

AMENDMENTS TO LB 463

(Amendments to Standing Committee amendments, AM754)

Introduced by Ashford

1 1. Strike sections 1 to 19 and insert the following new
2 sections:

3 Section 1. Section 28-416, Revised Statutes Cumulative
4 Supplement, 2010, is amended to read:

5 28-416 (1) Except as authorized by the Uniform Controlled
6 Substances Act, it shall be unlawful for any person knowingly or
7 intentionally: (a) To manufacture, distribute, deliver, dispense,
8 or possess with intent to manufacture, distribute, deliver, or
9 dispense a controlled substance; or (b) to create, distribute,
10 or possess with intent to distribute a counterfeit controlled
11 substance.

12 (2) Except as provided in subsections (4), (5), (7), (8),
13 (9), and (10) of this section, any person who violates subsection
14 (1) of this section with respect to: (a) A controlled substance
15 classified in Schedule I, II, or III of section 28-405 which is an
16 exceptionally hazardous drug shall be guilty of a Class II felony;
17 (b) any other controlled substance classified in Schedule I, II, or
18 III of section 28-405 shall be guilty of a Class III felony; or (c)
19 a controlled substance classified in Schedule IV or V of section
20 28-405 shall be guilty of a Class IIIA felony.

21 (3) A person knowingly or intentionally possessing a
22 controlled substance, except marijuana, unless such substance was

1 obtained directly or pursuant to a medical order issued by a
2 practitioner authorized to prescribe while acting in the course of
3 his or her professional practice, or except as otherwise authorized
4 by the act, shall be guilty of a Class IV felony.

5 (4) (a) Except as authorized by the Uniform Controlled
6 Substances Act, any person eighteen years of age or older who
7 knowingly or intentionally manufactures, distributes, delivers,
8 dispenses, or possesses with intent to manufacture, distribute,
9 deliver, or dispense a controlled substance or a counterfeit
10 controlled substance (i) to a person under the age of eighteen
11 years, (ii) in, on, or within one thousand feet of the real
12 property comprising a public or private elementary, vocational, or
13 secondary school, a community college, a public or private college,
14 junior college, or university, or a playground, or (iii) within one
15 hundred feet of a public or private youth center, public swimming
16 pool, or video arcade facility shall be punished by the next higher
17 penalty classification than the penalty prescribed in subsection
18 (2), (7), (8), (9), or (10) of this section, depending upon the
19 controlled substance involved, for the first violation and for a
20 second or subsequent violation shall be punished by the next higher
21 penalty classification than that prescribed for a first violation
22 of this subsection, but in no event shall such person be punished
23 by a penalty greater than a Class IB felony.

24 (b) For purposes of this subsection:

25 (i) Playground shall mean any outdoor facility, including
26 any parking lot appurtenant to the facility, intended for
27 recreation, open to the public, and with any portion containing

1 three or more apparatus intended for the recreation of children,
2 including sliding boards, swingsets, and teeterboards;

3 (ii) Video arcade facility shall mean any facility
4 legally accessible to persons under eighteen years of age, intended
5 primarily for the use of pinball and video machines for amusement,
6 and containing a minimum of ten pinball or video machines; and

7 (iii) Youth center shall mean any recreational facility
8 or gymnasium, including any parking lot appurtenant to the facility
9 or gymnasium, intended primarily for use by persons under eighteen
10 years of age which regularly provides athletic, civic, or cultural
11 activities.

12 (5) (a) Except as authorized by the Uniform Controlled
13 Substances Act, it shall be unlawful for any person eighteen
14 years of age or older to knowingly and intentionally employ, hire,
15 use, cause, persuade, coax, induce, entice, seduce, or coerce any
16 person under the age of eighteen years to manufacture, transport,
17 distribute, carry, deliver, dispense, prepare for delivery, offer
18 for delivery, or possess with intent to do the same a controlled
19 substance or a counterfeit controlled substance.

20 (b) Except as authorized by the Uniform Controlled
21 Substances Act, it shall be unlawful for any person eighteen years
22 of age or older to knowingly and intentionally employ, hire, use,
23 cause, persuade, coax, induce, entice, seduce, or coerce any person
24 under the age of eighteen years to aid and abet any person in
25 the manufacture, transportation, distribution, carrying, delivery,
26 dispensing, preparation for delivery, offering for delivery, or
27 possession with intent to do the same of a controlled substance or

1 a counterfeit controlled substance.

2 (c) Any person who violates subdivision (a) or (b) of
3 this subsection shall be punished by the next higher penalty
4 classification than the penalty prescribed in subsection (2), (7),
5 (8), (9), or (10) of this section, depending upon the controlled
6 substance involved, for the first violation and for a second or
7 subsequent violation shall be punished by the next higher penalty
8 classification than that prescribed for a first violation of this
9 subsection, but in no event shall such person be punished by a
10 penalty greater than a Class IB felony.

11 (6) It shall not be a defense to prosecution for
12 violation of subsection (4) or (5) of this section that the
13 defendant did not know the age of the person through whom the
14 defendant violated such subsection.

15 (7) Any person who violates subsection (1) of this
16 section with respect to cocaine or any mixture or substance
17 containing a detectable amount of cocaine in a quantity of:

18 (a) One hundred forty grams or more shall be guilty of a
19 Class IB felony;

20 (b) At least twenty-eight grams but less than one hundred
21 forty grams shall be guilty of a Class IC felony; or

22 (c) At least ten grams but less than twenty-eight grams
23 shall be guilty of a Class ID felony.

