

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 463

Final Reading

Introduced by Ashford, 20; at the request of the Governor; Howard,

9.

Read first time January 14, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to government; to amend sections 43-286, 43-412,
2 43-416, and 43-3701, Reissue Revised Statutes of
3 Nebraska, and sections 28-416, 29-2258, 29-2262.08,
4 29-3921, 43-2,108.01, 43-2,108.02, 43-2,108.03,
5 43-2,108.04, 43-2,108.05, 43-2,129, 79-209, 79-2104, and
6 79-2104.02, Revised Statutes Cumulative Supplement, 2010;
7 to change and transfer provisions relating to certain
8 violations of the Uniform Controlled Substances Act by
9 minors, powers and duties of probation officers relating
10 to juveniles, revocation of probation of a juvenile,
11 sealed juvenile records, and policies regarding excessive
12 absenteeism; to provide for and eliminate transfers from
13 the Commission on Public Advocacy Operations Cash Fund;
14 to eliminate provisions relating to a study and
15 assessment; to provide duties for the Office of Juvenile

1 Services; to state intent and provide for grants for
2 court appointed special advocate programs; to create a
3 fund; to require reports; to provide for funding for and
4 a plan regarding excessive absenteeism; to harmonize
5 provisions; to provide operative dates; to repeal the
6 original sections; and to declare an emergency.
7 Be it enacted by the people of the State of Nebraska,

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

3 28-416 (1) Except as authorized by the Uniform Controlled
4 Substances Act, it shall be unlawful for any person knowingly or
5 intentionally: (a) To manufacture, distribute, deliver, dispense, or
6 possess with intent to manufacture, distribute, deliver, or dispense
7 a controlled substance; or (b) to create, distribute, or possess with
8 intent to distribute a counterfeit controlled substance.

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

18 (3) A person knowingly or intentionally possessing a
19 controlled substance, except marijuana, unless such substance was
20 obtained directly or pursuant to a medical order issued by a
21 practitioner authorized to prescribe while acting in the course of
22 his or her professional practice, or except as otherwise authorized
23 by the act, shall be guilty of a Class IV felony.

24 (4)(a) Except as authorized by the Uniform Controlled
25 Substances Act, any person eighteen years of age or older who

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

18 (b) For purposes of this subsection:

19 (i) Playground shall mean any outdoor facility, including
20 any parking lot appurtenant to the facility, intended for recreation,
21 open to the public, and with any portion containing three or more
22 apparatus intended for the recreation of children, including sliding
23 boards, swingsets, and teeterboards;

24 (ii) Video arcade facility shall mean any facility
25 legally accessible to persons under eighteen years of age, intended

1 primarily for the use of pinball and video machines for amusement,
2 and containing a minimum of ten pinball or video machines; and

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

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

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

25 (c) Any person who violates subdivision (a) or (b) of

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

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

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

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

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

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

22 (8) Any person who violates subsection (1) of this
23 section with respect to base cocaine (crack) or any mixture or
24 substance containing a detectable amount of base cocaine in a
25 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 containing
9 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, and
18 salts of its isomers, or with respect to methamphetamine, its salts,
19 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.

1 (11) Any person knowingly or intentionally possessing
2 marijuana weighing more than one ounce but not more than one pound
3 shall be guilty of a Class III misdemeanor.

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

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

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

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

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

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

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

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

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

13 (18) In addition to the penalties provided in this
14 section:

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

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

23 (ii) For a second offense, the court may, as a part of
24 the judgment of conviction or adjudication, (A) impound any such
25 licenses or permits for ninety days and (B) require such person to

1 complete no fewer than twenty and no more than forty hours of
2 community service and to attend a drug education class; and

3 (iii) For a third or subsequent offense, the court may,
4 as a part of the judgment of conviction or adjudication, (A) impound
5 any such licenses or permits for twelve months and (B) require such
6 person to complete no fewer than sixty hours of community service, to
7 attend a drug education class, and to submit to a drug assessment by
8 a licensed alcohol and drug counselor; and

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

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

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

1 (iii) For a third or subsequent offense, the court may,
2 as part of the judgment of conviction or adjudication, (A) prohibit
3 such person from obtaining any permit or any license pursuant to the
4 act for which such person would otherwise be eligible until twelve
5 months after the date of such order and (B) require such person to
6 complete no fewer than sixty hours of community service, to attend a
7 drug education class, and to submit to a drug assessment by a
8 licensed alcohol and drug counselor.

