

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1172

Introduced by Cavanaugh, 6.

Read first time January 23, 2020

Committee:

1 A BILL FOR AN ACT relating to juveniles; to amend sections 43-247.02 and
2 43-408, Reissue Revised Statutes of Nebraska; to provide
3 requirements for a court order for placement at a youth
4 rehabilitation and treatment center; to provide powers and duties
5 for the Department of Health and Human Services; to require a report
6 regarding services provided at a youth rehabilitation and treatment
7 center and a needs analysis and plan for assistance as prescribed;
8 to repeal the original sections; and to declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-247.02, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 43-247.02 (1) Notwithstanding any other provision of Nebraska law,
4 on and after October 1, 2013, a juvenile court shall not:

5 (a) Place any juvenile adjudicated or pending adjudication under
6 subdivision (1), (2), (3)(b), or (4) of section 43-247 with the
7 Department of Health and Human Services or the Office of Juvenile
8 Services, other than as allowed under subsection (2) or (3) of this
9 section;

10 (b) Commit any juvenile adjudicated or pending adjudication under
11 subdivision (1), (2), (3)(b), or (4) of section 43-247 to the care and
12 custody of the Department of Health and Human Services or the Office of
13 Juvenile Services, other than as allowed under subsection (2) or (3) of
14 this section;

15 (c) Require the Department of Health and Human Services or the
16 Office of Juvenile Services to supervise any juvenile adjudicated or
17 pending adjudication under subdivision (1), (2), (3)(b), or (4) of
18 section 43-247, other than as allowed under subsection (2) or (3) of this
19 section; or

20 (d) Require the Department of Health and Human Services or the
21 Office of Juvenile Services to provide, arrange for, or pay for any
22 services for any juvenile adjudicated or pending adjudication under
23 subdivision (1), (2), (3)(b), or (4) of section 43-247, or for any party
24 to cases under those subdivisions, other than as allowed under subsection
25 (2) or (3) of this section.

26 (2) Notwithstanding any other provision of Nebraska law, on and
27 after July 1, 2013, a juvenile court shall not commit a juvenile to the
28 Office of Juvenile Services for placement at a youth rehabilitation and
29 treatment center except as part of an order of intensive supervised
30 probation under subdivision (1)(b)(ii) of section 43-286.

31 (3)(a) A court order to commit a juvenile to the Office of Juvenile

1 Services for placement at a youth rehabilitation and treatment center
2 shall specify the placement as either the Youth Rehabilitation and
3 Treatment Center-Geneva or the Youth Rehabilitation and Treatment Center-
4 Kearney.

5 (b) Any transportation of a juvenile between the Youth
6 Rehabilitation and Treatment Center-Geneva and the Youth Rehabilitation
7 and Treatment Center-Kearney shall require a new court order, except in
8 the case of an emergency that requires all juveniles to be moved from a
9 court-ordered location due to safety or security concerns regarding the
10 state of the facility in which such juveniles are located.

11 (4) ~~(3)~~ Nothing in this section shall be construed to limit the
12 authority or duties of the Department of Health and Human Services in
13 relation to juveniles adjudicated under subdivision (1), (2), (3)(b), or
14 (4) of section 43-247 who were committed to the care and custody of the
15 Department of Health and Human Services prior to October 1, 2013, to the
16 Office of Juvenile Services for community-based services prior to October
17 1, 2013, or to the Office of Juvenile Services for placement at a youth
18 rehabilitation and treatment center prior to July 1, 2013. The care and
19 custody of such juveniles with the Department of Health and Human
20 Services or the Office of Juvenile Services shall continue in accordance
21 with the Nebraska Juvenile Code and the Juvenile Services Act as such
22 acts existed on January 1, 2013, until:

23 (a) The juvenile reaches the age of majority;

24 (b) The juvenile is no longer under the care and custody of the
25 department pursuant to a court order or for any other reason, a guardian
26 other than the department is appointed for the juvenile, or the juvenile
27 is adopted;

28 (c) The juvenile is discharged pursuant to section 43-412, as such
29 section existed on January 1, 2013; or

30 (d) A juvenile court terminates its jurisdiction of the juvenile.

31 Sec. 2. Section 43-408, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 43-408 (1)(a) This subsection applies to all juveniles committed to
3 the Office of Juvenile Services for placement at a youth rehabilitation
4 and treatment center prior to July 1, 2013, and to all juveniles
5 committed to the Office of Juvenile Services for community supervision
6 prior to October 1, 2013. Whenever any juvenile is committed to the
7 Office of Juvenile Services, to any facility operated by the Office of
8 Juvenile Services, or to the custody of the Administrator of the Office
9 of Juvenile Services, a superintendent of a facility, or an administrator
10 of a program, the juvenile is deemed committed to the Office of Juvenile
11 Services. Juveniles committed to the Office of Juvenile Services shall
12 also be considered committed to the care and custody of the Department of
13 Health and Human Services for the purpose of obtaining health care and
14 treatment services.

15 (b) The committing court shall order the initial level of treatment
16 for a juvenile committed to the Office of Juvenile Services. Prior to
17 determining the initial level of treatment for a juvenile, the court may
18 solicit a recommendation regarding the initial level of treatment from
19 the Office of Juvenile Services. Under this subsection, the committing
20 court shall not order a specific placement for a juvenile. The court
21 shall continue to maintain jurisdiction over any juvenile committed to
22 the Office of Juvenile Services until such time that the juvenile is
23 discharged from the Office of Juvenile Services. The court shall conduct
24 review hearings every six months, or at the request of the juvenile, for
25 any juvenile committed to the Office of Juvenile Services who is placed
26 outside his or her home, except for a juvenile residing at a youth
27 rehabilitation and treatment center. The court shall determine whether an
28 out-of-home placement made by the Office of Juvenile Services is in the
29 best interests of the juvenile, with due consideration being given by the
30 court to public safety. If the court determines that the out-of-home
31 placement is not in the best interests of the juvenile, the court may

1 order other treatment services for the juvenile.

2 (c) After the initial level of treatment is ordered by the
3 committing court, the Office of Juvenile Services shall provide treatment
4 services which conform to the court's level of treatment determination.
5 Within thirty days after making an actual placement, the Office of
6 Juvenile Services shall provide the committing court with written
7 notification of where the juvenile has been placed. At least once every
8 six months thereafter, until the juvenile is discharged from the care and
9 custody of the Office of Juvenile Services, the office shall provide the
10 committing court with written notification of the juvenile's actual
11 placement and the level of treatment that the juvenile is receiving.

12 (d) For transfer hearings, the burden of proof to justify the
13 transfer is on the Office of Juvenile Services, the standard of proof is
14 clear and convincing evidence, and the strict rules of evidence do not
15 apply. Transfers of juveniles from one place of treatment to another are
16 subject to section 43-251.01 and to the following:

17 (i) Except as provided in subdivision (d)(ii) of this subsection, if
18 the Office of Juvenile Services proposes to transfer the juvenile from a
19 less restrictive to a more restrictive place of treatment, a plan
20 outlining the proposed change and the reasons for the proposed change
21 shall be presented to the court which committed the juvenile. Such change
22 shall occur only after a hearing and a finding by the committing court
23 that the change is in the best interests of the juvenile, with due
24 consideration being given by the court to public safety. At the hearing,
25 the juvenile has the right to be represented by counsel;

26 (ii) The Office of Juvenile Services may make an immediate temporary
27 change without prior approval by the committing court only if the
28 juvenile is in a harmful or dangerous situation, is suffering a medical
29 emergency, is exhibiting behavior which warrants temporary removal, or
30 has been placed in a non-state-owned facility and such facility has
31 requested that the juvenile be removed. Approval of the committing court

1 shall be sought within fifteen days of making an immediate temporary
2 change, at which time a hearing shall occur before the court. The court
3 shall determine whether it is in the best interests of the juvenile to
4 remain in the new place of treatment, with due consideration being given
5 by the court to public safety. At the hearing, the juvenile has the right
6 to be represented by counsel; and

7 (iii) If the proposed change seeks to transfer the juvenile from a
8 more restrictive to a less restrictive place of treatment or to transfer
9 the juvenile from the juvenile's current place of treatment to another
10 which has the same level of restriction as the current place of
11 treatment, the Office of Juvenile Services shall notify the juvenile, the
12 juvenile's parents, custodian, or legal guardian, the committing court,
13 the county attorney, the counsel for the juvenile, and the guardian ad
14 litem of the proposed change. The juvenile has fifteen days after the
15 date of the notice to request an administrative hearing with the Office
16 of Juvenile Services, at which time the Office of Juvenile Services shall
17 determine whether it is in the best interests of the juvenile for the
18 proposed change to occur, with due consideration being given by the
19 office to public safety. The juvenile may be represented by counsel at
20 the juvenile's own expense. If the juvenile is aggrieved by the
21 administrative decision of the Office of Juvenile Services, the juvenile
22 may appeal that decision to the committing court within fifteen days
23 after the Office of Juvenile Services' decision. At the hearing before
24 the committing court, the juvenile has the right to be represented by
25 counsel.

26 (e) If a juvenile is placed in detention after the initial level of
27 treatment is determined by the committing court, the committing court
28 shall hold a hearing every fourteen days to review the status of the
29 juvenile. Placement of a juvenile in detention shall not be considered as
30 a treatment service.

31 (f) The committing court's review of a change of place of treatment

1 pursuant to this subsection does not apply to parole revocation hearings.

2 (2)(a) This subsection applies to all juveniles committed to the
3 Office of Juvenile Services for placement at a youth rehabilitation and
4 treatment center on or after July 1, 2013. Whenever any juvenile is
5 committed to the Office of Juvenile Services, the juvenile shall also be
6 considered committed to the care and custody of the Department of Health
7 and Human Services for the purpose of obtaining health care and treatment
8 services.

9 (b) The committing court shall order placement at either the Youth
10 Rehabilitation and Treatment Center-Geneva or the Youth Rehabilitation
11 and Treatment Center-Kearney ~~a youth rehabilitation and treatment center~~
12 for a juvenile committed to the Office of Juvenile Services. The court
13 shall continue to maintain jurisdiction over any juvenile committed to
14 the Office of Juvenile Services for the purpose of reviewing the
15 juvenile's probation upon discharge from the care and custody of the
16 Office of Juvenile Services.

17 (c) If a juvenile is placed in detention while awaiting placement at
18 a youth rehabilitation and treatment center and the placement has not
19 occurred within fourteen days, the committing court shall hold a hearing
20 every fourteen days to review the status of the juvenile. Placement of a
21 juvenile in detention shall not be considered a treatment service.

22 Sec. 3. The Department of Health and Human Services may use space
23 at the Lincoln Regional Center as a psychiatric residential treatment
24 facility for juveniles. The department shall not discharge or transfer a
25 juvenile from such facility without a court order, except in the case of
26 an emergency that requires all juveniles to be moved from a court-ordered
27 location due to safety or security concerns regarding the state of the
28 facility in which such juveniles are located. The department shall not
29 employ exclusionary criteria for juveniles in intake administration at
30 such facility. The department shall notify those required to be served by
31 sections 43-262 to 43-267, all interested parties, and the committing

1 court of the pending discharge of a juvenile from such psychiatric
2 residential treatment facility sixty days prior to discharge and again in
3 every case not less than thirty days prior to discharge.

4 Sec. 4. Each youth rehabilitation and treatment center shall
5 provide a description of the services provided to juveniles and report
6 such description to the Supreme Court and electronically to the
7 Legislature on or before December 1 of each year. Such report shall
8 include any changes made during the year to the services provided at the
9 youth rehabilitation and treatment center.

10 Sec. 5. The Department of Health and Human Services shall contract
11 with the University of Nebraska to conduct a needs analysis of the
12 programs and facilities at the youth rehabilitation and treatment
13 centers. The needs analysis shall identify areas in which the University
14 of Nebraska can assist the Department of Health and Human Services and
15 shall create a plan for such assistance. The needs analysis and plan
16 shall be submitted electronically to the Health and Human Services
17 Committee of the Legislature on or before July 1, 2020.

18 Sec. 6. Original sections 43-247.02 and 43-408, Reissue Revised
19 Statutes of Nebraska, are repealed.

20 Sec. 7. Since an emergency exists, this act takes effect when
21 passed and approved according to law.