24 (8) Any person who violates subsection (1) of this
25 section with respect to base cocaine (crack) or any mixture or
26 substance containing a detectable amount of base cocaine in a
27 quantity of:

1 (a) One hundred forty grams or more shall be guilty of a
2 Class IB felony;

3 (b) At least twenty-eight grams but less than one hundred
4 forty grams shall be guilty of a Class IC felony; or

5 (c) At least ten grams but less than twenty-eight grams
6 shall be guilty of a Class ID felony.

7 (9) Any person who violates subsection (1) of this
8 section with respect to heroin or any mixture or substance
9 containing a detectable amount of heroin in a quantity of:

10 (a) One hundred forty grams or more shall be guilty of a
11 Class IB felony;

12 (b) At least twenty-eight grams but less than one hundred
13 forty grams shall be guilty of a Class IC felony; or

14 (c) At least ten grams but less than twenty-eight grams
15 shall be guilty of a Class ID felony.

16 (10) Any person who violates subsection (1) of this
17 section with respect to amphetamine, its salts, optical isomers,
18 and salts of its isomers, or with respect to methamphetamine, its
19 salts, optical isomers, and salts of its isomers, in a quantity of:

20 (a) One hundred forty grams or more shall be guilty of a
21 Class IB felony;

22 (b) At least twenty-eight grams but less than one hundred
23 forty grams shall be guilty of a Class IC felony; or

24 (c) At least ten grams but less than twenty-eight grams
25 shall be guilty of a Class ID felony.

26 (11) Any person knowingly or intentionally possessing
27 marijuana weighing more than one ounce but not more than one pound

1 shall be guilty of a Class III misdemeanor.

2 (12) Any person knowingly or intentionally possessing
3 marijuana weighing more than one pound shall be guilty of a Class
4 IV felony.

5 (13) Any person knowingly or intentionally possessing
6 marijuana weighing one ounce or less shall:

7 (a) For the first offense, be guilty of an infraction,
8 receive a citation, be fined three hundred dollars, and be assigned
9 to attend a course as prescribed in section 29-433 if the judge
10 determines that attending such course is in the best interest of
11 the individual defendant;

12 (b) For the second offense, be guilty of a Class IV
13 misdemeanor, receive a citation, and be fined four hundred dollars
14 and may be imprisoned not to exceed five days; and

15 (c) For the third and all subsequent offenses, be guilty
16 of a Class IIIA misdemeanor, receive a citation, be fined five
17 hundred dollars, and be imprisoned not to exceed seven days.

18 (14) Any person convicted of violating this section,
19 if placed on probation, shall, as a condition of probation,
20 satisfactorily attend and complete appropriate treatment and
21 counseling on drug abuse provided by a program authorized under
22 the Nebraska Behavioral Health Services Act or other licensed drug
23 treatment facility.

24 (15) Any person convicted of violating this section, if
25 sentenced to the Department of Correctional Services, shall attend
26 appropriate treatment and counseling on drug abuse.

27 (16) Any person knowingly or intentionally possessing a

1 firearm while in violation of subsection (1) of this section shall
2 be punished by the next higher penalty classification than the
3 penalty prescribed in subsection (2), (7), (8), (9), or (10) of
4 this section, but in no event shall such person be punished by a
5 penalty greater than a Class IB felony.

6 (17) A person knowingly or intentionally in possession
7 of money used or intended to be used to facilitate a violation
8 of subsection (1) of this section shall be guilty of a Class IV
9 felony.

10 (18) In addition to the penalties provided in this
11 section:

12 (a) If the person convicted or adjudicated of violating
13 this section is eighteen years of age or younger and has one or
14 more licenses or permits issued under the Motor Vehicle Operator's
15 License Act:

16 (i) For the first offense, the court may, as a part of
17 the judgment of conviction or adjudication, (A) impound any such
18 licenses or permits for thirty days and (B) require such person to
19 attend a drug education class;

20 (ii) For a second offense, the court may, as a part of
21 the judgment of conviction or adjudication, (A) impound any such
22 licenses or permits for ninety days and (B) require such person
23 to complete no fewer than twenty and no more than forty hours of
24 community service and to attend a drug education class; and

25 (iii) For a third or subsequent offense, the court may,
26 as a part of the judgment of conviction or adjudication, (A)
27 impound any such licenses or permits for twelve months and (B)

1 require such person to complete no fewer than sixty hours of
2 community service, to attend a drug education class, and to submit
3 to a drug assessment by a licensed alcohol and drug counselor; and

4 (b) If the person convicted or adjudicated of violating
5 this section is eighteen years of age or younger and does not
6 have a permit or license issued under the Motor Vehicle Operator's
7 License Act:

8 (i) For the first offense, the court may, as part of the
9 judgment of conviction or adjudication, (A) prohibit such person
10 from obtaining any permit or any license pursuant to the act for
11 which such person would otherwise be eligible until thirty days
12 after the date of such order and (B) require such person to attend
13 a drug education class;

14 (ii) For a second offense, the court may, as part of the
15 judgment of conviction or adjudication, (A) prohibit such person
16 from obtaining any permit or any license pursuant to the act for
17 which such person would otherwise be eligible until ninety days
18 after the date of such order and (B) require such person to
19 complete no fewer than twenty hours and no more than forty hours of
20 community service and to attend a drug education class; and

21 (iii) For a third or subsequent offense, the court may,
22 as part of the judgment of conviction or adjudication, (A) prohibit
23 such person from obtaining any permit or any license pursuant
24 to the act for which such person would otherwise be eligible
25 until twelve months after the date of such order and (B) require
26 such person to complete no fewer than sixty hours of community
27 service, to attend a drug education class, and to submit to a drug

1 assessment by a licensed alcohol and drug counselor.

