

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 42

Introduced by Hansen, B., 16.

Read first time January 05, 2023

Committee:

1 A BILL FOR AN ACT relating to children and families; to amend sections
2 43-247 and 43-292, Reissue Revised Statutes of Nebraska, and
3 sections 28-101, 28-707, 28-710, and 43-2,129, Revised Statutes
4 Cumulative Supplement, 2022; to define and redefine terms; to change
5 provisions relating to what constitutes child abuse and neglect
6 under the Child Protection and Family Safety Act and the Nebraska
7 Juvenile Code; to change grounds for juvenile court jurisdiction and
8 termination of parental rights; to harmonize provisions; and to
9 repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 28-101 Sections 28-101 to 28-1357, 28-1601 to 28-1603, and 28-1701
4 and section 4 of this act shall be known and may be cited as the Nebraska
5 Criminal Code.

6 Sec. 2. Section 28-707, Revised Statutes Cumulative Supplement,
7 2022, is amended to read:

8 28-707 (1) Subject to section 4 of this act, a A person commits
9 child abuse if he or she knowingly, intentionally, or negligently causes
10 or permits a minor child to be:

11 (a) Placed in a situation that endangers the minor child's his or
12 her life or physical or mental health under circumstances such that the
13 danger is sufficiently obvious that no reasonable person would cause or
14 permit the minor child to be placed in such situation;

15 (b) Cruelly confined or cruelly punished;

16 (c) Deprived of necessary food, clothing, shelter, or care;

17 (d) Placed in a situation to be sexually exploited through sex
18 trafficking of a minor as defined in section 28-830 or by allowing,
19 encouraging, or forcing such minor child to engage in debauchery, public
20 indecency, or obscene or pornographic photography, films, or depictions;

21 (e) Placed in a situation to be sexually abused as defined in
22 section 28-319, 28-319.01, or 28-320.01; or

23 (f) Placed in a situation to be a trafficking victim as defined in
24 section 28-830.

25 (2) The statutory privilege between patient and physician, between
26 client and professional counselor, and between husband and wife shall not
27 be available for excluding or refusing testimony in any prosecution for a
28 violation of this section.

29 (3) Child abuse is a Class I misdemeanor if the offense is committed
30 negligently and does not result in serious bodily injury as defined in
31 section 28-109 or death.

1 (4) Child abuse is a Class IIIA felony if the offense is committed
2 knowingly and intentionally and does not result in serious bodily injury
3 as defined in section 28-109 or death.

4 (5) Child abuse is a Class IIIA felony if the offense is committed
5 negligently and results in serious bodily injury as defined in section
6 28-109.

7 (6) Child abuse is a Class IIA felony if the offense is committed
8 negligently and results in the death of such child.

9 (7) Child abuse is a Class II felony if the offense is committed
10 knowingly and intentionally and results in serious bodily injury as
11 defined in such section.

12 (8) Child abuse is a Class IB felony if the offense is committed
13 knowingly and intentionally and results in the death of such child.

14 (9) For purposes of this section, negligently refers to criminal
15 negligence and means that a person knew or should have known of the
16 danger involved and acted recklessly, as defined in section 28-109, with
17 respect to the safety or health of the minor child.

18 Sec. 3. Section 28-710, Revised Statutes Cumulative Supplement,
19 2022, is amended to read:

20 28-710 (1) Sections 28-710 to 28-727 shall be known and may be cited
21 as the Child Protection and Family Safety Act.

22 (2) For purposes of the Child Protection and Family Safety Act:

23 (a) Alternative response means a comprehensive assessment of (i)
24 child safety, (ii) the risk of future child abuse or neglect, (iii)
25 family strengths and needs, and (iv) the provision of or referral for
26 necessary services and support. Alternative response is an alternative to
27 traditional response and does not include an investigation or a formal
28 determination as to whether child abuse or neglect has occurred, and the
29 subject of the report shall not be entered into the central registry of
30 child protection cases maintained pursuant to section 28-718;

31 (b) Child abuse or neglect means, subject to section 4 of this act,

1 knowingly, intentionally, or negligently causing or permitting a minor
2 child to be:

3 (i) Placed in a situation that endangers the minor child's his or
4 her life or physical or mental health under circumstances such that the
5 danger is sufficiently obvious that no reasonable person would cause or
6 permit the minor child to be placed in such situation;