9 A copy of an abstract of the court's conviction or
10 adjudication shall be transmitted to the Director of Motor Vehicles
11 pursuant to sections 60-497.01 to 60-497.04 if a license or permit is
12 impounded or a juvenile is prohibited from obtaining a license or
13 permit under this subsection.

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

16 29-2258 A district probation officer shall:

17 (1) Conduct juvenile intake interviews and investigations
18 in accordance with ~~section 43-253~~ utilizing a standardized juvenile
19 detention screening instrument described in section sections 43-253
20 and 43-260.01;

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

23 (3) Supervise probationers in accordance with the rules
24 and regulations of the office and the directions of the sentencing
25 court;

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

5 (5) Advise the sentencing court, in accordance with the
6 rules and regulations of the office and the direction of the court,
7 when the situation of a probationer may require a modification of the
8 conditions of probation or when a probationer's adjustment is such as
9 to warrant termination of probation;

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

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

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

19 (9) Supervise and evaluate deputy probation officers
20 under his or her jurisdiction;

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

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

1 (12) Keep accurate and complete accounts of all money or
2 property collected or received from probationers and give receipts
3 therefor;

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

6 (14) In counties with a population of less than twenty-
7 five thousand people, participate in pretrial diversion programs
8 established pursuant to sections 29-3601 to 29-3604 and juvenile
9 pretrial diversion programs established pursuant to sections
10 43-260.02 to 43-260.07 as requested by judges of the probation
11 district in which he or she serves, except that participation in such
12 programs shall not require appointment of additional personnel and
13 shall be consistent with the probation officer's current caseload;

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

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

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

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

25 29-3921 (1) The Commission on Public Advocacy Operations

1 Cash Fund is created. The fund shall be used for the operations of
2 the commission, except that transfers may be made from the fund to
3 the General Fund at the direction of the Legislature through June 30,
4 2011. The Commission on Public Advocacy Operations Cash Fund shall
5 consist of money remitted pursuant to section 33-156. It is the
6 intent of the Legislature that the commission shall be funded solely
7 from the fund. Any money in the fund available for investment shall
8 be invested by the state investment officer pursuant to the Nebraska
9 Capital Expansion Act and the Nebraska State Funds Investment Act.

10 (2) On July 1, 2011, or as soon thereafter as
11 administratively possible, the State Treasurer shall transfer one
12 hundred thousand dollars from the Commission on Public Advocacy
13 Operations Cash Fund to the Supreme Court Education Fund. The State
14 Court Administrator shall use these funds to assist the juvenile
15 justice system in providing prefiling and diversion programming
16 designed to reduce excessive absenteeism and unnecessary involvement
17 with the juvenile justice system.

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

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

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

25 ~~The State Treasurer shall transfer two hundred fifty~~

1 thousand dollars from the Commission on Public Advocacy Operations
2 Cash Fund to the University Cash Fund within fifteen days after May
3 1, 2008. Such funds shall be used for a study of the juvenile legal
4 defense and guardian ad litem systems utilizing the University of
5 Nebraska Public Policy Center to create, administer, and review a
6 Request for Proposals to select from a national search a research
7 consultant that is qualified to provide a methodologically sound and
8 objective assessment of Nebraska's juvenile justice system. The
9 assessment shall include: (1) Gathering of general data and
10 information about the structure and funding mechanisms for juvenile
11 legal defense and guardian ad litem representation; (2) a review of
12 caseloads; (3) examining issues related to the timing of appointment
13 of counsel and guardians ad litem; (4) supervision of attorneys; (5)
14 charging and trying juveniles as adults; (6) frequency with which
15 juveniles waive their right to counsel and under what conditions they
16 do so; (7) allocation of resources; (8) adequacy of juvenile court
17 facilities; (9) compensation of attorneys; (10) supervising and
18 training of attorneys; (11) access to investigators, experts, social
19 workers, and support staff; (12) access to educational officers,
20 teachers, educational staff, and truancy officers; (13) the
21 relationship between a guardian ad litem, a juvenile's legal counsel,
22 and the judicial system with identified educational staff regarding a
23 juvenile's educational status; (14) examining issues related to
24 truancy and the relationship between the school districts and the
25 juvenile court system; (15) recidivism; (16) time to permanency and

1 ~~time in court, especially when a guardian ad litem is appointed; and~~
2 ~~(17) coordination of representation for those juveniles that may have~~
3 ~~been appointed an attorney in a juvenile delinquency matter and a~~
4 ~~guardian ad litem because of abuse or neglect. The assessment shall~~
5 ~~also highlight promising approaches and innovative practices within~~
6 ~~the state and offer recommendations to improve weak areas.~~

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

9 43-286 (1) When any juvenile is adjudicated to be a
10 juvenile described in subdivision (1), (2), or (4) of section 43-247:

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

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

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

23 (iii) Cause the juvenile to be placed in a suitable
24 family home or institution, subject to the supervision of the
25 probation officer. If the court has committed the juvenile to the

1 care and custody of the Department of Health and Human Services, the
2 department shall pay the costs of the suitable family home or
3 institution which are not otherwise paid by the juvenile's parents.

