nonjudicial intervention in high conflict or domestic intimate partner abuse cases in which an approved specialized mediator facilitates voluntary mutual development of and agreement to a structured parenting plan, provisions for safety, a transition plan, or other related resolution between the parties;

(24) Transition plan means a plan developed to reduce exposure of the child and the adult to ongoing unresolved parental conflict during parenting time, visitation, or other access for the exercise of parental functions; and

(25) Unresolved parental conflict means persistent conflict in which parents are unable to resolve disputes about parenting functions which has a potentially harmful impact on a child.

Sec. 37. Section 43-2937, Reissue Revised Statutes of Nebraska, is amended to read:

43-2937 (1) In addition to those cases that are mandatorily referred to mediation or specialized alternative dispute resolution under subsection (3) of this section, a court may, at any time in the proceedings upon its own motion or upon the motion of either party, refer a case to mediation or specialized

alternative dispute resolution in order to attempt resolution of any relevant matter. The court may state a date for the case to return to court, and the court shall not grant an extension of such date except for cause. If the court refers a case to mediation or specialized alternative dispute resolution, the court may, if appropriate, order temporary relief, including necessary support and provision for payment of mediation costs. Court referral shall be to a mediator agreed to by the parties and approved by the court, an approved mediation center, or a court conciliation program. The State Court Administrator's office shall develop a process to approve mediators who are qualified under subsection (2) or (3) of section 43-2938 under the Parenting Act.

(2) Prior to July 1, 2010, if there are allegations of domestic intimate partner abuse or unresolved parental conflict between the parties in any proceeding, mediation shall not be required pursuant to the Parenting Act or by local court rule, unless the court has established a specialized alternative dispute resolution rule approved by the State Court Administrator. The specialized alternative dispute resolution process shall include a method for court consideration of precluding or disqualifying parties from participating; provide an opportunity to educate both parties about the process; require informed consent from both parties in order to proceed; provide safety protocols, including separate individual sessions for each participant, informing each party about the process, and obtaining informed consent from each party to continue the process; allow support persons to attend sessions; and establish opt-out-for-cause provisions. On and after July 1, 2010, all trial courts shall have a mediation and specialized alternative dispute resolution rule in accordance with the act.

(3) Except as provided in subsection (4) of this section, for cases filed on or after July 1, 2010, all parties who have not submitted a parenting plan to the court within the time specified by the court shall be ordered to participate in mediation or specialized alternative dispute resolution with a mediator, a court conciliation program, or an approved mediation center as provided in section 43-2938 43-2939.

(4) For good cause shown and (a) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (b) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence.

Sec. 38. Section 43-2938, Reissue Revised Statutes of Nebraska, is amended to read:

43-2938 (1) A mediator under the Parenting Act may be a court conciliation program counselor, a court conciliation program mediator, an approved mediation center affiliated mediator, ~~or a mediator approved by the Office of Dispute Resolution, or an attorney as provided in subsection (4) of this section in private practice.~~

(2) To qualify for inclusion in the roster of mediators maintained by the Office of Dispute Resolution as an approved as a Parenting Act mediator, a person shall have basic mediation training and family mediation training, approved by the Office of Dispute Resolution, and shall have served as an apprentice to a mediator as defined in section 25-2903. The training shall include, but not be limited to:

(a) Knowledge of the court system and procedures used in contested family matters;

(b) General knowledge of family law, especially regarding custody, parenting time, visitation, and other access, and support, including calculation of child support using the child support guidelines pursuant to section 42-364.16;

(c) Knowledge of other resources in the state to which parties and children can be referred for assistance;

(d) General knowledge of child development, the potential effects of dissolution or parental separation upon children, parents, and extended families, and the psychology of families;

(e) Knowledge of child abuse or neglect and domestic intimate partner abuse and their potential impact upon the safety of family members, including knowledge of provisions for safety, transition plans, domestic intimate partner abuse screening protocols, and mediation safety measures; and

(f) Knowledge in regard to the potential effects of domestic violence on a child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; interviewing, documentation of, and appropriate recommendations for families affected by domestic intimate partner abuse; and availability of community and legal domestic violence resources.

(3) To qualify for inclusion in the roster of mediators maintained by the Office of Dispute Resolution as an approved specialized mediator for parents involved in high conflict and situations in which abuse is present, the mediator shall apply to an approved mediation center or court conciliation program for consideration to be listed as an approved specialized mediator. The approved mediation center or court conciliation program shall submit its list of approved specialized mediators for inclusion in the roster to the Office of

Dispute Resolution on an annual basis. Minimum requirements to be listed as an approved specialized mediator include:

(a) Affiliation with a court conciliation program or an approved mediation center;

(b) Meeting the minimum standards for a Parenting Act mediator under this section;

(c) Meeting additional relevant standards and qualifications as determined by the State Court Administrator; and

(d) Satisfactorily completing an additional minimum twenty-four-hour specialized alternative dispute resolution domestic mediation training course developed by entities providing domestic abuse services and mediation services for children and families and approved by the State Court Administrator. This course shall include advanced education in regard to the potential effects of domestic violence on the child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; and appropriate and safe mediation strategies to assist parties in developing a parenting plan, provisions for safety, and a transition plan, as necessary and relevant.