7 (ii) Cruelly confined or cruelly punished;

8 (iii) Deprived of necessary food, clothing, shelter, or care;

9 (iv) Left unattended in a motor vehicle if such minor child is six
10 years of age or younger in conditions likely to cause serious harm that
11 have not been mitigated by reasonable precautionary measures;

12 (v) Placed in a situation to be sexually abused;

13 (vi) Placed in a situation to be sexually exploited through sex
14 trafficking of a minor as defined in section 28-830 or by allowing,
15 encouraging, or forcing such person to engage in debauchery, public
16 indecency, or obscene or pornographic photography, films, or depictions;
17 or

18 (vii) Placed in a situation to be a trafficking victim as defined in
19 section 28-830;

20 (c) Child advocacy center means a community-based organization that
21 (i) provides an appropriate site for conducting forensic interviews as
22 defined in section 28-728 and referring victims of child abuse or neglect
23 and appropriate caregivers for such victims to needed evaluation,
24 services, and supports, (ii) assists county attorneys in facilitating
25 case reviews, developing and updating protocols, and arranging training
26 opportunities for the teams established pursuant to sections 28-728 and
27 28-729, and (iii) is a member, in good standing, of a state chapter as
28 defined in 34 U.S.C. 20302;

29 (d) Comprehensive assessment means an analysis of child safety, risk
30 of future child abuse or neglect, and family strengths and needs on a
31 report of child abuse or neglect using an evidence-informed and validated

1 tool. Comprehensive assessment does not include a finding as to whether
2 the child abuse or neglect occurred but does determine the need for
3 services and support, if any, to address the safety of children and the
4 risk of future abuse or neglect;

5 (e) Department means the Department of Health and Human Services;

6 (f) Investigation means fact gathering by the department, using an
7 evidence-informed and validated tool, or by law enforcement related to
8 the current safety of a child and the risk of future child abuse or
9 neglect that determines whether child abuse or neglect has occurred and
10 whether child protective services are needed;

11 (g) Kin caregiver means a person with whom a child in foster care
12 has been placed or with whom a child is residing pursuant to a temporary
13 living arrangement in a non-court-involved case, who has previously lived
14 with or is a trusted adult that has a preexisting, significant
15 relationship with the child or with a sibling of such child placed
16 pursuant to section 43-1311.02;

17 (h) Law enforcement agency means the police department or town
18 marshal in incorporated municipalities, the office of the sheriff in
19 unincorporated areas, and the Nebraska State Patrol;

20 (i) Non-court-involved case means an ongoing case opened by the
21 department following a report of child abuse or neglect in which the
22 department has determined that ongoing services are required to maintain
23 the safety of a child or alleviate the risk of future abuse or neglect
24 and in which the family voluntarily engages in child protective services
25 without a filing in a juvenile court;

26 (j) Out-of-home child abuse or neglect means child abuse or neglect
27 occurring outside of a child's family home, including in day care homes,
28 foster homes, day care centers, residential child-caring agencies as
29 defined in section 71-1926, other child care facilities or institutions,
30 and the community. Out-of-home child abuse or neglect also includes cases
31 in which the subject of the report of child abuse or neglect is not a

1 member of the child's household, no longer has access to the child, is
2 unknown, or cannot be identified;

3 (k) Relative caregiver means a person with whom a child is placed by
4 the department and who is related to the child, or to a sibling of such
5 child pursuant to section 43-1311.02, by blood, marriage, or adoption or,
6 in the case of an Indian child, is an extended family member as defined
7 in section 43-1503;

8 (l) Report means any communication received by the department or a
9 law enforcement agency pursuant to the Child Protection and Family Safety
10 Act that describes child abuse or neglect and contains sufficient content
11 to identify the child who is the alleged victim of child abuse or
12 neglect;

13 (m) Review, Evaluate, and Decide Team means an internal team of
14 staff within the department and shall include no fewer than two
15 supervisors or administrators and two staff members knowledgeable on the
16 policies and practices of the department, including, but not limited to,
17 the structured review process. County attorneys, child advocacy centers,
18 or law enforcement agency personnel may attend team reviews upon request
19 of a party;

20 (n) School employee means a person nineteen years of age or older
21 who is employed by a public, private, denominational, or parochial school
22 approved or accredited by the State Department of Education;

23 (o) Student means a person less than nineteen years of age enrolled
24 in or attending a public, private, denominational, or parochial school
25 approved or accredited by the State Department of Education, or who was
26 such a person enrolled in or who attended such a school within ninety
27 days of any violation of section 28-316.01;

28 (p) Traditional response means an investigation by a law enforcement
29 agency or the department pursuant to section 28-713 which requires a
30 formal determination of whether child abuse or neglect has occurred; and

31 (q) Subject of the report of child abuse or neglect or subject of

1 the report means the person or persons identified in the report as
2 responsible for the child abuse or neglect.

3 Sec. 4. (1) Permitting a minor child, who is of sufficient
4 maturity, physical condition, and mental abilities to avoid a substantial
5 risk of physical harm, to engage in independent activities, either alone
6 or with other children, shall not be considered child abuse under section
7 28-707 or child abuse or neglect under section 28-710.

8 (2) For purposes of this section, independent activities include,
9 but are not limited to:

10 (a) Traveling, including, but not limited to, by walking, running,
11 or bicycling, to and from school or nearby commercial or recreational
12 facilities;

13 (b) Playing outdoors;

14 (c) Remaining unattended in a motor vehicle, unless it is in
15 conditions likely to cause serious harm that have not been mitigated by
16 reasonable precautionary measures; or

17 (d) Remaining at home unattended for a reasonable amount of time,
18 provided the person has made provisions for any reasonably foreseeable
19 emergencies that may arise.

20 Sec. 5. Section 43-247, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 43-247 The juvenile court in each county shall have jurisdiction of:

23 (1) Any juvenile who has committed an act other than a traffic
24 offense which would constitute a misdemeanor or an infraction under the
25 laws of this state, or violation of a city or village ordinance, and who,
26 beginning July 1, 2017, was eleven years of age or older at the time the
27 act was committed;

28 (2) Any juvenile who has committed an act which would constitute a
29 felony under the laws of this state and who, beginning July 1, 2017, was
30 eleven years of age or older at the time the act was committed;

31 (3) Any juvenile:

1 (a) Subject to section 6 of this act:

2 (i) Who ~~who~~ is homeless or destitute, or without ~~proper~~ support
3 through no fault of his or her parent, guardian, or custodian;

4 (ii) Who ~~who~~ is abandoned by his or her parent, guardian, or
5 custodian;

6 ~~who lacks proper parental care by reason of the fault or habits of~~
7 ~~his or her parent, guardian, or custodian;~~

8 (iii) Whose ~~whose~~ parent, guardian, or custodian, through willful,
9 reckless, or grossly negligent conduct, neglects or refuses to provide
10 the minimum ~~proper or~~ necessary subsistence, education, or other care
11 necessary for the health, safety ~~morals~~, or well-being of such juvenile;

12 (iv) Whose ~~whose~~ parent, guardian, or custodian is unable to provide
13 or neglects or refuses to provide special care made necessary by the
14 mental condition of the juvenile;

15 (v) Who ~~who~~ is in a situation, including labor trafficking of a
16 minor or sex trafficking of a minor, as defined in section 28-830, which
17 is or engages in an occupation, including prostitution, dangerous to life
18 or limb or injurious to the health, safety, or well-being or morals of
19 such juvenile; or

20 (vi) Who ~~who~~, beginning July 1, 2017, has committed an act or
21 engaged in behavior described in subdivision (1), (2), (3)(b), or (4) of
22 this section and who was under eleven years of age at the time of such
23 act or behavior; ~~;~~

24 (b)(i) Who ~~who~~, until July 1, 2017, by reason of being wayward or
25 habitually disobedient, is uncontrolled by his or her parent, guardian,
26 or custodian; who departs himself or herself so as to injure or endanger
27 seriously the morals or health of himself, herself, or others; or who is
28 habitually truant from home or school; or

29 (ii) Who ~~who~~, beginning July 1, 2017, is eleven years of age or
30 older and, by reason of being wayward or habitually disobedient, is
31 uncontrolled by his or her parent, guardian, or custodian; who departs

1 himself or herself so as to injure or endanger seriously the ~~morals or~~
2 health, safety, or well-being of himself, herself, or others; or who is
3 habitually truant from home or school; ~~τ~~ or

4 (c) Who ~~who~~ is mentally ill and dangerous as defined in section
5 71-908;

