

LEGISLATIVE BILL 972

Approved by the Governor April 10, 2012

Introduced by Ashford, 20; Hadley, 37; at the request of the Governor.

FOR AN ACT relating to the youth rehabilitation and treatment centers; to amend sections 43-251.01, 43-401, and 43-405, Reissue Revised Statutes of Nebraska, section 43-276, Revised Statutes Cumulative Supplement, 2010, and section 43-286, Revised Statutes Supplement, 2011; to change the age for placement or commitment of juveniles to the youth rehabilitation and treatment centers; to provide for consideration of such commitments by county attorneys making determinations; to change reporting requirements for the Office of Juvenile Services; to provide for documentation of certain assaults, escapes, and attempts to escape; to require collaboration on training, safety, and security; to harmonize provisions; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 43-251.01, Reissue Revised Statutes of Nebraska, is amended to read:

43-251.01 All placements and commitments of juveniles for evaluations or as temporary or final dispositions are subject to the following:

(1) No juvenile shall be confined in an adult correctional facility as a disposition of the court;

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

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

(4) A juvenile under the age of ~~twelve~~ fourteen years shall not be placed with or committed to a youth rehabilitation and treatment center except as provided in section 43-286.

Sec. 2. Section 43-276, Revised Statutes Cumulative Supplement, 2010, is amended to read:

43-276 In cases coming within subdivision (1) of section 43-247, when there is concurrent jurisdiction, or subdivision (2) or (4) of section 43-247, when the juvenile is under the age of sixteen years, the county attorney shall, in making the determination whether to file a criminal charge, file a juvenile court petition, offer juvenile pretrial diversion, or offer mediation, consider: (1) The type of treatment such juvenile would most likely be amenable to; (2) whether there is evidence that the alleged offense included violence or was committed in an aggressive and premeditated manner; (3) the motivation for the commission of the offense; (4) the age of the juvenile and the ages and circumstances of any others involved in the offense; (5) the previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court, and, if so, whether such offenses were crimes against the person or relating to property, and other previous history of antisocial behavior, if any, including any patterns of physical violence; (6) the sophistication and maturity of the juvenile as determined by consideration of his or her home, school activities, emotional attitude and desire to be treated as an adult, pattern of living, and whether he or she has had previous contact with law enforcement agencies and courts and the nature thereof; (7) whether there are facilities particularly available to the juvenile court for treatment and rehabilitation of the juvenile; (8) whether the best interests of the juvenile and the security of the public may require that the juvenile continue in secure detention or under supervision for a period extending beyond his or her minority and, if so, the available alternatives best suited to this purpose; (9) whether the victim agrees to participate in mediation; (10) whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07; (11) whether the juvenile has been convicted of or has acknowledged unauthorized use or possession of a firearm; (12) whether a juvenile court order has been issued for the juvenile pursuant to section 43-2,106.03; (13) whether the juvenile is a criminal street gang member; (14)

whether the juvenile has been previously committed to a youth rehabilitation and treatment center; and ~~(14)~~ (15) such other matters as the county attorney deems relevant to his or her decision.

Sec. 3. Section 43-286, Revised Statutes Supplement, 2011, is amended to read:

43-286 (1) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), or (4) of section 43-247:

(a) The court may continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged or an order requiring the juvenile to participate in community service programs, if such order is in the interest of the juvenile's reformation or rehabilitation, and, subject to the further order of the court, may:

(i) Place the juvenile on probation subject to the supervision of a probation officer;

(ii) Permit the juvenile to remain in his or her own home or be placed in a suitable family home, subject to the supervision of the probation officer; or

(iii) Cause the juvenile to be placed in a suitable family home or institution, subject to the supervision of the probation officer. If the court has committed the juvenile to the care and custody of the Department of Health and Human Services, the department shall pay the costs of the suitable family home or institution which are not otherwise paid by the juvenile's parents.

Under subdivision (1)(a) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until a suitable provision may be made for the juvenile without such payment; or

(b) The court may commit such juvenile to the Office of Juvenile Services, but a juvenile under the age of ~~twelve~~ fourteen years shall not be placed at the Youth Rehabilitation and Treatment Center-Geneva or the Youth Rehabilitation and Treatment Center-Kearney unless he or she has violated the terms of probation or has committed an additional offense and the court finds that the interests of the juvenile and the welfare of the community demand his or her commitment. This minimum age provision shall not apply if the act in question is murder or manslaughter.

(2) When any juvenile is found by the court to be a juvenile described in subdivision (3)(b) of section 43-247, the court may enter such order as it is empowered to enter under subdivision (1)(a) of this section or enter an order committing or placing the juvenile to the care and custody of the Department of Health and Human Services.

(3) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 because of a nonviolent act or acts and the juvenile has not previously been adjudicated to be such a juvenile because of a violent act or acts, the court may, with the agreement of the victim, order the juvenile to attend juvenile offender and victim mediation with a mediator or at an approved center selected from the roster made available pursuant to section 25-2908.

(4) When a juvenile is placed on probation and a probation officer has reasonable cause to believe that such juvenile has committed or is about to commit a substance abuse violation, a noncriminal violation, or a violation of a condition of his or her probation, the probation officer shall take appropriate measures as provided in section 43-286.01.

