

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1112

Introduced by Vargas, 7; Krist, 10; Pansing Brooks, 28.

Read first time January 18, 2018

Committee:

- 1 A BILL FOR AN ACT relating to juveniles; to amend sections 43-251.01,
- 2 43-260.01, 43-2404.02, and 43-2409, Reissue Revised Statutes of
- 3 Nebraska, and section 43-253, Revised Statutes Supplement, 2017; to
- 4 change provisions relating to placement and detention; to provide
- 5 for an additional use of funds under the Community-based Juvenile
- 6 Services Aid Program; to harmonize provisions; and to repeal the
- 7 original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-251.01, Reissue Revised Statutes of Nebraska,
2 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 correctional facility
7 as a disposition of the court;

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

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

17 (4) A juvenile shall not be placed at a youth rehabilitation and
18 treatment center unless such placement is a matter of immediate and
19 urgent necessity. No A juvenile under the age of fourteen years shall not
20 be placed with or committed to a youth rehabilitation and treatment
21 center;

22 (5)(a) A juvenile shall not be detained unless the physical safety
23 of persons in the community would be seriously threatened or detention is
24 necessary to secure the presence of the juvenile at the next hearing, as
25 evidenced by a demonstrable record of willful failure to appear at a
26 scheduled court hearing within the last twelve months. A child twelve
27 years of age or younger shall not be placed in detention under any
28 circumstances. ~~(5) A juvenile shall not be detained in secure detention~~
29 ~~or placed at a youth rehabilitation and treatment center unless detention~~
30 ~~or placement of such juvenile is a matter of immediate and urgent~~
31 ~~necessity for the protection of such juvenile or the person or property~~

1 ~~of another or if it appears that such juvenile is likely to flee the~~
2 ~~jurisdiction of the court;~~

3 (b) A juvenile shall not be placed into detention:

4 (i) To allow a parent or guardian to avoid his or her legal
5 responsibility;

6 (ii) To punish, treat, or rehabilitate such juvenile;

7 (iii) To permit more convenient administrative access to such
8 juvenile;

9 (iv) To facilitate further interrogation or investigation; or

10 (v) Due to a lack of more appropriate facilities;

11 (6) A juvenile alleged to be a juvenile as described in subdivision
12 (3) of section 43-247 shall not be placed in a juvenile detention
13 facility, including a wing labeled as staff secure at such facility,
14 unless the designated staff secure portion of the facility fully complies
15 with subdivision (5) of section 83-4,125 and the ingress and egress to
16 the facility are restricted solely through staff supervision; and

17 (7) A juvenile alleged to be a juvenile as described in subdivision
18 (1), (2), (3)(b), or (4) of section 43-247 shall not be placed out of his
19 or her home as a dispositional order of the court unless:

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

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

24 Sec. 2. Section 43-253, Revised Statutes Supplement, 2017, is
25 amended to read:

26 43-253 (1) Upon delivery to the probation officer of a juvenile who
27 has been taken into temporary custody under section 29-401, 43-248, or
28 43-250, the probation officer shall immediately investigate the situation
29 of the juvenile and the nature and circumstances of the events
30 surrounding his or her being taken into custody. Such investigation may
31 be by informal means when appropriate.

1 (2) The probation officer's decision to release the juvenile from
2 custody or place the juvenile in detention or an alternative to detention
3 shall be based upon the results of the standardized juvenile detention
4 screening instrument described in section 43-260.01.

5 (3) No juvenile who has been taken into temporary custody under
6 subdivision (1)(c) of section 43-250 or subsection (6) of section
7 43-286.01 or pursuant to an alleged violation of an order for conditional
8 release shall be detained in any detention facility or be subject to an
9 alternative to detention infringing upon the juvenile's liberty interest
10 for longer than twenty-four hours, excluding nonjudicial days, after
11 having been taken into custody unless such juvenile has appeared
12 personally before a court of competent jurisdiction for a hearing to
13 determine if continued detention, services, or supervision is necessary.
14 The juvenile shall be represented by counsel at the hearing. Whether such
15 counsel shall be provided at the cost of the county shall be determined
16 as provided in subsection (1) of section 43-272. If continued secure
17 detention is ordered, such detention shall be in a juvenile detention
18 facility, except that a juvenile charged with a felony as an adult in
19 county or district court may be held in an adult jail as set forth in
20 subdivision (1)(c)(v) of section 43-250. A juvenile placed in an
21 alternative to detention, but not in detention, may waive this hearing
22 through counsel.