2 A copy of an abstract of the court's conviction or
3 adjudication shall be transmitted to the Director of Motor Vehicles
4 pursuant to sections 60-497.01 to 60-497.04 if a license or permit
5 is impounded or a juvenile is prohibited from obtaining a license
6 or permit under this subsection.

7 Sec. 2. Section 29-2258, Revised Statutes Cumulative
8 Supplement, 2010, is amended to read:

9 29-2258 A district probation officer shall:

10 (1) Conduct juvenile intake interviews and investigations
11 in accordance with ~~section 43-253 utilizing a standardized juvenile~~
12 ~~detention screening instrument described in section~~ sections 43-253
13 and 43-260.01;

14 (2) Make presentence and other investigations, as may be
15 required by law or directed by a court in which he or she is
16 serving;

17 (3) Supervise probationers in accordance with the rules
18 and regulations of the office and the directions of the sentencing
19 court;

20 (4) Advise the sentencing court, in accordance with
21 the Nebraska Probation Administration Act and such rules and
22 regulations of the office, of violations of the conditions of
23 probation by individual probationers;

24 (5) Advise the sentencing court, in accordance with the
25 rules and regulations of the office and the direction of the court,
26 when the situation of a probationer may require a modification of
27 the conditions of probation or when a probationer's adjustment is

1 such as to warrant termination of probation;

2 (6) Provide each probationer with a statement of the
3 period and conditions of his or her probation;

4 (7) Whenever necessary, exercise the power of arrest or
5 temporary custody as provided in section ~~29-2262.08~~ ~~or~~ 29-2266 or
6 section 5 of this act;

7 (8) Establish procedures for the direction and guidance
8 of deputy probation officers under his or her jurisdiction and
9 advise such officers in regard to the most effective performance of
10 their duties;

11 (9) Supervise and evaluate deputy probation officers
12 under his or her jurisdiction;

13 (10) Delegate such duties and responsibilities to a
14 deputy probation officer as he or she deems appropriate;

15 (11) Make such reports as required by the administrator,
16 the judges of the probation district in which he or she serves, or
17 the Supreme Court;

18 (12) Keep accurate and complete accounts of all money or
19 property collected or received from probationers and give receipts
20 therefor;

21 (13) Cooperate fully with and render all reasonable
22 assistance to other probation officers;

23 (14) In counties with a population of less than
24 twenty-five thousand people, participate in pretrial diversion
25 programs established pursuant to sections 29-3601 to 29-3604
26 and juvenile pretrial diversion programs established pursuant
27 to sections 43-260.02 to 43-260.07 as requested by judges of

1 the probation district in which he or she serves, except that
2 participation in such programs shall not require appointment of
3 additional personnel and shall be consistent with the probation
4 officer's current caseload;

5 (15) Participate, at the direction of the probation
6 administrator pursuant to an interlocal agreement which meets the
7 requirements of section 29-2255, in non-probation-based programs
8 and services;

9 (16) Perform such other duties not inconsistent with the
10 Nebraska Probation Administration Act or the rules and regulations
11 of the office as a court may from time to time direct; and

12 (17) Exercise all powers and perform all duties necessary
13 and proper to carry out his or her responsibilities.

14 Sec. 3. Section 29-3921, Revised Statutes Cumulative
15 Supplement, 2010, is amended to read:

16 29-3921 (1) The Commission on Public Advocacy Operations
17 Cash Fund is created. The fund shall be used for the operations
18 of the commission, except that transfers may be made from the fund
19 to the General Fund at the direction of the Legislature through
20 June 30, 2011. The Commission on Public Advocacy Operations Cash
21 Fund shall consist of money remitted pursuant to section 33-156.
22 It is the intent of the Legislature that the commission shall
23 be funded solely from the fund. Any money in the fund available
24 for investment shall be invested by the state investment officer
25 pursuant to the Nebraska Capital Expansion Act and the Nebraska
26 State Funds Investment Act.

27 (2) On July 1, 2011, or as soon thereafter as

1 administratively possible, the State Treasurer shall transfer
2 one hundred thousand dollars from the Commission on Public
3 Advocacy Operations Cash Fund to the Supreme Court Education
4 Fund. The State Court Administrator shall use these funds to
5 assist the juvenile justice system in providing prefiling and
6 diversion programming designed to reduce excessive absenteeism and
7 unnecessary involvement with the juvenile justice system.

8 (3) The State Treasurer shall transfer the following
9 amounts from the Commission on Public Advocacy Operations Cash Fund
10 to the Court Appointed Special Advocate Fund:

11 (a) On July 1, 2011, or as soon thereafter as
12 administratively possible, one hundred thousand dollars; and

13 (b) On July 1, 2012, or as soon thereafter as
14 administratively possible, two hundred thousand dollars.

15 ~~The State Treasurer shall transfer two hundred fifty~~
16 ~~thousand dollars from the Commission on Public Advocacy Operations~~
17 ~~Cash Fund to the University Cash Fund within fifteen days after~~
18 ~~May 1, 2008. Such funds shall be used for a study of the~~
19 ~~juvenile legal defense and guardian ad litem systems utilizing~~
20 ~~the University of Nebraska Public Policy Center to create,~~
21 ~~administer, and review a Request for Proposals to select from~~
22 ~~a national search a research consultant that is qualified to~~
23 ~~provide a methodologically sound and objective assessment of~~
24 ~~Nebraska's juvenile justice system. The assessment shall include:~~
25 ~~(1) Gathering of general data and information about the structure~~
26 ~~and funding mechanisms for juvenile legal defense and guardian ad~~
27 ~~litem representation; (2) a review of caseloads; (3) examining~~