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

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

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

1 Human Services.

2 (3) ~~Beginning July 15, 1998, when~~ When any juvenile is
3 adjudicated to be a juvenile described in subdivision (1), (2), (3)
4 (b), or (4) of section 43-247 because of a nonviolent act or acts and
5 the juvenile has not previously been adjudicated to be such a
6 juvenile because of a violent act or acts, the court may, with the
7 agreement of the victim, order the juvenile to attend juvenile
8 offender and victim mediation with a mediator or at an approved
9 center selected from the roster made available pursuant to section
10 25-2908.

11 (4) When a juvenile is placed on probation and a
12 probation officer has reasonable cause to believe that such juvenile
13 has committed or is about to commit a substance abuse violation, a
14 noncriminal violation, or a violation of a condition of his or her
15 probation, the probation officer shall take appropriate measures as
16 provided in section 5 of this act.

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

25 (b) When a juvenile is placed on probation or under the

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

7 (i) The motion shall set forth specific factual
8 allegations of the alleged violations and a copy of such motion shall
9 be served on all persons required to be served by sections 43-262 to
10 43-267;

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

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

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

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

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

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

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

2 (a) Administrative sanction means additional probation
3 requirements imposed upon a juvenile subject to the supervision of a
4 probation officer by his or her probation officer, with the full
5 knowledge and consent of such juvenile and such juvenile's parents or
6 guardian, designed to hold such juvenile accountable for substance
7 abuse or noncriminal violations of conditions of probation,
8 including, but not limited to:

9 (i) Counseling or reprimand by his or her probation
10 officer;

11 (ii) Increased supervision contact requirements;

12 (iii) Increased substance abuse testing;

13 (iv) Referral for substance abuse or mental health
14 evaluation or other specialized assessment, counseling, or treatment;

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

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

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

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

25 (ix) Implementation of educational or cognitive

1 behavioral programming;

2 (b) Noncriminal violation means activities or behaviors
3 of a juvenile subject to the supervision of a probation officer which
4 create the opportunity for re-offending or which diminish the
5 effectiveness of probation supervision resulting in a violation of an
6 original condition of probation, including, but not limited to:

7 (i) Moving traffic violations;

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

9 (iii) Leaving the juvenile's residence, jurisdiction of
10 the court, or the state without the permission of the court or his or
11 her probation officer;

12 (iv) Failure to regularly attend school, vocational
13 training, other training, counseling, treatment, programming, or
14 employment;

15 (v) Noncompliance with school rules;

16 (vi) Continued violations of home rules;

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

19 (viii) Frequenting places where controlled substances are
20 illegally sold, used, distributed, or administered and association
21 with persons engaged in illegal activity;

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

23 and

24 (x) Curfew or electronic monitoring violations; and

25 (c) Substance abuse violation means activities or

1 behaviors of a juvenile subject to the supervision of a probation
2 officer associated with the use of chemical substances or related
3 treatment services resulting in a violation of an original condition
4 of probation, including, but not limited to:

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

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

7 (iii) Failure to report for alcohol testing or drug
8 testing;

9 (iv) Failure to appear for or complete substance abuse or
10 mental health treatment evaluations or inpatient or outpatient
11 treatment; and

12 (v) Tampering with alcohol or drug testing.

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

20 (a) Impose one or more administrative sanctions with the
21 approval of his or her chief probation officer or such chief's
22 designee. The decision to impose administrative sanctions in lieu of
23 formal revocation proceedings rests with the probation officer and
24 his or her chief probation officer or such chief's designee and shall
25 be based upon such juvenile's risk level, the severity of the