(5)(a) When a juvenile is placed on probation or under the supervision of the court and it is alleged that the juvenile is again a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, a petition may be filed and the same procedure followed and rights given at a hearing on the original petition. If an adjudication is made that the allegations of the petition are true, the court may make any disposition authorized by this section for such adjudications.

(b) When a juvenile is placed on probation or under the supervision of the court for conduct under subdivision (1), (2), (3)(b), or (4) of section 43-247 and it is alleged that the juvenile has violated a term of probation or supervision or that the juvenile has violated an order of the court, a motion to revoke probation or supervision or to change the disposition may be filed and proceedings held as follows:

(i) The motion shall set forth specific factual allegations of the alleged violations and a copy of such motion shall be served on all persons required to be served by sections 43-262 to 43-267;

(ii) The juvenile shall be entitled to a hearing before the court

to determine the validity of the allegations. At such hearing the juvenile shall be entitled to those rights relating to counsel provided by section 43-272 and those rights relating to detention provided by sections 43-254 to 43-256. The juvenile shall also be entitled to speak and present documents, witnesses, or other evidence on his or her own behalf. He or she may confront persons who have given adverse information concerning the alleged violations, may cross-examine such persons, and may show that he or she did not violate the conditions of his or her probation or supervision or an order of the court or, if he or she did, that mitigating circumstances suggest that the violation does not warrant revocation of probation or supervision or a change of disposition. The hearing shall be held within a reasonable time after the juvenile is taken into custody;

(iii) The hearing shall be conducted in an informal manner and shall be flexible enough to consider evidence, including letters, affidavits, and other material, that would not be admissible in an adversarial criminal trial;

(iv) The juvenile shall be given a preliminary hearing in all cases when the juvenile is confined, detained, or otherwise significantly deprived of his or her liberty as a result of his or her alleged violation of probation, supervision, or court order. Such preliminary hearing shall be held before an impartial person other than his or her probation officer or any person directly involved with the case. If, as a result of such preliminary hearing, probable cause is found to exist, the juvenile shall be entitled to a hearing before the court in accordance with this subsection;

(v) If the juvenile is found by the court to have violated the terms of his or her probation or supervision or an order of the court, the court may modify the terms and conditions of the probation, supervision, or other court order, extend the period of probation, supervision, or other court order, or enter any order of disposition that could have been made at the time the original order was entered; and

(vi) In cases when the court revokes probation, supervision, or other court order, it shall enter a written statement as to the evidence relied on and the reasons for revocation.

Sec. 4. Section 43-401, Reissue Revised Statutes of Nebraska, is amended to read:

43-401 Sections 43-401 to 43-423 and section 6 of this act shall be known and may be cited as the Health and Human Services, Office of Juvenile Services Act.

Sec. 5. Section 43-405, Reissue Revised Statutes of Nebraska, is amended to read:

43-405 The administrative duties of the Office of Juvenile Services are to:

(1) Manage, establish policies for, and administer the office, including all facilities and programs operated by the office or provided through the office by contract with a provider;

(2) Supervise employees of the office, including employees of the facilities and programs operated by the office;

(3) Have separate budgeting procedures and develop and report budget information separately from the Department of Health and Human Services;

(4) Adopt and promulgate rules and regulations for the levels of treatment and for management, control, screening, evaluation, treatment, rehabilitation, parole, transfer, and discharge of juveniles placed with or committed to the Office of Juvenile Services;

(5) Ensure that statistical information concerning juveniles placed with or committed to facilities or programs of the office is collected, developed, and maintained for purposes of research and the development of treatment programs;

(6) Monitor commitments, placements, and evaluations at facilities and programs operated by the office or through contracts with providers and report its findings annually to the Legislature. The report shall include an assessment of the administrative costs of operating the facilities, the cost of programming, and the savings realized through reductions in commitments, placements, and evaluations, and information regarding the collaboration required by section 7 of this act;

(7) Coordinate the programs and services of the juvenile justice system with other governmental agencies and political subdivisions;

(8) Coordinate educational, vocational, and social counseling;

(9) Coordinate community-based services for juveniles and their families;

(10) Supervise and coordinate juvenile parole and aftercare services; and

(11) Exercise all powers and perform all duties necessary to carry out its responsibilities under the Health and Human Services, Office of

Juvenile Services Act.

Sec. 6. If a juvenile assaults an employee of a youth rehabilitation and treatment center or another juvenile who has been committed to the youth rehabilitation and treatment center or escapes or attempts to escape from a youth rehabilitation and treatment center, the chief executive officer of the youth rehabilitation and treatment center shall document the assault, escape, or attempt to escape and send a copy of such documentation to the committing court and the county attorney of the county in which the committing court is located as soon as possible after the determination that such assault, escape, or attempt to escape has occurred. Such documentation may be offered as evidence presented at any hearing conducted pursuant to section 43-2,106.03.

Sec. 7. The Office of Juvenile Services shall collaborate with the Department of Correctional Services regarding the training of all employees and the safety and security of the youth rehabilitation and treatment centers. The office shall include information regarding such collaboration in the annual report required by subdivision (6) of section 43-405.

Sec. 8. The Revisor of Statutes shall assign section 7 of this act to Chapter 83, article 1.

Sec. 9. Original sections 43-251.01, 43-401, and 43-405, Reissue Revised Statutes of Nebraska, section 43-276, Revised Statutes Cumulative Supplement, 2010, and section 43-286, Revised Statutes Supplement, 2011, are repealed.