1 issues related to the timing of appointment of counsel and
2 guardians ad litem; (4) supervision of attorneys; (5) charging
3 and trying juveniles as adults; (6) frequency with which juveniles
4 waive their right to counsel and under what conditions they do
5 so; (7) allocation of resources; (8) adequacy of juvenile court
6 facilities; (9) compensation of attorneys; (10) supervising and
7 training of attorneys; (11) access to investigators, experts,
8 social workers, and support staff; (12) access to educational
9 officers, teachers, educational staff, and truancy officers; (13)
10 the relationship between a guardian ad litem, a juvenile's legal
11 counsel, and the judicial system with identified educational
12 staff regarding a juvenile's educational status; (14) examining
13 issues related to truancy and the relationship between the school
14 districts and the juvenile court system; (15) recidivism; (16) time
15 to permanency and time in court, especially when a guardian ad
16 litem is appointed; and (17) coordination of representation for
17 those juveniles that may have been appointed an attorney in a
18 juvenile delinquency matter and a guardian ad litem because of
19 abuse or neglect. The assessment shall also highlight promising
20 approaches and innovative practices within the state and offer
21 recommendations to improve weak areas.

22 Sec. 4. Section 43-286, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 43-286 (1) When any juvenile is adjudicated to be a
25 juvenile described in subdivision (1), (2), or (4) of section
26 43-247:

27 (a) The court may continue the dispositional portion of

1 the hearing, from time to time upon such terms and conditions as
2 the court may prescribe, including an order of restitution of any
3 property stolen or damaged or an order requiring the juvenile to
4 participate in community service programs, if such order is in
5 the interest of the juvenile's reformation or rehabilitation, and,
6 subject to the further order of the court, may:

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

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

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

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

26 (b) The court may commit such juvenile to the Office
27 of Juvenile Services, but a juvenile under the age of twelve

1 years shall not be placed at the Youth Rehabilitation and
2 Treatment Center-Geneva or the Youth Rehabilitation and Treatment
3 Center-Kearney unless he or she has violated the terms of probation
4 or has committed an additional offense and the court finds that the
5 interests of the juvenile and the welfare of the community demand
6 his or her commitment. This minimum age provision shall not apply
7 if the act in question is murder or manslaughter.

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

14 (3) ~~Beginning July 15, 1998, when~~ When any juvenile is
15 adjudicated to be a juvenile described in subdivision (1), (2),
16 (3)(b), or (4) of section 43-247 because of a nonviolent act or
17 acts and the juvenile has not previously been adjudicated to be
18 such a juvenile because of a violent act or acts, the court may,
19 with the agreement of the victim, order the juvenile to attend
20 juvenile offender and victim mediation with a mediator or at an
21 approved center selected from the roster made available pursuant to
22 section 25-2908.

23 (4) When a juvenile is placed on probation and a
24 probation officer has reasonable cause to believe that such
25 juvenile has committed or is about to commit a substance abuse
26 violation, a noncriminal violation, or a violation of a condition
27 of his or her probation, the probation officer shall take

1 appropriate measures as provided in section 5 of this act.

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

10 (b) When a juvenile is placed on probation or under
11 the supervision of the court for conduct under subdivision (1),
12 (2), (3)(b), or (4) of section 43-247 and it is alleged that the
13 juvenile has violated a term of probation or supervision or that
14 the juvenile has violated an order of the court, a motion to revoke
15 probation or supervision or to change the disposition may be filed
16 and proceedings held as follows:

17 (i) The motion shall set forth specific factual
18 allegations of the alleged violations and a copy of such motion
19 shall be served on all persons required to be served by sections
20 43-262 to 43-267;

21 (ii) The juvenile shall be entitled to a hearing before
22 the court to determine the validity of the allegations. At such
23 hearing the juvenile shall be entitled to those rights relating
24 to counsel provided by section 43-272 and those rights relating
25 to detention provided by sections 43-254 to 43-256. The juvenile
26 shall also be entitled to speak and present documents, witnesses,
27 or other evidence on his or her own behalf. He or she may

1 confront persons who have given adverse information concerning the
2 alleged violations, may cross-examine such persons, and may show
3 that he or she did not violate the conditions of his or her
4 probation or supervision or an order of the court or, if he or
5 she did, that mitigating circumstances suggest that the violation
6 does not warrant revocation of probation or supervision or a change
7 of disposition. The ~~revocation~~ hearing shall be held within a
8 reasonable time after the juvenile is taken into custody;

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

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

23 (v) If the juvenile is found by the court to have
24 violated the terms of his or her probation or supervision or an
25 order of the court, the court may modify the terms and conditions
26 of the probation, supervision, or other court order, extend the
27 period of probation, supervision, or other court order, or enter

1 any order of disposition that could have been made at the time the
2 original order ~~of probation~~ was entered; and

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

7 Sec. 5. Section 29-2262.08, Revised Statutes Cumulative
8 Supplement, 2010, is amended to read:

9 ~~29-2262.08~~ (1) For purposes of this section:

10 (a) Administrative sanction means additional probation
11 requirements imposed upon a juvenile subject to the supervision
12 of a probation officer by his or her probation officer, with the
13 full knowledge and consent of such juvenile and such juvenile's
14 parents or guardian, designed to hold such juvenile accountable
15 for substance abuse or noncriminal violations of conditions of
16 probation, including, but not limited to:

17 (i) Counseling or reprimand by his or her probation
18 officer;

19 (ii) Increased supervision contact requirements;

20 (iii) Increased substance abuse testing;

21 (iv) Referral for substance abuse or mental health
22 evaluation or other specialized assessment, counseling, or
23 treatment;

24 (v) Modification of a designated curfew for a period not
25 to exceed thirty days;

26 (vi) Community service for a specified number of hours
27 pursuant to sections 29-2277 to 29-2279;