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

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

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

25 (4) Whenever a probation officer has reasonable cause to

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

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

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

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

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

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

24 Sec. 6. Section 43-2,108.01, Revised Statutes Cumulative
25 Supplement, 2010, is amended to read:

1 43-2,108.01 Sections 43-2,108.01 to 43-2,108.05 apply
2 only to persons who were under the age of eighteen years when the
3 offense took place and, after being taken into custody, arrested,
4 cited in lieu of arrest, or referred for prosecution without
5 citation, the county attorney or city attorney (1) released the
6 juvenile without filing a juvenile petition or criminal complaint,
7 (2) offered juvenile pretrial diversion or mediation to the juvenile
8 under the Nebraska Juvenile Code, (3) ~~or~~ filed a juvenile court
9 petition describing the juvenile as a juvenile described in
10 subdivision (1), (2), (3)(b), or (4) of section 43-247, (4) filed a
11 criminal complaint in county court against the juvenile under state
12 statute or city or village ordinance for misdemeanor or infraction
13 possession of marijuana or misdemeanor or infraction possession of
14 drug paraphernalia, or (5) ~~or the county attorney or city attorney~~
15 filed a criminal complaint in county court against ~~such the~~ juvenile
16 for ~~a any other~~ misdemeanor or infraction under state statute or city
17 or village ordinance, other than for a traffic offense that may be
18 waived. , ~~under the laws of this state or a city or village~~
19 ordinance.

20 Sec. 7. Section 43-2,108.02, Revised Statutes Cumulative
21 Supplement, 2010, is amended to read:

22 43-2,108.02 For a juvenile described in section
23 43-2,108.01, the county attorney or city attorney shall, ~~in addition~~
24 ~~to the filings or actions described in such section,~~ provide the
25 juvenile with written notice that:

1 (1) States in plain language that the juvenile or the
2 juvenile's parent or guardian may petition file a motion to seal the
3 record with the court to seal the record when the juvenile has
4 satisfactorily completed the diversion, mediation, probation,
5 supervision, or other treatment or rehabilitation program provided ~~to~~
6 ~~the juvenile~~ under the Nebraska Juvenile Code or has satisfactorily
7 completed the diversion or sentence ordered by a county court; and

8 (2) Explains in plain language what sealing the record
9 means.

10 Sec. 8. Section 43-2,108.03, Revised Statutes Cumulative
11 Supplement, 2010, is amended to read:

12 43-2,108.03 (1) ~~Notwithstanding subsection (2) of this~~
13 ~~section, if the~~ If a juvenile described in section 43-2,108.01 was
14 taken into custody, or arrested, cited in lieu of arrest, or referred
15 for prosecution without citation but no juvenile petition or criminal
16 complaint was filed against the juvenile with respect to the arrest
17 or custody, the county attorney or city attorney shall notify the
18 ~~appropriate public office or government~~ agency responsible for the
19 arrest, or custody, citation in lieu of arrest, or referral for
20 prosecution without citation that no criminal charge or juvenile
21 court petition was filed.

22 (2) If the county attorney or city attorney ~~has offered~~
23 ~~and the~~ a juvenile described in section 43-2,108.01 has agreed to
24 pretrial diversion or mediation, the county attorney or city attorney
25 shall notify the ~~appropriate public office or government~~ agency

1 responsible for the arrest or custody ~~that~~ when the juvenile has
2 satisfactorily completed the resulting diversion or mediation.

3 (3) If the juvenile was taken into custody, arrested,
4 cited in lieu of arrest, or referred for prosecution without citation
5 and charges were filed but later dismissed and any required pretrial
6 diversion or mediation for any related charges have been completed
7 and no related charges remain under the jurisdiction of the court,
8 the county attorney or city attorney shall notify the government
9 agency responsible for the arrest, custody, citation in lieu of
10 arrest, or referral for prosecution without citation and the court
11 where the charge or petition was filed that the charge or juvenile
12 court petition was dismissed.

13 ~~(3)-(4)~~ Upon receiving notice under subsection (1), (2),
14 or ~~(2)-(3)~~ of this section, the ~~public office or government agency or~~
15 court shall immediately seal all ~~original~~ records housed at that
16 ~~public office or government agency or court~~ pertaining to the
17 citation, arrest, record of custody, complaint, disposition,
18 diversion, or mediation.

19 ~~(4)-(5)~~ If a juvenile described in section 43-2,108.01
20 has satisfactorily completed such juvenile's probation, supervision,
21 or other treatment or rehabilitation program provided under the
22 Nebraska Juvenile Code or has satisfactorily completed such
23 juvenile's diversion or sentence in county court: ~~and~~

24 (a) The court may initiate proceedings pursuant to
25 section 43-2,108.04 to seal the record pertaining to such disposition

1 or adjudication under the juvenile code or sentence of the county
2 court; and

3 (b) If the juvenile has attained at least the age of
4 seventeen years, the court shall initiate proceedings pursuant to
5 section 43-2,108.04 to seal the record pertaining to such disposition
6 or ,—adjudication,—or under the juvenile code or diversion or
7 sentence of the county court, except that the court is not required
8 to initiate proceedings to seal a record pertaining to a misdemeanor
9 or infraction not described in subdivision (4) of section 43-2,108.01
10 under a city or village ordinance that has no possible jail sentence.
11 Such a record may be sealed under subsection (6) of this section.