(4) In lieu of qualifying as a mediator under subsection (2) or (3) of this section, an attorney licensed to practice law in the State of Nebraska may serve as a parenting plan mediator if the parties agree to use such attorney as a mediator.

Sec. 39. Section 79-209, Reissue Revised Statutes of Nebraska, is amended to read:

79-209 (1) In all school districts in this state, any superintendent, principal, teacher, or member of the school board who knows of any violation of subsection (2) of section 79-201 shall within three days report such violation to the attendance officer of the school, who shall immediately investigate the case. When of his or her personal knowledge or by report or complaint from any resident of the district, the attendance officer believes that there is a violation of subsection (2) of section 79-201, the attendance officer shall immediately investigate such alleged violation.

(2) All school boards shall have a written policy on attendance developed and annually reviewed in collaboration with the county attorney of the county in which the principal office of the school district is located. The policy shall include a provision indicating how the school district will handle cases in which excessive absences are due to illness. The policy shall also state the circumstances and number of absences or the hourly equivalent upon which the school shall render all services to address barriers to attendance. Such services shall include, but not be limited to:

(a) Verbal or written communication by school officials with the person or persons who have legal or actual charge or control of any child; and

(b) One or more meetings between, at a minimum, a school attendance officer, a school social worker, or a school administrator or his or her designee, the person who has legal or actual charge or control of the child, and the child, when appropriate, to attempt to address the barriers to attendance. The result of the meeting or meetings shall be to develop a collaborative plan to reduce barriers identified to improve regular attendance. The plan shall consider, but not be limited to:

(i) Illness related to physical or behavioral health of the child;

(ii) Educational counseling;

(iii) Educational evaluation;

(iv) Referral to community agencies for economic services;

(v) Family or individual counseling; ~~and~~

(vi) Assisting the family in working with other community services; ~~and~~

(vii) Referral to restorative justice practices or services.

(3) The school may report to the county attorney of the county in which the person resides when the school has documented the efforts it has made as required by subsection (2) of this section that the collaborative plan to reduce barriers identified to improve regular attendance has not been successful and that the child has been absent more than twenty days per year. The school shall notify the child's family in writing prior to referring the child to the county attorney. Failure by the school to document the efforts required by subsection (2) of this section is a defense to prosecution under section 79-201 and adjudication for educational neglect under subdivision (3) (a) of section 43-247 and habitual truancy under subdivision (3)(b) of section 43-247. Illness that makes attendance impossible or impracticable shall not be the basis for referral to the county attorney.

(4) Nothing in this section shall preclude a county attorney from being involved at any stage in the process to address excessive absenteeism.

Sec. 40. Section 79-258, Reissue Revised Statutes of Nebraska, is amended to read:

79-258 Administrative and teaching personnel may take actions regarding student behavior, other than those specifically provided in the Student Discipline Act, which are reasonably necessary to aid the student, further school purposes, or prevent interference with the educational process. Such actions may include, but need not be limited to, counseling of students, parent conferences, referral to restorative justice practices or services, rearrangement of schedules, requirements that a student remain in school after regular hours to do additional work, restriction of extracurricular activity, or requirements that a student receive counseling, psychological evaluation, or psychiatric evaluation upon the written consent of a parent or guardian to such

counseling or evaluation.

Sec. 41. Original sections 25-2901, 25-2902, 25-2903, 25-2904, 25-2905, 25-2906, 25-2908, 25-2909, 25-2911, 25-2912, 25-2913, 25-2914, 25-2915, 25-2916, 25-2917, 25-2918, 25-2919, 25-2920, 25-2921, 43-245, 43-246, 43-247.03, 43-247.04, 43-260.06, 43-275, 43-276, 43-2,108.01, 43-2,108.04, 43-2922, 43-2937, 43-2938, 79-209, and 79-258, Reissue Revised Statutes of Nebraska, sections 43-274 and 43-286, Revised Statutes Cumulative Supplement, 2018, and sections 43-2,108.02 and 43-2,108.03, Reissue Revised Statutes of Nebraska, as amended by sections 3 and 4, respectively, Legislative Bill 354, One Hundred Sixth Legislature, First Session, 2019, are repealed.