

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 389

Introduced by Howard, 9.

Read first time January 17, 2019

Committee:

1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend
2 sections 43-292 and 43-292.01, Reissue Revised Statutes of Nebraska,
3 and sections 43-283.01 and 43-292.02, Revised Statutes Cumulative
4 Supplement, 2018; to change and provide grounds for termination of
5 parental rights; to change provisions relating to when reasonable
6 efforts at reunification are required; to change provisions relating
7 to petitions for termination of parental rights; to harmonize
8 provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-283.01, Revised Statutes Cumulative
2 Supplement, 2018, is amended to read:

3 43-283.01 (1) In determining whether reasonable efforts have been
4 made to preserve and reunify the family and in making such reasonable
5 efforts, the juvenile's health and safety are the paramount concern.

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

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

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

19 (a) The parent of the juvenile has subjected the juvenile or another
20 minor child to aggravated circumstances, including, but not limited to,
21 abandonment, torture, chronic abuse, or sexual abuse;

22 (b) The parent of the juvenile has (i) committed ~~first or second~~
23 degree murder of ~~to~~ another child of the parent, (ii) committed voluntary
24 manslaughter of ~~to~~ another child of the parent, (iii) aided or abetted,
25 attempted, conspired, or solicited to commit murder, or aided or abetted
26 voluntary manslaughter of the juvenile or another child of the parent,
27 (iv) committed a felony assault which results in serious bodily injury to
28 the juvenile or another minor child of the parent, (v) committed a sexual
29 assault of the juvenile or another minor child under section 28-319,
30 28-319.01, 28-320, or 28-320.01, (vi) committed labor trafficking of a
31 minor or sex trafficking of a minor under section 28-831 with such

1 juvenile or another minor child as the victim, or (vii) (v) been
2 convicted of ~~felony~~ sexual assault of the other parent of the juvenile
3 under section 28-319, 28-319.01, 28-320, or 28-320.01 or a comparable
4 crime in another state; or

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

7 (5) Except as otherwise provided in the Nebraska Indian Child
8 Welfare Act, if the family includes a child who was conceived by the
9 victim of a sexual assault and a biological parent is convicted of the
10 crime under section 28-319, 28-319.01, or 28-320, or 28-320.01 or a law
11 in another jurisdiction similar to any such ~~either section 28-319 or~~
12 ~~28-320,~~ the convicted biological parent of such child shall not be
13 considered a part of the child's family for purposes of requiring
14 reasonable efforts to preserve and reunify the family.

15 (6) If reasonable efforts to preserve and reunify the family are not
16 required because of a court determination made under subsection (4) of
17 this section, a permanency hearing, as provided in section 43-1312, shall
18 be held for the juvenile within thirty days after the determination,
19 reasonable efforts shall be made to place the juvenile in a timely manner
20 in accordance with the permanency plan, and whatever steps are necessary
21 to finalize the permanent placement of the juvenile shall be made.

22 (7) Reasonable efforts to place a juvenile for adoption or with a
23 guardian may be made concurrently with reasonable efforts to preserve and
24 reunify the family, but priority shall be given to preserving and
25 reunifying the family as provided in this section.

26 Sec. 2. Section 43-292, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 43-292 The court may terminate all parental rights between a parent
29 and a juvenile ~~the parents or the mother of a juvenile born out of~~
30 ~~wedlock and such juvenile~~ when the court finds by clear and convincing
31 evidence that termination is in the best interests of the juvenile and

1 such parent is unfit by reason of conduct or a condition which renders
2 the parent unable to care properly for the juvenile due to such action to
3 be in the best interests of the juvenile and it appears by the evidence
4 that one or more of the following enumerated grounds conditions exist:

5 (1) The parents have abandoned the juvenile for six months or more
6 immediately prior to the filing of the petition;

7 (2) The parents have substantially and continuously or repeatedly
8 neglected and refused to give the juvenile or a sibling of the juvenile
9 necessary parental care and protection;

10 (3) The court has terminated parental rights pursuant to this
11 section with respect to another child of the parent who is a member of
12 the same family or a court of competent jurisdiction in another state has
13 entered an order involuntarily terminating parental rights with respect
14 to another child of the parent;

15 (4) ~~(3)~~ The parents, being financially able, have willfully
16 neglected to provide the juvenile with the necessary subsistence,
17 education, or other care necessary for his or her health, morals, or
18 welfare or have neglected to pay for such subsistence, education, or
19 other care when legal custody of the juvenile is lodged with others and
20 such payment ordered by the court;

21 (5) The use by the parent of alcohol, narcotics, or other dangerous
22 drugs for such a duration or of such a nature as to render the parent
23 unable to care for the ongoing physical, mental, or emotional needs of
24 the juvenile or to be a serious detriment to the health, safety, and
25 well-being of the juvenile;

26 ~~(4)~~ The parents are unfit by reason of debauchery, habitual use of
27 intoxicating liquor or narcotic drugs, or repeated lewd and lascivious
28 behavior, which conduct is found by the court to be seriously detrimental
29 to the health, morals, or well-being of the juvenile;

30 (6) ~~(5)~~ The parents are unable to discharge parental
31 responsibilities because of mental illness or mental deficiency and there