12 (6) If a juvenile described in section 43-2,108.01 has
13 satisfactorily completed diversion, mediation, probation,
14 supervision, or other treatment or rehabilitation program provided
15 under the Nebraska Juvenile Code or has satisfactorily completed the
16 diversion or sentence ordered by a county court, the juvenile or the
17 juvenile's parent or guardian may file a motion in the court of
18 record asking the court to seal the record pertaining to the offense
19 which resulted in such disposition, adjudication, or diversion of the
20 juvenile court or diversion or sentence of the county court.

21 ~~(5) At any time after a juvenile described in section~~
22 ~~43-2,108.01 has satisfactorily completed probation, supervision, or~~
23 ~~other treatment or rehabilitation program under the code or has~~
24 ~~satisfactorily completed diversion or sentence of the county court,~~
25 ~~the court may, upon the motion of the juvenile or the court's own~~

1 ~~motion, initiate proceedings to seal the record pertaining to such~~
2 ~~disposition, dismissal following pretrial diversion under section~~
3 ~~43-260.04, or disposition under section 43-286 or any county court~~
4 ~~records pertaining to such county court diversion or sentence.~~

5 Sec. 9. Section 43-2,108.04, Revised Statutes Cumulative
6 Supplement, 2010, is amended to read:

7 43-2,108.04 (1) ~~The~~ When a proceeding to seal the record
8 is initiated, the court shall promptly notify the county attorney or
9 city attorney involved in the case that is the subject of the
10 proceeding to seal the record shall be promptly notified of the
11 proceedings, and shall promptly notify the Department of Health and
12 Human Services shall also be promptly notified of the proceedings if
13 the juvenile whose record is the subject of the proceeding to seal
14 the record is a ward of the state at the time the proceeding is
15 initiated or if the department was a party in the case. ~~proceeding.~~

16 (2) A party notified under subsection (1) of this section
17 may file a response with the court within thirty days after receiving
18 such notice.

19 (3) If a party notified under subsection (1) of this
20 section does not file a response with the court or files a response
21 that indicates there is no objection to the sealing of the record,
22 the court may: (a) Order order ~~the record of the juvenile under~~
23 ~~consideration be sealed without conducting a hearing on the motion;~~
24 or (b) decide in its discretion to conduct a hearing on the motion.
25 If the court decides in its discretion to conduct a hearing on the

1 motion, the court shall conduct the hearing within ~~thirty-sixty~~ days
2 after making that decision and shall give notice, by regular mail, of
3 the date, time, and location of the hearing to the parties receiving
4 notice under subsection (1) of this section and to the juvenile who
5 is the subject of the record under consideration.

6 (4) If a party receiving notice under subsection (1) of
7 this section files a response with the court objecting to the sealing
8 of the record, the court shall conduct a hearing on the motion within
9 ~~thirty-sixty~~ days after the court receives the response. The court
10 shall give notice, by regular mail, of the date, time, and location
11 of the hearing to the parties receiving notice under subsection (1)
12 of this section and to the juvenile who is the subject of the record
13 under consideration.

14 (5) After conducting a hearing in accordance with this
15 section, the court may order the record of the juvenile that is the
16 subject of the motion ~~to~~ be sealed if it finds that the juvenile has
17 been rehabilitated to a satisfactory degree. In determining whether
18 the juvenile has been rehabilitated to a satisfactory degree, the
19 court may consider all of the following:

20 (a) The age of the juvenile;

21 (b) The nature of the offense and the role of the
22 juvenile in the offense;

23 (c) The behavior of the juvenile after the disposition,
24 adjudication, diversion, or sentence and the juvenile's response to
25 diversion, mediation, probation, supervision, other treatment and or

1 rehabilitation ~~programs;~~ program, or sentence;

2 (d) The education and employment history of the juvenile;
3 and

4 (e) Any other circumstances that may relate to the
5 rehabilitation of the juvenile, ~~who is the subject of the record~~
6 ~~under consideration.~~

7 (6) If, after conducting the hearing in accordance with
8 this section, the juvenile is not found to be satisfactorily
9 rehabilitated such that the record is not ordered to be sealed, a
10 juvenile who is a person described in section 43-2,108.01 or such
11 juvenile's parent or guardian may not move the court to seal the
12 record for ~~a period of one year~~ after the court's decision not to
13 seal the record is made, unless such time restriction is waived by
14 the court.