1 (vii) Travel restrictions to stay within his or her
2 residence or county of residence or employment unless otherwise
3 permitted by the supervising probation officer;

4 (viii) Restructuring court-imposed financial obligations
5 to mitigate their effect on the juvenile subject to the supervision
6 of a probation officer; and

7 (ix) Implementation of educational or cognitive
8 behavioral programming;

9 (b) Noncriminal violation means activities or behaviors
10 of a juvenile subject to the supervision of a probation officer
11 which create the opportunity for re-offending or which diminish the
12 effectiveness of probation supervision resulting in a violation of
13 an original condition of probation, including, but not limited to:

14 (i) Moving traffic violations;

15 (ii) Failure to report to his or her probation officer;

16 (iii) Leaving the juvenile's residence, jurisdiction of
17 the court, or the state without the permission of the court or his
18 or her probation officer;

19 (iv) Failure to regularly attend school, vocational
20 training, other training, counseling, treatment, programming, or
21 employment;

22 (v) Noncompliance with school rules;

23 (vi) Continued violations of home rules;

24 (vii) Failure to notify his or her probation officer of
25 change of address, school, or employment;

26 (viii) Frequenting places where controlled substances are
27 illegally sold, used, distributed, or administered and association

1 with persons engaged in illegal activity;

2 (ix) Failure to perform community service as directed;

3 and

4 (x) Curfew or electronic monitoring violations; and

5 (c) Substance abuse violation means activities or
6 behaviors of a juvenile subject to the supervision of a probation
7 officer associated with the use of chemical substances or related
8 treatment services resulting in a violation of an original
9 condition of probation, including, but not limited to:

10 (i) Positive breath test for the consumption of alcohol;

11 (ii) Positive urinalysis for the illegal use of drugs;

12 (iii) Failure to report for alcohol testing or drug
13 testing;

14 (iv) Failure to appear for or complete substance abuse
15 or mental health treatment evaluations or inpatient or outpatient
16 treatment; and

17 (v) Tampering with alcohol or drug testing.

18 (2) Whenever a probation officer has reasonable cause to
19 believe that a juvenile subject to the supervision of a probation
20 officer has committed or is about to commit a substance abuse
21 violation or noncriminal violation while on probation, but that
22 such juvenile will not attempt to leave the jurisdiction and will
23 not place lives or property in danger, the probation officer shall
24 either:

25 (a) Impose one or more administrative sanctions with the
26 approval of his or her chief probation officer or such chief's
27 designee. The decision to impose administrative sanctions in lieu

1 of formal revocation proceedings rests with the probation officer
2 and his or her chief probation officer or such chief's designee
3 and shall be based upon such juvenile's risk level, the severity
4 of the violation, and the juvenile's response to the violation.
5 If administrative sanctions are to be imposed, such juvenile shall
6 acknowledge in writing the nature of the violation and agree
7 upon the administrative sanction with approval of such juvenile's
8 parents or guardian. Such juvenile has the right to decline to
9 acknowledge the violation, and if he or she declines to acknowledge
10 the violation, the probation officer shall submit a written report
11 pursuant to subdivision (2)(b) of this section. A copy of the
12 report shall be submitted to the county attorney of the county
13 where probation was imposed; or

14 (b) Submit a written report to the adjudicating court
15 with a copy to the county attorney of the county where probation
16 was imposed, outlining the nature of the probation violation and
17 request that formal revocation proceedings be instituted against
18 the juvenile subject to the supervision of a probation officer.

19 (3) Whenever a probation officer has reasonable cause to
20 believe that a juvenile subject to the supervision of a probation
21 officer has violated or is about to violate a condition of
22 probation other than a substance abuse violation or noncriminal
23 violation and that such juvenile will not attempt to leave the
24 jurisdiction and will not place lives or property in danger, the
25 probation officer shall submit a written report to the adjudicating
26 court, with a copy to the county attorney of the county where
27 probation was imposed, outlining the nature of the probation

1 violation.

2 (4) Whenever a probation officer has reasonable cause to
3 believe that a juvenile subject to the supervision of a probation
4 officer has violated or is about to violate a condition of his
5 or her probation and that such juvenile will attempt to leave
6 the jurisdiction or will place lives or property in danger, the
7 probation officer shall take such juvenile into temporary custody
8 without a warrant and may call on any peace officer for assistance
9 as provided in section 43-248.

10 (5) Immediately after detention pursuant to subsection
11 (4) of this section, the probation officer shall notify the county
12 attorney of the county where probation was imposed and submit
13 a written report of the reason for such detention and of any
14 violation of probation. After prompt consideration of the written
15 report, the county attorney shall:

16 (a) Order the release of the juvenile from confinement
17 subject to the supervision of a probation officer; or

18 (b) File with the adjudicating court a motion or
19 information to revoke the probation.

20 (6) Whenever a county attorney receives a report from a
21 probation officer that a juvenile subject to the supervision of a
22 probation officer has violated a condition of probation, the county
23 attorney may file a motion or information to revoke probation.

24 (7) The probation administrator shall adopt and
25 promulgate rules and regulations to carry out this section.

26 Sec. 6. Section 43-2,108.05, Revised Statutes Cumulative
27 Supplement, 2010, is amended to read:

1 43-2,108.05 (1) If the court orders the records of a
2 juvenile sealed pursuant to section 43-2,108.04, the juvenile who
3 is the subject of the order properly may, and the court, county
4 attorneys, city attorneys, and institutions, persons, or agencies
5 shall, reply that no record exists with respect to the juvenile
6 upon any public inquiry in the matter, and the court shall do all
7 of the following:

8 (a) Order that any information or other data concerning
9 any proceedings relating to the arrest, taking into custody,
10 petition, complaint, indictment, information, trial, hearing,
11 adjudication, correctional supervision, dismissal, or disposition
12 be deemed never to have occurred; and

13 (b) Send notice of the order to seal the record to the
14 Nebraska Commission on Law Enforcement and Criminal Justice and,
15 if the record includes impoundment or prohibition to obtain a
16 license or permit pursuant to section 43-287, to the Department
17 of Motor Vehicles and to any law enforcement agencies and
18 county attorneys or city attorneys and institutions, persons,
19 or agencies, including treatment providers, therapists, or other
20 service providers, referenced in the court record and order that
21 all original records of the case be sealed.