1 are reasonable grounds to believe that such condition will continue for a
2 prolonged indeterminate period;

3 (7) (6) Following a determination that the juvenile is one as
4 described in subdivision (3)(a) of section 43-247, reasonable efforts to
5 preserve and reunify the family if required under section 43-283.01,
6 under the direction of the court, have failed to correct the conditions
7 leading to the determination;

8 (8) (7) The juvenile is four years of age or older and has been in a
9 court-ordered an out-of-home placement for fifteen or more months of the
10 most recent twenty-two months. The number of months of out-of-home
11 placement shall be calculated in accordance with section 43-1301.01;

12 (9) Following a determination that the juvenile is one as described
13 in subdivision (3)(a) of section 43-247, which determination occurred
14 when the juvenile was younger than four years of age, the juvenile has
15 been in a court-ordered out-of-home placement for six or more months of
16 the most recent twelve months and the parent has not made substantial
17 progress in having the juvenile returned to his or her custody. The
18 number of months of out-of-home placement shall be calculated in
19 accordance with section 43-1301.01;

20 (10) (8) The parent has inflicted upon the juvenile, by other than
21 accidental means, serious bodily injury;

22 (11) (9) The parent of the juvenile has subjected the juvenile or
23 another minor child to aggravated circumstances, including, but not
24 limited to, abandonment, torture, chronic abuse, or sexual abuse;

25 (12) (10) The parent has (a) committed murder of another child of
26 the parent, (b) committed voluntary manslaughter of another child of the
27 parent, (c) aided or abetted, attempted, conspired, or solicited to
28 commit murder, or aided or abetted voluntary manslaughter of the juvenile
29 or another child of the parent, ~~or~~ (d) committed a felony assault that
30 resulted in serious bodily injury to the juvenile or another minor child
31 of the parent, (e) committed a sexual assault of the juvenile or another

1 minor child under section 28-319, 28-319.01, 28-320, or 28-320.01, or (f)
2 committed labor trafficking of a minor or sex trafficking of a minor
3 under section 28-831 with such juvenile or another minor child as the
4 victim; or

5 (13) The ~~(11) One~~ parent has been convicted of ~~felony~~ sexual assault
6 of the other parent of the juvenile under section 28-319, 28-319.01,
7 28-320, or 28-320.01 or a comparable crime in another state.

8 Sec. 3. Section 43-292.01, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 43-292.01 When termination of the parent-juvenile relationship is
11 sought under subdivision (6) ~~(5)~~ of section 43-292, the court shall
12 appoint a guardian ad litem for the alleged incompetent parent. The court
13 may, in any other case, appoint a guardian ad litem, as deemed necessary
14 or desirable, for any party. The guardian ad litem shall be paid a
15 reasonable fee set by the court and paid from the general fund of the
16 county.

17 Sec. 4. Section 43-292.02, Revised Statutes Cumulative Supplement,
18 2018, is amended to read:

19 43-292.02 (1) A petition shall be filed on behalf of the state to
20 terminate the parental rights of the juvenile's parents or, if such a
21 petition has been filed by another party, the state shall join as a party
22 to the petition, and the state shall concurrently identify, recruit,
23 process, and approve a qualified family for an adoption of the juvenile,
24 if:

25 (a) A juvenile has been in foster care under the responsibility of
26 the state for fifteen or more months of the most recent twenty-two
27 months. The number of months of out-of-home placement shall be calculated
28 in accordance with section 43-1301.01; or

29 (b) A court of competent jurisdiction has determined the juvenile to
30 be an abandoned infant or has made a determination that the parent has
31 committed murder of another child of the parent, committed voluntary

1 manslaughter of another child of the parent, aided or abetted, attempted,
2 conspired, or solicited to commit murder, or aided or abetted voluntary
3 manslaughter of the juvenile or another child of the parent, or committed
4 a felony assault that has resulted in serious bodily injury to the
5 juvenile or another minor child of the parent. For purposes of this
6 subdivision, infant means a child eighteen months of age or younger.

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

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

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

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

26 (c) The family of the juvenile has not had a reasonable opportunity
27 to avail themselves of the services deemed necessary in the case plan or
28 permanency plan approved by the court if reasonable efforts to preserve
29 and reunify the family are required under section 43-283.01.

30 (4) Except as otherwise provided in the Nebraska Indian Child
31 Welfare Act, if a child is conceived by the victim of a sexual assault, a

1 petition for termination of parental rights of the perpetrator shall be
2 granted if such termination is in the best interests of the child and (a)
3 the perpetrator has been convicted of or pled guilty or nolo contendere
4 to sexual assault of the child's birth parent under section 28-319,
5 28-319.01, ~~or 28-320, or 28-320.01~~ or a law in another jurisdiction
6 similar to any such ~~either~~ section ~~28-319 or 28-320~~ or (b) the
7 perpetrator has fathered the child or given birth to the child as a
8 result of such sexual assault.

9 Sec. 5. Original sections 43-292 and 43-292.01, Reissue Revised
10 Statutes of Nebraska, and sections 43-283.01 and 43-292.02, Revised
11 Statutes Cumulative Supplement, 2018, are repealed.