15 ~~(7) The juvenile court or county court shall provide~~
16 ~~verbal notice to a juvenile whose record is sealed, if that juvenile~~
17 ~~is present in the court at the time the court issues a sealing order,~~
18 ~~and explain what sealing a record means.~~

19 ~~(8) The juvenile court or county court shall provide~~
20 ~~written notice to a juvenile whose record is sealed under this~~
21 ~~section by regular mail to the juvenile's last known address, if that~~
22 ~~juvenile is not present in the court at the time the court issues a~~
23 ~~sealing order, that explains what sealing a record means.~~

24 Sec. 10. Section 43-2,108.05, Revised Statutes Cumulative
25 Supplement, 2010, is amended to read:

1 43-2,108.05 (1) If the court orders the ~~records~~ record of
2 a 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 upon~~
6 ~~any public inquiry in the matter, and the court shall: do all of the~~
7 ~~following:~~

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

14 (b) Send notice of the order to seal the record (i) to
15 the Nebraska Commission on Law Enforcement and Criminal Justice, (ii)
16 ~~and,~~ if the record includes impoundment or prohibition to obtain a
17 license or permit pursuant to section 43-287, to the Department of
18 Motor Vehicles, (iii) if the juvenile whose record has been ordered
19 sealed was a ward of the state at the time the proceeding was
20 initiated or if the Department of Health and Human Services was a
21 party in the proceeding, to such department, and (iv) and to any law
22 enforcement agencies, ~~and county attorneys, and or city attorneys and~~
23 ~~institutions, persons, or agencies, including treatment providers,~~
24 ~~therapists, or other service providers,~~ referenced in the court
25 record;

1 (c) Order all notified under subdivision (1)(b) of this
2 section to seal and order that all original records of the case be
3 sealed, pertaining to the offense;

4 (d) If the case was transferred from district court to
5 juvenile court or was transferred under section 43-282, send notice
6 of the order to seal the record to the transferring court; and

7 (e) Explain to the juvenile what sealing the record means
8 verbally if the juvenile is present in the court at the time the
9 court issues the sealing order or by written notice sent by regular
10 mail to the juvenile's last-known address if the juvenile is not
11 present in the court at the time the court issues the sealing order.

12 (2) The effect of having a record sealed under section
13 43-2,108.04 is that thereafter no person is allowed to release any
14 information concerning such record, except as provided by this
15 section. After a record is sealed, the person whose record was sealed
16 can respond to any public inquiry as if the offense resulting in such
17 record never occurred. A government agency and any other public
18 office or agency shall reply to any public inquiry that no
19 information exists regarding a sealed record. Except as provided in
20 subsection (3) of this section, an order to seal the record applies
21 to every government agency and any other public office or agency that
22 has a record relating to the case, offense, regardless of whether it
23 receives notice of the hearing on the sealing of the record or a copy
24 of the order. Upon the written request of a person whose record has
25 been sealed and the presentation of a copy of such order, a

1 government agency or any other public office or agency shall seal all
2 original records relating to the case. pertaining to the offense.

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

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

13 (b) By the court, city attorney, or county attorney for
14 purposes of collection of any remaining parental support or
15 obligation balances under section 43-290;

16 ~~(b)-(c)~~ By the Nebraska Probation System for purposes of
17 juvenile intake services, for presentence and other probation
18 investigations, and for the direct supervision of persons placed on
19 probation and by the Department of Correctional Services, the Office
20 of Juvenile Services, a juvenile assessment center, a criminal
21 detention facility, or a juvenile detention facility, for an
22 individual committed to it, placed with it, or under its care;

23 ~~(e)-(d)~~ By the Department of Health and Human Services
24 for purposes of juvenile intake services, the preparation of case
25 plans and reports, the preparation of evaluations, compliance with

1 federal reporting requirements, or the supervision and protection of
2 persons placed with the department or for licensing or certification
3 purposes under sections 71-1901 to 71-1906.01 or the Child Care
4 Licensing Act;

5 ~~(d)~~(e) Upon application, by the ~~juvenile person~~ who is
6 the subject of the sealed record and by ~~the person that is~~ persons
7 authorized by the person who is the subject of the sealed record who
8 are named in that application;

9 ~~(e)~~(f) At the request of a party in a civil action that
10 is based on a case ~~the~~ that has a sealed record, for which is the
11 ~~subject of a sealing order issued under section 43-2,108.04,~~ as
12 needed for the civil action. The party also may copy the sealed
13 record as needed for the civil action. The sealed record shall be
14 used solely in the civil action and is otherwise confidential and
15 subject to this section; ~~or~~

16 ~~(f)~~(g) By persons engaged in bona fide research, with
17 the permission of the court, only if the research results in no
18 disclosure of a ~~juvenile's~~ the person's identity and protects the
19 confidentiality of the sealed record; ~~or -~~

20 (h) By a law enforcement agency if a person whose record
21 has been sealed applies for employment with the law enforcement
22 agency.