23 (4) When the probation officer deems it to be in the best interests
24 of the juvenile, the probation officer shall immediately release such
25 juvenile to the custody of his or her parent. If the juvenile has both a
26 custodial and a noncustodial parent and the probation officer deems that
27 release of the juvenile to the custodial parent is not in the best
28 interests of the juvenile, the probation officer shall, if it is deemed
29 to be in the best interests of the juvenile, attempt to contact the
30 noncustodial parent, if any, of the juvenile and to release the juvenile
31 to such noncustodial parent. If such release is not possible or not

1 deemed to be in the best interests of the juvenile, the probation officer
2 may release the juvenile to the custody of a legal guardian, a
3 responsible relative, or another responsible person.

4 (5) The court may admit such juvenile to bail by bond in such amount
5 and on such conditions and security as the court, in its sole discretion,
6 shall determine, or the court may proceed as provided in section 43-254.
7 In no case shall the court or probation officer release such juvenile if
8 it appears that the physical safety of persons in the community would be
9 seriously threatened or that detention is necessary to secure the
10 presence of the juvenile at the next hearing, as evidenced by a
11 demonstrable record of willful failure to appear at a scheduled court
12 hearing within the last twelve months further detention or placement of
13 such juvenile is a matter of immediate and urgent necessity for the
14 protection of such juvenile or the person or property of another or if it
15 appears that such juvenile is likely to flee the jurisdiction of the
16 court.

17 Sec. 3. Section 43-260.01, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 43-260.01 The need for preadjudication placement, services, or
20 supervision and the need for detention of a juvenile and whether
21 detention or an alternative to detention is indicated shall be subject to
22 subdivision (5) of section 43-251.01 and shall may be determined as
23 follows:

24 (1) The standardized juvenile detention screening instrument shall
25 be used to evaluate the juvenile;

26 (2) If the results indicate that detention is not required, the
27 juvenile shall be released without restriction or released to an
28 alternative to detention; and

29 (3) If the results indicate that detention is required, detention
30 shall be pursued.

31 Sec. 4. Section 43-2404.02, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 43-2404.02 (1) There is created a separate and distinct budgetary
3 program within the commission to be known as the Community-based Juvenile
4 Services Aid Program. Funding acquired from participation in the federal
5 act, state General Funds, and funding acquired from other sources which
6 may be used for purposes consistent with the Juvenile Services Act and
7 the federal act shall be used to aid in the establishment and provision
8 of community-based services for juveniles who come in contact with the
9 juvenile justice system.

10 (2)(a) Ten percent of the annual General Fund appropriation to the
11 Community-based Juvenile Services Aid Program, excluding administrative
12 budget funds, shall be set aside for the development of a common data set
13 and evaluation of the effectiveness of the Community-based Juvenile
14 Services Aid Program. The intent in creating this common data set is to
15 allow for evaluation of the use of the funds and the effectiveness of the
16 programs or outcomes in the Community-based Juvenile Services Aid
17 Program.

18 (b) The common data set shall be developed and maintained by the
19 commission and shall serve as a primary data collection site for any
20 intervention funded by the Community-based Juvenile Services Aid Program
21 designed to serve juveniles and deter involvement in the formal juvenile
22 justice system. The commission shall work with agencies and programs to
23 enhance existing data sets. To ensure that the data set permits
24 evaluation of recidivism and other measures, the commission shall work
25 with the Office of Probation Administration, juvenile diversion programs,
26 law enforcement, the courts, and others to compile data that demonstrates
27 whether a youth has moved deeper into the juvenile justice system. The
28 University of Nebraska at Omaha, Juvenile Justice Institute, shall assist
29 with the development of common definitions, variables, and training
30 required for data collection and reporting into the common data set by
31 juvenile justice programs. The common data set maintained by the

1 commission shall be provided to the University of Nebraska at Omaha,
2 Juvenile Justice Institute, to assess the effectiveness of the Community-
3 based Juvenile Services Aid Program.

4 (c) Providing the commission access to records and information for,
5 as well as the commission granting access to records and information
6 from, the common data set is not a violation of confidentiality
7 provisions under any law, rule, or regulation if done in good faith for
8 purposes of evaluation. Records and documents, regardless of physical
9 form, that are obtained or produced or presented to the commission for
10 the common data set are not public records for purposes of sections
11 84-712 to 84-712.09.

12 (d) The ten percent of the annual General Fund appropriation to the
13 Community-based Juvenile Services Aid Program, excluding administrative
14 budget funds, shall be appropriated as follows: In fiscal year 2015-16,
15 seven percent shall go to the commission for development of the common
16 data set and three percent shall go to the University of Nebraska at
17 Omaha, Juvenile Justice Institute, for evaluation. In fiscal year
18 2016-17, six percent shall go to the commission for development and
19 maintenance of the common data set and four percent shall go to the
20 University of Nebraska at Omaha, Juvenile Justice Institute, for
21 evaluation. Every fiscal year thereafter, beginning in fiscal year
22 2017-18, five percent shall go to the commission for development and
23 maintenance of the common data set and five percent shall go to the
24 University of Nebraska at Omaha, Juvenile Justice Institute, for
25 evaluation.

26 (e) The remaining funds in the annual General Fund appropriation to
27 the Community-based Juvenile Services Aid Program shall be apportioned as
28 aid in accordance with a formula established in rules and regulations
29 adopted and promulgated by the commission. The formula shall be based on
30 the total number of residents per county and federally recognized or
31 state-recognized Indian tribe who are twelve years of age through

1 eighteen years of age and other relevant factors as determined by the
2 commission. The commission may require a local match of up to forty
3 percent from the county, multiple counties, federally recognized or
4 state-recognized Indian tribe or tribes, or any combination of the three
5 which is receiving aid under such program. Any local expenditures for
6 community-based programs for juveniles may be applied toward such match
7 requirement.

8 (3)(a) In distributing funds provided under the Community-based
9 Juvenile Services Aid Program, aid recipients shall prioritize programs
10 and services that will divert juveniles from the juvenile justice system,
11 reduce the population of juveniles in juvenile detention and secure
12 confinement, and assist in transitioning juveniles from out-of-home
13 placements.

14 (b) Funds received under the Community-based Juvenile Services Aid
15 Program shall be used exclusively to assist the aid recipient in the
16 implementation and operation of programs or the provision of services
17 identified in the aid recipient's comprehensive juvenile services plan,
18 including programs for local planning and service coordination;
19 screening, assessment, and evaluation; diversion; alternatives to
20 detention; family support services; treatment services; truancy
21 prevention and intervention programs; pilot projects approved by the
22 commission; payment of transportation costs to and from placements,
23 evaluations, or services; personnel when the personnel are aligned with
24 evidence-based treatment principles, programs, or practices; contracting
25 with other state agencies or private organizations that provide evidence-
26 based treatment or programs; preexisting programs that are aligned with
27 evidence-based practices or best practices; and other services that will
28 positively impact juveniles and families in the juvenile justice system.

29 (c) Funds received under the Community-based Juvenile Services Aid
30 Program may be used one time by an aid recipient:

31 (i) To convert an existing juvenile detention facility or other

1 existing structure for use as an alternative to detention as defined in
2 section 43-245;

3 (ii) To invest in capital construction, including both new
4 construction and renovations, for a facility for use as an alternative to
5 detention; or

6 (iii) For the initial lease of a facility for use as an alternative
7 to detention.

8 (d) ~~(e)~~ Funds received under the Community-based Juvenile Services
9 Aid Program shall not be used for the following:

10 (i) Construction of secure detention facilities, secure youth
11 treatment facilities, or secure youth confinement facilities;

12 (ii) ~~Capital~~ ~~capital~~ construction or the lease or acquisition of
13 facilities beyond the one-time use described in subdivision (3)(c) of
14 this section;

15 (iii) ~~Programs~~ ~~programs~~, services, treatments, evaluations, or other
16 preadjudication services that are not based on or grounded in evidence-
17 based practices, principles, and research, except that the commission may
18 approve pilot projects that authorize the use of such aid; or

19 (iv) ~~Office~~ ~~office~~ equipment, office supplies, or office space.

20 (e) ~~(d)~~ Any aid not distributed to counties under this subsection
21 shall be retained by the commission to be distributed on a competitive
22 basis under the Community-based Juvenile Services Aid Program for a
23 county, multiple counties, federally recognized or state-recognized
24 Indian tribe or tribes, or any combination of the three demonstrating
25 additional need in the funding areas identified in this subsection.

26 (f) ~~(e)~~ If a county, multiple counties, or a federally recognized or
27 state-recognized Indian tribe or tribes is denied aid under this section
28 or receives no aid under this section, the entity may request an appeal
29 pursuant to the appeal process in rules and regulations adopted and
30 promulgated by the commission. The commission shall establish appeal and
31 hearing procedures by December 15, 2014. The commission shall make appeal

1 and hearing procedures available on its web site.

