

LEGISLATURE OF NEBRASKA
 ONE HUNDRED SECOND LEGISLATURE
 SECOND SESSION
LEGISLATIVE BILL 972

Final Reading

Introduced by Ashford, 20; Hadley, 37; at the request of the
 Governor.

Read first time January 12, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the youth rehabilitation and treatment
 2 centers; to amend sections 43-251.01, 43-401, and 43-405,
 3 Reissue Revised Statutes of Nebraska, section 43-276,
 4 Revised Statutes Cumulative Supplement, 2010, and section
 5 43-286, Revised Statutes Supplement, 2011; to change the
 6 age for placement or commitment of juveniles to the youth
 7 rehabilitation and treatment centers; to provide for
 8 consideration of such commitments by county attorneys
 9 making determinations; to change reporting requirements
 10 for the Office of Juvenile Services; to provide for
 11 documentation of certain assaults, escapes, and attempts
 12 to escape; to require collaboration on training, safety,
 13 and security; to harmonize provisions; to provide a duty
 14 for the Revisor of Statutes; and to repeal the original
 15 sections.

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

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

3 43-251.01 All placements and commitments of juveniles for
4 evaluations or as temporary or final dispositions are subject to the
5 following:

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

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

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

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

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

23 43-276 In cases coming within subdivision (1) of section
24 43-247, when there is concurrent jurisdiction, or subdivision (2) or
25 (4) of section 43-247, when the juvenile is under the age of sixteen

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

1 there is a juvenile pretrial diversion program established pursuant
2 to sections 43-260.02 to 43-260.07; (11) whether the juvenile has
3 been convicted of or has acknowledged unauthorized use or possession
4 of a firearm; (12) whether a juvenile court order has been issued for
5 the juvenile pursuant to section 43-2,106.03; (13) whether the
6 juvenile is a criminal street gang member; (14) whether the juvenile
7 has been previously committed to a youth rehabilitation and treatment
8 center; and ~~(14)~~(15) such other matters as the county attorney deems
9 relevant to his or her decision.

10 Sec. 3. Section 43-286, Revised Statutes Supplement,
11 2011, is amended to read:

12 43-286 (1) When any juvenile is adjudicated to be a
13 juvenile described in subdivision (1), (2), or (4) of section 43-247:

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

21 (i) Place the juvenile on probation subject to the
22 supervision of a probation officer;

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

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

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

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

24 (2) When any juvenile is found by the court to be a
25 juvenile described in subdivision (3)(b) of section 43-247, the court

1 may enter such order as it is empowered to enter under subdivision
2 (1)(a) of this section or enter an order committing or placing the
3 juvenile to the care and custody of the Department of Health and
4 Human Services.

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

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

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

1 for such adjudications.

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

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

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

1 shall be held within a reasonable time after the juvenile is taken
2 into custody;

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

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

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

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

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

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

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

8 43-405 The administrative duties of the Office of
9 Juvenile Services are to:

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

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

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

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

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

1 research and the development of treatment programs;

2 (6) Monitor commitments, placements, and evaluations at
3 facilities and programs operated by the office or through contracts
4 with providers and report its findings annually to the Legislature.
5 The report shall include an assessment of the administrative costs of
6 operating the facilities, the cost of programming, ~~and~~ the savings
7 realized through reductions in commitments, placements, and
8 evaluations, and information regarding the collaboration required by
9 section 7 of this act;

10 (7) Coordinate the programs and services of the juvenile
11 justice system with other governmental agencies and political
12 subdivisions;

13 (8) Coordinate educational, vocational, and social
14 counseling;

15 (9) Coordinate community-based services for juveniles and
16 their families;

17 (10) Supervise and coordinate juvenile parole and
18 aftercare services; and

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

22 Sec. 6. If a juvenile assaults an employee of a youth
23 rehabilitation and treatment center or another juvenile who has been
24 committed to the youth rehabilitation and treatment center or escapes
25 or attempts to escape from a youth rehabilitation and treatment

1 center, the chief executive officer of the youth rehabilitation and
2 treatment center shall document the assault, escape, or attempt to
3 escape and send a copy of such documentation to the committing court
4 and the county attorney of the county in which the committing court
5 is located as soon as possible after the determination that such
6 assault, escape, or attempt to escape has occurred. Such
7 documentation may be offered as evidence presented at any hearing
8 conducted pursuant to section 43-2,106.03.

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

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

17 Sec. 9. Original sections 43-251.01, 43-401, and 43-405,
18 Reissue Revised Statutes of Nebraska, section 43-276, Revised
19 Statutes Cumulative Supplement, 2010, and section 43-286, Revised
20 Statutes Supplement, 2011, are repealed.