23 ~~(4) No person shall knowingly release, disseminate, or~~
24 ~~make available, for any purpose involving employment, bonding,~~
25 ~~licensing, or education, to any person or to any department, agency,~~

1 ~~or other instrumentality of the state or of any of its political~~
2 ~~subdivisions, any information or other data concerning any arrest,~~
3 ~~taking into custody, petition, complaint, indictment, information,~~
4 ~~trial, hearing, adjudication, correctional supervision, dismissal, or~~
5 ~~disposition, the record of which has been sealed pursuant to section~~
6 ~~43-2-108.04 and the release, dissemination, or making available of~~
7 ~~which is not expressly permitted by this section or court order.~~
8 Nothing in this section ~~shall prohibit~~ prohibits the Department of
9 Health and Human Services from releasing, ~~disseminating, or making~~
10 ~~available~~ information from sealed records in the performance of its
11 duties with respect to the supervision and protection of persons
12 served by the department. ~~Any person who violates this section may be~~
13 ~~held in contempt of court.~~

14 (5) In any application for employment, bonding, license,
15 education, or other right or privilege, any appearance as a witness,
16 or any other public inquiry, a person cannot be questioned with
17 respect to any arrest or taking into custody offense for which the
18 record is sealed. If an inquiry is made in violation of this
19 subsection, the person may respond as if the ~~sealed arrest or taking~~
20 ~~into custody did not occur, and the person is not subject to any~~
21 ~~adverse action because of the arrest or taking into custody or the~~
22 ~~response. offense never occurred.~~ Applications for employment shall
23 contain specific language that states that the applicant is not
24 obligated to disclose a sealed ~~juvenile record, or sentence.~~
25 Employers shall not ask if an applicant has had a ~~juvenile record~~

1 sealed. The Department of Labor shall develop a link on the
2 department's web site to inform employers that employers cannot ask
3 if an applicant had a ~~juvenile~~-record sealed and that an application
4 for employment shall contain specific language that states that the
5 applicant is not obligated to disclose a sealed ~~juvenile~~-record. ~~of~~
6 ~~arrest, custody, complaint, disposition, diversion, adjudication, or~~
7 ~~sentence.~~

8 (6) Any person who violates this section may be held in
9 contempt of court.

10 Sec. 11. Section 43-2,129, Revised Statutes Cumulative
11 Supplement, 2010, is amended to read:

12 43-2,129 Sections 43-245 to 43-2,129 and section 5 of
13 this act shall be known and may be cited as the Nebraska Juvenile
14 Code.

15 Sec. 12. Section 43-412, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 43-412 (1) Every juvenile committed to the Office of
18 Juvenile Services pursuant to the Nebraska Juvenile Code or pursuant
19 to subsection (3) of section 29-2204 shall remain committed until he
20 or she attains the age of nineteen or is legally discharged.

21 (2) The discharge of any juvenile pursuant to the rules
22 and regulations or upon his or her attainment of the age of nineteen
23 shall be a complete release from all penalties incurred by conviction
24 or adjudication of the offense for which he or she was committed.

25 (3) The Office of Juvenile Services shall provide the

1 committing court with written notification of the juvenile's
2 discharge within thirty days of a juvenile being discharged from the
3 care and custody of the office.

4 Sec. 13. Section 43-416, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 43-416 The Office of Juvenile Services shall have
7 administrative authority over the parole function for juveniles
8 committed to a youth rehabilitation and treatment center and may (1)
9 determine the time of release on parole of committed juveniles
10 eligible for such release, (2) fix the conditions of parole, revoke
11 parole, issue or authorize the issuance of detainers for the
12 apprehension and detention of parole violators, and impose other
13 sanctions short of revocation for violation of conditions of parole,
14 and (3) determine the time of discharge from parole. The office shall
15 provide the committing court with written notification of the
16 juvenile's discharge from parole within thirty days of a juvenile
17 being discharged from the supervision of the office.