22 (2) Except as provided in subsection (3) of this section,
23 an order to seal the record applies to every public office or
24 agency that has a record relating to the case, regardless of
25 whether it receives notice of the hearing on the sealing of the
26 record or a copy of the order. Upon the written request of a person
27 whose record has been sealed and the presentation of a copy of such

1 order, a public office or agency shall seal all original records
2 relating to the case.

3 (3) A sealed record is still accessible to law
4 enforcement officers, county attorneys, city attorneys, and the
5 sentencing judge in the investigation of crimes and in the
6 prosecution and sentencing of criminal defendants. Inspection of
7 records that have been ordered sealed under section 43-2,108.04
8 may be made only by the following persons or for the following
9 purposes:

10 (a) By the court or by any person allowed to inspect such
11 records by an order of the court for good cause shown;

12 (b) By the Nebraska Probation System for purposes of
13 juvenile intake services, for presentence and other probation
14 investigations, and for the direct supervision of persons placed on
15 probation;

16 (c) By the Department of Health and Human Services for
17 purposes of juvenile intake services, the preparation of case plans
18 and reports, the preparation of evaluations, or the supervision and
19 protection of persons placed with the department or for licensing
20 or certification purposes under sections 71-1901 to 71-1906.01 or
21 the Child Care Licensing Act;

22 (d) Upon application, by the juvenile who is the subject
23 of the sealed record and by the person that is named in that
24 application;

25 (e) At the request of a party in a civil action that is
26 based on a case the record for which is the subject of a sealing
27 order issued under section 43-2,108.04, as needed for the civil

1 action. The party also may copy the record as needed for the civil
2 action. The sealed record shall be used solely in the civil action
3 and is otherwise confidential and subject to this section; ~~ex~~

4 (f) By persons engaged in bona fide research, with
5 the permission of the court, only if the research results
6 in no disclosure of a juvenile's identity and protects the
7 confidentiality of the record; or-

8 (g) By a law enforcement agency if a person whose record
9 has been sealed applies for employment with the law enforcement
10 agency.

11 (4) No person shall knowingly release, disseminate, or
12 make available, for any purpose involving employment, bonding,
13 licensing, or education, to any person or to any department,
14 agency, or other instrumentality of the state or of any of
15 its political subdivisions, any information or other data
16 concerning any arrest, taking into custody, petition, complaint,
17 indictment, information, trial, hearing, adjudication, correctional
18 supervision, dismissal, or disposition, the record of which has
19 been sealed pursuant to section 43-2,108.04 and the release,
20 dissemination, or making available of which is not expressly
21 permitted by this section or court order. Nothing in this section
22 shall prohibit the Department of Health and Human Services from
23 releasing, disseminating, or making available information from
24 sealed records in the performance of its duties with respect to the
25 supervision and protection of persons served by the department. Any
26 person who violates this section may be held in contempt of court.

27 (5) In any application for employment, license, or other

1 right or privilege, any appearance as a witness, or any other
2 inquiry, a person cannot be questioned with respect to any arrest
3 or taking into custody for which the record is sealed. If an
4 inquiry is made in violation of this subsection, the person may
5 respond as if the sealed arrest or taking into custody did not
6 occur, and the person is not subject to any adverse action because
7 of the arrest or taking into custody or the response. Applications
8 for employment shall contain specific language that states that the
9 applicant is not obligated to disclose a sealed juvenile record
10 or sentence. Employers shall not ask if an applicant has had
11 a juvenile record sealed. The Department of Labor shall develop
12 a link on the department's web site to inform employers that
13 employers cannot ask if an applicant had a juvenile record sealed
14 and that an application for employment shall contain specific
15 language that states that the applicant is not obligated to
16 disclose a sealed juvenile record of arrest, custody, complaint,
17 disposition, diversion, adjudication, or sentence.

18 Sec. 7. Section 43-2,129, Revised Statutes Cumulative
19 Supplement, 2010, is amended to read:

20 43-2,129 Sections 43-245 to 43-2,129 and section 5 of
21 this act shall be known and may be cited as the Nebraska Juvenile
22 Code.

23 Sec. 8. The Legislature finds and declares that:

24 (1) The safety and well-being of abused and neglected
25 children throughout the State of Nebraska should be of tantamount
26 concern to the state and its citizens;

27 (2) Court appointed special advocate volunteers provide a

1 unique and vital service to the children they represent and work to
2 ensure the safety and well-being of abused and neglected children;

3 (3) Court appointed special advocate volunteers have
4 provided, in many cases, the judges who adjudicate cases with
5 essential information that has not only ensured the safety and
6 well-being of abused and neglected children throughout Nebraska,
7 but has also saved the state thousands of dollars; and

8 (4) Providing resources through a grant program will
9 increase the savings to the state through these programs.

10 Sec. 9. The Court Appointed Special Advocate Fund is
11 created. The fund shall be under the control of the Supreme Court
12 and administered by the State Court Administrator. The fund shall
13 be used for grants as provided in section 10 of this act. The fund
14 shall consist of transfers authorized under section 29-3921. Any
15 money in the fund available for investment shall be invested by the
16 state investment officer pursuant to the Nebraska Capital Expansion
17 Act and the Nebraska State Funds Investment Act. Interest earned
18 shall be credited back to the fund.

19 Sec. 10. (1) The Supreme Court shall award grants from
20 the Court Appointed Special Advocate Fund as provided in subsection
21 (2) of this section to any court appointed special advocate program
22 that applies for the grant and:

23 (a) Is a nonprofit organization organized under section
24 501(c)(3) of the Internal Revenue Code;

25 (b) Operates statewide; and

26 (c) Has an affiliation agreement with local programs that
27 meet the requirements of section 43-3706.

1 (2) The Supreme Court shall award grants up to the amount
2 credited to the fund as follows:

3 (a) Up to ten thousand dollars may be used by the court
4 to administer this section;

5 (b) Of the remaining amount, eighty percent, but not more
6 than three hundred thousand dollars, shall be awarded as grants
7 used to recruit new court appointed special advocate volunteers and
8 to defray the cost of training court appointed special advocate
9 volunteers;

10 (c) Of the remaining amount, ten percent, but no more
11 than fifty thousand dollars, shall be awarded as grants used to
12 create innovative programming to implement the Court Appointed
13 Special Advocate Act; and

14 (d) Of the remaining amount, ten percent but no more than
15 fifty thousand dollars shall be awarded as grants used to expand
16 court appointed special advocate programs into counties that have
17 no programs or limited programs.

18 Sec. 11. Each applicant who is awarded a grant under
19 section 10 of this act shall provide the Supreme Court, Clerk of
20 the Legislature, and Governor prior to December 31 of each year a
21 report detailing:

22 (1) The number of court appointed special advocate
23 volunteers trained during the previous fiscal year;

24 (2) The cost of training the court appointed special
25 advocate volunteers trained during the previous fiscal year;

26 (3) The number of court appointed special advocate
27 volunteers recruited during the previous fiscal year;

1 (4) A description of any programs described in
2 subdivision (2)(d) of section 10 of this act;

3 (5) The total number of courts being served by court
4 appointed special advocate programs during the previous fiscal
5 year; and

6 (6) The total number of children being served by court
7 appointed special advocate volunteers during the previous fiscal
8 year.

9 Sec. 12. Section 43-3701, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 43-3701 Sections 43-3701 to 43-3716 and sections 8, 9,
12 10, and 11 of this act shall be known and may be cited as the Court
13 Appointed Special Advocate Act.

14 Sec. 13. Section 79-209, Revised Statutes Cumulative
15 Supplement, 2010, is amended to read:

16 79-209 In all school districts in this state, any
17 superintendent, principal, teacher, or member of the school board
18 who knows of any violation of section 79-201 on the part of any
19 child of school age, his or her parent, the person in actual or
20 legal control of such child, or any other person shall within
21 three days report such violation to the attendance officer of
22 the school, who shall investigate the case. When of his or her
23 personal knowledge, by report or complaint from any resident of the
24 district, or by report or complaint as provided in this section,
25 the attendance officer believes that any child is unlawfully absent
26 from school, the attendance officer shall immediately investigate.

27 All school districts shall have a written policy on

1 excessive absenteeism developed in collaboration with the county
2 attorney of the county in which the principal office of the
3 school district is located. The policy shall include a provision
4 indicating how the school district and the county attorney will
5 handle cases in which excessive absences are due to documented
6 illness that makes attendance impossible or impracticable, and
7 the policy shall state the number of absences or the hourly
8 equivalent upon the occurrence of which the school shall render
9 all services in its power to compel such child to attend some
10 public, private, denominational, or parochial school, which the
11 person having control of the child shall designate, in an attempt
12 to address the problem of excessive absenteeism. The number of
13 absences in the policy shall not exceed five days per quarter
14 or the hourly equivalent. School districts may use excused and
15 unexcused absences for purposes of the policy. Such services shall
16 include, but need not be limited to:

17 (1) One or more meetings between a school attendance
18 officer, school social worker or the school principal or a
19 member of the school administrative staff designated by the school
20 administration if such school does not have a school social worker,
21 the child's parent or guardian, and the child, if necessary,
22 to report and to attempt to solve the problem of excessive
23 absenteeism;

24 (2) Educational counseling to determine whether
25 curriculum changes, including, but not limited to, enrolling the
26 child in an alternative education program that meets the specific
27 educational and behavioral needs of the child, would help solve the

1 problem of excessive absenteeism;

2 (3) Educational evaluation, which may include a
3 psychological evaluation, to assist in determining the specific
4 condition, if any, contributing to the problem of excessive
5 absenteeism, supplemented by specific efforts by the school to help
6 remedy any condition diagnosed; and

7 (4) Investigation of the problem of excessive absenteeism
8 by the school social worker, or if such school does not have
9 a school social worker, by the school principal or a member
10 of the school administrative staff designated by the school
11 administration, to identify conditions which may be contributing to
12 the problem. If services for the child and his or her family are
13 determined to be needed, the school social worker or the school
14 principal or a member of the school administrative staff performing
15 the investigation shall meet with the parent or guardian and the
16 child to discuss any referral to appropriate community agencies
17 for economic services, family or individual counseling, or other
18 services required to remedy the conditions that are contributing to
19 the problem of excessive absenteeism.

20 If the child is absent more than twenty days per year
21 or the hourly equivalent, the attendance officer shall file a
22 report with the county attorney of the county in which such person
23 resides. The county attorney may file a complaint against a person
24 violating section 79-201 before the judge of the county court
25 of the county in which such person resides charging such person
26 with violation of section 79-201 or may file a petition under
27 the Nebraska Juvenile Code alleging the person violating section

1 79-201 is a juvenile described in subdivision (3)(a) or (3)(b) of
2 section 43-247. Nothing in this section shall preclude a county
3 attorney from being involved at any stage in the process to address
4 excessive absenteeism.