6 (4) Any juvenile who has committed an act which would constitute a
7 traffic offense as defined in section 43-245 and who, beginning July 1,
8 2017, was eleven years of age or older at the time the act was committed;

9 (5) The parent, guardian, or custodian of any juvenile described in
10 this section;

11 (6) The proceedings for termination of parental rights;

12 (7) Any juvenile who has been voluntarily relinquished, pursuant to
13 section 43-106.01, to the Department of Health and Human Services or any
14 child placement agency licensed by the Department of Health and Human
15 Services;

16 (8) Any juvenile who was a ward of the juvenile court at the
17 inception of his or her guardianship and whose guardianship has been
18 disrupted or terminated;

19 (9) The adoption or guardianship proceedings for a child over which
20 the juvenile court already has jurisdiction under another provision of
21 the Nebraska Juvenile Code;

22 (10) The paternity or custody determination for a child over which
23 the juvenile court already has jurisdiction;

24 (11) The proceedings under the Young Adult Bridge to Independence
25 Act; and

26 (12) Except as provided in subdivision (11) of this section, any
27 individual adjudged to be within the provisions of this section until the
28 individual reaches the age of majority or the court otherwise discharges
29 the individual from its jurisdiction.

30 Notwithstanding the provisions of the Nebraska Juvenile Code, the
31 determination of jurisdiction over any Indian child as defined in section

1 43-1503 shall be subject to the Nebraska Indian Child Welfare Act; and
2 the district court shall have exclusive jurisdiction in proceedings
3 brought pursuant to section 71-510.

4 Sec. 6. (1) The fact that a person permits a juvenile, who is of
5 sufficient maturity, physical condition, and mental abilities to avoid a
6 substantial risk of physical harm, to engage in independent activities,
7 either alone or with other children, shall not be a basis for the
8 juvenile court to exercise jurisdiction under subdivision (3)(a) of
9 section 43-247 or to terminate parental rights under section 43-292.

10 (2) For purposes of this section, independent activities include,
11 but are not limited to:

12 (a) Traveling, including, but not limited to, by walking, running,
13 or bicycling, to and from school or nearby commercial or recreational
14 facilities;

15 (b) Playing outdoors;

16 (c) Remaining unattended in a motor vehicle, unless it is in
17 conditions likely to cause serious harm that have not been mitigated by
18 reasonable precautionary measures; or

19 (d) Remaining at home unattended for a reasonable amount of time,
20 provided the person has made provisions for any reasonably foreseeable
21 emergencies that may arise.

22 Sec. 7. Section 43-292, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 43-292 Subject to section 6 of this act, the ~~The~~ court may
25 terminate all parental rights between the parents or the mother of a
26 juvenile born out of wedlock and such juvenile when the court finds such
27 action to be in the best interests of the juvenile and it appears by the
28 evidence that one or more of the following conditions exist:

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

31 (2) The parents have substantially and continuously or repeatedly

1 neglected and refused to give the juvenile or a sibling of the juvenile
2 necessary parental care and protection;

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

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

13 (5) The parents are unable to discharge parental responsibilities
14 because of mental illness or mental deficiency and there are reasonable
15 grounds to believe that such condition will continue for a prolonged
16 indeterminate period;

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

22 (7) The juvenile has been in an out-of-home placement for fifteen or
23 more months of the most recent twenty-two months;

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

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

29 (10) The parent has (a) committed murder of another child of the
30 parent, (b) committed voluntary manslaughter of another child of the
31 parent, (c) aided or abetted, attempted, conspired, or solicited to

1 commit murder, or aided or abetted voluntary manslaughter of the juvenile
2 or another child of the parent, or (d) committed a felony assault that
3 resulted in serious bodily injury to the juvenile or another minor child
4 of the parent; or

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

8 Sec. 8. Section 43-2,129, Revised Statutes Cumulative Supplement,
9 2022, is amended to read:

10 43-2,129 Sections 43-245 to 43-2,129 and section 6 of this act shall
11 be known and may be cited as the Nebraska Juvenile Code.

12 Sec. 9. Original sections 43-247 and 43-292, Reissue Revised
13 Statutes of Nebraska, and sections 28-101, 28-707, 28-710, and 43-2,129,
14 Revised Statutes Cumulative Supplement, 2022, are repealed.