2 (4)(a) Any recipient of aid under the Community-based Juvenile
3 Services Aid Program shall electronically file an annual report as
4 required by rules and regulations adopted and promulgated by the
5 commission. Any program funded through the Community-based Juvenile
6 Services Aid Program that served juveniles shall report data on the
7 individual youth served. Any program that is not directly serving youth
8 shall include program-level data. In either case, data collected shall
9 include, but not be limited to, the following: The type of juvenile
10 service, how the service met the goals of the comprehensive juvenile
11 services plan, demographic information on the juveniles served, program
12 outcomes, the total number of juveniles served, and the number of
13 juveniles who completed the program or intervention.

14 (b) Any recipient of aid under the Community-based Juvenile Services
15 Aid Program shall be assisted by the University of Nebraska at Omaha,
16 Juvenile Justice Institute, in reporting in the common data set, as set
17 forth in the rules and regulations adopted and promulgated by the
18 commission. Community-based aid utilization and evaluation data shall be
19 stored and maintained by the commission.

20 (c) Evaluation of the use of funds and the evidence of the
21 effectiveness of the programs shall be completed by the University of
22 Nebraska at Omaha, Juvenile Justice Institute, specifically:

23 (i) The varying rates of recidivism, as defined by rules and
24 regulations adopted and promulgated by the commission, and other measures
25 for juveniles participating in community-based programs; and

26 (ii) Whether juveniles are sent to staff secure or secure juvenile
27 detention after participating in a program funded by the Community-based
28 Juvenile Services Aid Program.

29 (5) The commission shall report annually to the Governor and the
30 Legislature on the distribution and use of funds for aid appropriated
31 under the Community-based Juvenile Services Aid Program. The report shall

1 include, but not be limited to, an aggregate report of the use of the
2 Community-based Juvenile Services Aid Program funds, including the types
3 of juvenile services and programs that were funded, whether any
4 recipients used the funds for a purpose described in subdivision (3)(c)
5 of this section, demographic information on the total number of juveniles
6 served, program success rates, the total number of juveniles sent to
7 secure juvenile detention or residential treatment and secure
8 confinement, and a listing of the expenditures of all counties and
9 federally recognized or state-recognized Indian tribes for detention,
10 residential treatment, and secure confinement. The report submitted to
11 the Legislature shall be submitted electronically.

12 (6) The commission shall adopt and promulgate rules and regulations
13 for the Community-based Juvenile Services Aid Program in consultation
14 with the Director of the Community-based Juvenile Services Aid Program,
15 the Director of Juvenile Diversion Programs, the Office of Probation
16 Administration, the Nebraska Association of County Officials, and the
17 University of Nebraska at Omaha, Juvenile Justice Institute. The rules
18 and regulations shall include, but not be limited to:

19 (a) The required elements of a comprehensive juvenile services plan
20 and planning process;

21 (b) The Community-based Juvenile Services Aid Program formula,
22 review process, match requirements, and fund distribution. The
23 distribution process shall ensure a conflict of interest policy;

24 (c) A distribution process for funds retained under subsection (3)
25 of this section;

26 (d) A plan for evaluating the effectiveness of plans and programs
27 receiving funding;

28 (e) A reporting process for aid recipients;

29 (f) A reporting process for the commission to the Governor and
30 Legislature. The report shall be made electronically to the Governor and
31 the Legislature; and

1 (g) Requirements regarding the use of the common data set.

2 Sec. 5. Section 43-2409, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 43-2409 (1) The coalition shall review periodically the performance
5 of eligible applicants participating under the Commission Grant Program
6 and the federal act to determine if substantial compliance criteria are
7 being met. The commission shall establish criteria for defining
8 substantial compliance.

9 (2) Grants received by an eligible applicant under the Commission
10 Grant Program shall not be used to replace or supplant any funds
11 currently being used to support existing programs for juveniles.

12 (3) Grants received under the Commission Grant Program shall not be
13 used for capital construction or the lease or acquisition of facilities
14 except as provided in subdivision (3)(c) of section 43-2404.02.

15 Sec. 6. Original sections 43-251.01, 43-260.01, 43-2404.02, and
16 43-2409, Reissue Revised Statutes of Nebraska, and section 43-253,
17 Revised Statutes Supplement, 2017, are repealed.