5 Sec. 14. Section 79-2104, Revised Statutes Cumulative
6 Supplement, 2010, is amended to read:

7 79-2104 A learning community coordinating council shall
8 have the authority to:

9 (1) Levy a common levy for the general funds of member
10 school districts pursuant to sections 77-3442 and 79-1073;

11 (2) Levy a common levy for the special building funds
12 of member school districts pursuant to sections 77-3442 and
13 79-1073.01;

14 (3) Levy for elementary learning center facility leases,
15 for remodeling of leased elementary learning center facilities, and
16 for up to fifty percent of the estimated cost for focus school
17 or program capital projects approved by the learning community
18 coordinating council pursuant to subdivision (2)(h) of section
19 77-3442 and section 79-2111;

20 (4) Levy for elementary learning center employees, for
21 contracts with other entities or individuals who are not employees
22 of the learning community for elementary learning center programs
23 and services, and for pilot projects pursuant to subdivision (2)(i)
24 of section 77-3442, except that not more than ten percent of such
25 levy may be used for elementary learning center employees;

26 (5) Collect, analyze, and report data and information,
27 including, but not limited to, information provided by a school

1 district pursuant to subsection (5) of section 79-201;

2 (6) Approve focus schools and focus programs to be
3 operated by member school districts;

4 (7) Adopt, approve, and implement a diversity plan which
5 shall include open enrollment and may include focus schools, focus
6 programs, magnet schools, and pathways pursuant to section 79-2110;

7 (8) Administer the open enrollment provisions in section
8 79-2110 for the learning community as part of a diversity plan
9 developed by the council to provide educational opportunities which
10 will result in increased diversity in schools across the learning
11 community;

12 (9) Annually conduct school fairs to provide students and
13 parents the opportunity to explore the educational opportunities
14 available at each school in the learning community and develop
15 other methods for encouraging access to such information and
16 promotional materials;

17 (10) Develop and approve reorganization plans for
18 submission pursuant to the Learning Community Reorganization Act;

19 (11) Establish and administer elementary learning centers
20 through achievement subcouncils pursuant to sections 79-2112 to
21 79-2114;

22 (12) Administer the learning community funds distributed
23 to the learning community pursuant to section 79-2111;

24 (13) Approve or disapprove poverty plans and limited
25 English proficiency plans for member school districts through
26 achievement subcouncils established under section 79-2117;

27 (14) Establish a procedure for receiving community input

1 and complaints regarding the learning community;

2 (15) Establish a procedure to assist parents, citizens,
3 and member school districts in accessing an approved center
4 pursuant to the Dispute Resolution Act to resolve disputes
5 involving member school districts or the learning community. Such
6 procedure may include payment by the learning community for some
7 mediation services; ~~and~~

8 (16) Establish and administer pilot projects related
9 to enhancing the academic achievement of elementary students,
10 particularly students who face challenges in the educational
11 environment due to factors such as poverty, limited English skills,
12 and mobility; ~~and-~~

13 (17) Provide funding to public or private entities
14 engaged in the juvenile justice system providing prefiling and
15 diversion programming designed to reduce excessive absenteeism and
16 unnecessary involvement with the juvenile justice system.

17 Sec. 15. Section 79-2104.02, Revised Statutes Cumulative
18 Supplement, 2010, is amended to read:

19 79-2104.02 Each learning community coordinating council
20 shall use any funds received after January 15, 2011, pursuant
21 to section 79-1241.03 for evaluation and research pursuant to
22 plans developed by the learning community coordinating council
23 with assistance from the educational service unit coordinating
24 council and the student achievement coordinator and adjusted on
25 an ongoing basis. The evaluation shall be conducted by one or
26 more other entities or individuals who are not employees of the
27 learning community and shall measure progress toward the goals and

1 objectives of the learning community, which goals and objectives
2 shall include reduction of excessive absenteeism of students in
3 the member school districts of the learning community, closing
4 academic achievement gaps based on socioeconomic status, and the
5 effectiveness of the approaches used by the learning community or
6 pilot project to reach such goals and objectives. Any research
7 conducted pursuant to this section shall also be related to such
8 goals and objectives. After the first full year of operation, each
9 learning community shall report evaluation and research results to
10 the Education Committee of the Legislature on or before December 1
11 of each year.

12 Sec. 16. The superintendents of any school districts
13 that are members of a learning community shall develop and
14 participate in a plan by August 1, 2011, to reduce excessive
15 absenteeism including a process to share information regarding
16 at-risk youth with the goal of improving educational outcomes,
17 providing effective interventions that impact risk factors, and
18 reducing unnecessary penetration deeper into the juvenile justice
19 system. For purposes of this section, at-risk youth means children
20 who are under the jurisdiction of the Office of Probation
21 Administration, are under the jurisdiction of the Department
22 of Health and Human Services, are otherwise involved in the
23 juvenile justice system, or have been absent from school for
24 more than ten days per year or the hourly equivalent for reasons
25 other than documented illness that makes attendance impossible or
26 impracticable.

27 Sec. 17. Original sections 43-286 and 43-3701, Reissue

1 Revised Statutes of Nebraska, and sections 28-416, 29-2258,
2 29-2262.08, 29-3921, 43-2,108.05, 43-2,129, 79-209, 79-2104, and
3 79-2104.02, Revised Statutes Cumulative Supplement, 2010, are
4 repealed.

5 Sec. 18. Since an emergency exists, this act takes effect
6 when passed and approved according to law.