18 Sec. 14. The Legislature finds and declares that:

19 (1) The safety and well-being of abused and neglected
20 children throughout the State of Nebraska should be of paramount
21 concern to the state and its residents;

22 (2) Court appointed special advocate volunteers provide a
23 unique and vital service to the children they represent and work to
24 ensure the safety and well-being of abused and neglected children;

25 (3) Court appointed special advocate volunteers have

1 provided, in many cases, the judges who adjudicate cases with
2 essential information that has not only ensured the safety and well-
3 being of abused and neglected children throughout Nebraska, but has
4 also saved the state thousands of dollars; and

5 (4) Providing resources through a grant program will
6 increase the savings to the state through court appointed special
7 advocate programs.

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

17 Sec. 16. (1) The Supreme Court shall award grants from
18 the Court Appointed Special Advocate Fund as provided in subsection
19 (2) of this section to any court appointed special advocate program
20 that applies for the grant and:

21 (a) Is a nonprofit organization organized under section
22 501(c)(3) of the Internal Revenue Code;

23 (b) Has the ability to operate statewide; and

24 (c) Has an affiliation agreement with local programs that
25 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 no more
6 than three hundred thousand dollars, shall be awarded as grants used
7 to recruit new court appointed special advocate volunteers and to
8 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
15 than fifty thousand dollars, shall be awarded as grants used to
16 expand court appointed special advocate programs into counties that
17 have no programs or limited programs.

18 Sec. 17. Each applicant who is awarded a grant under
19 section 16 of this act shall provide the Supreme Court, Clerk of the
20 Legislature, and Governor prior to December 31 of each year a report
21 regarding the grant 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;

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

3 (4) A description of any programs described in
4 subdivision (2)(d) of section 16 of this act;

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

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

11 Sec. 18. Section 43-3701, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 43-3701 Sections 43-3701 to 43-3716 and sections 14, 15,
14 16, and 17 of this act shall be known and may be cited as the Court
15 Appointed Special Advocate Act.

16 Sec. 19. Section 79-209, Revised Statutes Cumulative
17 Supplement, 2010, is amended to read:

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

1 or complaint as provided in this section, the attendance officer
2 believes that any child is unlawfully absent from school, the
3 attendance officer shall immediately investigate.

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

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

1 (2) Educational counseling to determine whether
2 curriculum changes, including, but not limited to, enrolling the
3 child in an alternative education program that meets the specific
4 educational and behavioral needs of the child, would help solve the
5 problem of excessive absenteeism;

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

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

24 If the child is absent more than twenty days per year or
25 the hourly equivalent, the attendance officer shall file a report

1 with the county attorney of the county in which such person resides.
2 The county attorney may file a complaint against a person violating
3 section 79-201 before the judge of the county court of the county in
4 which such person resides charging such person with violation of
5 section 79-201 or may file a petition under the Nebraska Juvenile
6 Code alleging the person violating section 79-201 is a juvenile
7 described in subdivision (3)(a) or (3)(b) of section 43-247. Nothing
8 in this section shall preclude a county attorney from being involved
9 at any stage in the process to address excessive absenteeism.

10 Sec. 20. Section 79-2104, Revised Statutes Cumulative
11 Supplement, 2010, is amended to read:

12 79-2104 A learning community coordinating council shall
13 have the authority to:

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

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

18 (3) Levy for elementary learning center facility leases,
19 for remodeling of leased elementary learning center facilities, and
20 for up to fifty percent of the estimated cost for focus school or
21 program capital projects approved by the learning community
22 coordinating council pursuant to subdivision (2)(h) of section
23 77-3442 and section 79-2111;

24 (4) Levy for elementary learning center employees, for
25 contracts with other entities or individuals who are not employees of

1 the learning community for elementary learning center programs and
2 services, and for pilot projects pursuant to subdivision (2)(i) of
3 section 77-3442, except that not more than ten percent of such levy
4 may be used for elementary learning center employees;

5 (5) Collect, analyze, and report data and information,
6 including, but not limited to, information provided by a school
7 district pursuant to subsection (5) of section 79-201;

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

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

13 (8) Administer the open enrollment provisions in section
14 79-2110 for the learning community as part of a diversity plan
15 developed by the council to provide educational opportunities which
16 will result in increased diversity in schools across the learning
17 community;

18 (9) Annually conduct school fairs to provide students and
19 parents the opportunity to explore the educational opportunities
20 available at each school in the learning community and develop other
21 methods for encouraging access to such information and promotional
22 materials;

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

25 (11) Establish and administer elementary learning centers

1 through achievement subcouncils pursuant to sections 79-2112 to
2 79-2114;

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

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

8 (14) