

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 182

Introduced by Avery, 28.

Read first time January 14, 2013

Committee:

A BILL

1 FOR AN ACT relating to sexual assault; to amend sections 43-292.02
2 and 43-1411.01, Reissue Revised Statutes of Nebraska, and
3 sections 43-254 and 43-283.01, Revised Statutes
4 Cumulative Supplement, 2012; to change provisions
5 relating to paternity of a child conceived as a result of
6 a sexual assault as prescribed; to harmonize provisions;
7 and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-254, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 43-254 Pending the adjudication of any case, if it
4 appears that the need for placement or further detention exists, the
5 juvenile may be (1) placed or detained a reasonable period of time on
6 order of the court in the temporary custody of either the person
7 having charge of the juvenile or some other suitable person, (2) kept
8 in some suitable place provided by the city or county authorities,
9 (3) placed in any proper and accredited charitable institution, (4)
10 placed in a state institution, except any adult correctional
11 facility, when proper facilities are available and the only local
12 facility is a city or county jail, at the expense of the committing
13 county on a per diem basis as determined from time to time by the
14 head of the particular institution, or (5) placed in the temporary
15 care and custody of the Department of Health and Human Services when
16 it does not appear that there is any need for secure detention. The
17 court may assess the cost of such placement or detention in whole or
18 in part to the parent of the juvenile as provided in section 43-290.

19 If a juvenile has been removed from his or her parent,
20 guardian, or custodian pursuant to subdivision (2) of section 43-248,
21 the court may enter an order continuing detention or placement upon a
22 written determination that continuation of the juvenile in his or her
23 home would be contrary to the health, safety, or welfare of such
24 juvenile and that reasonable efforts were made to preserve and
25 reunify the family if required under ~~subsections (1) through (4) of~~

1 section 43-283.01.

2 Sec. 2. Section 43-283.01, Revised Statutes Cumulative
3 Supplement, 2012, is amended to read:

4 43-283.01 (1) In determining whether reasonable efforts
5 have been made to preserve and reunify the family and in making such
6 reasonable efforts, the juvenile's health and safety are the
7 paramount concern.

8 (2) Except as provided in ~~subsection~~subsections (4) and
9 (5) of this section, reasonable efforts shall be made to preserve and
10 reunify families prior to the placement of a juvenile in foster care
11 to prevent or eliminate the need for removing the juvenile from the
12 juvenile's home and to make it possible for a juvenile to safely
13 return to the juvenile's home.

14 (3) If continuation of reasonable efforts to preserve and
15 reunify the family is determined to be inconsistent with the
16 permanency plan determined for the juvenile in accordance with a
17 permanency hearing under section 43-1312, efforts shall be made to
18 place the juvenile in a timely manner in accordance with the
19 permanency plan and to complete whatever steps are necessary to
20 finalize the permanent placement of the juvenile.

21 (4) Reasonable efforts to preserve and reunify the family
22 are not required if a court of competent jurisdiction has determined
23 that:

24 (a) The parent of the juvenile has subjected the juvenile
25 or another minor child to aggravated circumstances, including, but

1 not limited to, abandonment, torture, chronic abuse, or sexual abuse;

2 (b) The parent of the juvenile has (i) committed first or
3 second degree murder to another child of the parent, (ii) committed
4 voluntary manslaughter to another child of the parent, (iii) aided or
5 abetted, attempted, conspired, or solicited to commit murder, or
6 aided or abetted voluntary manslaughter of the juvenile or another
7 child of the parent, (iv) committed a felony assault which results in
8 serious bodily injury to the juvenile or another minor child of the
9 parent, or (v) been convicted of felony sexual assault of the other
10 parent of the juvenile under section 28-319.01 or 28-320.01 or a
11 comparable crime in another state; or

12 (c) The parental rights of the parent to a sibling of the
13 juvenile have been terminated involuntarily.

14 (5) If the family includes a child who was conceived by
15 the victim of a first degree sexual assault and the biological father
16 is convicted of the crime under section 28-319, the biological father
17 of such child shall not be considered a part of the child's family
18 for purposes of requiring reasonable efforts to preserve and reunify
19 the family.

20 ~~(5)-(6)~~ If reasonable efforts to preserve and reunify the
21 family are not required because of a ~~court~~-determination made under
22 subsection (4) or (5) of this section, a permanency hearing, as
23 provided in section 43-1312, shall be held for the juvenile within
24 thirty days after the determination, reasonable efforts shall be made
25 to place the juvenile in a timely manner in accordance with the

1 permanency plan, and whatever steps are necessary to finalize the
2 permanent placement of the juvenile shall be made.

3 ~~(6)~~—(7) Reasonable efforts to place a juvenile for
4 adoption or with a guardian may be made concurrently with reasonable
5 efforts to preserve and reunify the family, but priority shall be
6 given to preserving and reunifying the family as provided in this
7 section.

8 Sec. 3. Section 43-292.02, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 43-292.02 (1) A petition shall be filed on behalf of the
11 state to terminate the parental rights of the juvenile's parents or,
12 if such a petition has been filed by another party, the state shall
13 join as a party to the petition, and the state shall concurrently
14 identify, recruit, process, and approve a qualified family for an
15 adoption of the juvenile, if:

16 (a) A juvenile has been in foster care under the
17 responsibility of the state for fifteen or more months of the most
18 recent twenty-two months; or

19 (b) A court of competent jurisdiction has determined the
20 juvenile to be an abandoned infant or has made a determination that
21 the parent has committed murder of another child of the parent,
22 committed voluntary manslaughter of another child of the parent,
23 aided or abetted, attempted, conspired, or solicited to commit
24 murder, or aided or abetted voluntary manslaughter of the juvenile or
25 another child of the parent, or committed a felony assault that has

1 resulted in serious bodily injury to the juvenile or another minor
2 child of the parent. For purposes of this subdivision, infant means a
3 child eighteen months of age or younger.

4 (2) A petition shall not be filed on behalf of the state
5 to terminate the parental rights of the juvenile's parents or, if
6 such a petition has been filed by another party, the state shall not
7 join as a party to the petition if the sole factual basis for the
8 petition is that (a) the parent or parents of the juvenile are
9 financially unable to provide health care for the juvenile or (b) the
10 parent or parents of the juvenile are incarcerated. The fact that a
11 qualified family for an adoption of the juvenile has been identified,
12 recruited, processed, and approved shall have no bearing on whether
13 parental rights shall be terminated.

14 (3) The petition is not required to be filed on behalf of
15 the state or if a petition is filed the state shall not be required
16 to join in a petition to terminate parental rights or to concurrently
17 find a qualified family to adopt the juvenile under this section if:

18 (a) The child is being cared for by a relative;

19 (b) The Department of Health and Human Services has
20 documented in the case plan or permanency plan, which shall be
21 available for court review, a compelling reason for determining that
22 filing such a petition would not be in the best interests of the
23 juvenile; or

24 (c) The family of the juvenile has not had a reasonable
25 opportunity to avail themselves of the services deemed necessary in

1 the case plan or permanency plan approved by the court if reasonable
2 efforts to preserve and reunify the family are required under section
3 43-283.01.

4 (4) If a child is conceived by the victim of a first
5 degree sexual assault and the biological father is convicted of the
6 crime under section 28-319, the county attorney shall file a petition
7 on behalf of the state to terminate the parental rights of the
8 biological father and the conviction shall be conclusive evidence
9 that the parental rights of the biological father should be
10 terminated, unless the child's biological mother or guardian consents
11 otherwise and the court finds that not terminating the parental
12 rights of the biological father is in the best interests of the
13 child. The court may order the biological father to pay child support
14 even if his parental rights are terminated pursuant to this section
15 if it is in the best interests of the child.

16 Sec. 4. Section 43-1411.01, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 43-1411.01 (1) An action for paternity or parental
19 support under sections 43-1401 to 43-1418 may be initiated by filing
20 a complaint with the clerk of the district court as provided in
21 section 25-2740. Such proceeding may be heard by the county court or
22 the district court as provided in section 25-2740. A paternity
23 determination under sections 43-1411 to 43-1418 may also be decided
24 in a county court or separate juvenile court if the county court or
25 separate juvenile court already has jurisdiction over the child whose

1 paternity is to be determined.

2 (2) Whenever termination of parental rights is placed in
3 issue in any case arising under sections 43-1401 to 43-1418,
4 subsection (5) of section 42-364 and the Parenting Act shall apply to
5 such proceedings.

6 (3) The court shall stay the paternity action if there is
7 a pending criminal allegation of first degree sexual assault under
8 section 28-319 against the alleged father with regard to the
9 conception of the child. If the alleged father is not found guilty,
10 the paternity action shall proceed. If the alleged father is found
11 guilty, the paternity of the child is established by the conviction
12 and the parental rights of the biological father may be terminated
13 and child support ordered as provided in subsection (4) of section
14 43-292.02.

15 Sec. 5. Original sections 43-292.02 and 43-1411.01,
16 Reissue Revised Statutes of Nebraska, and sections 43-254 and
17 43-283.01, Revised Statutes Cumulative Supplement, 2012, are
18 repealed.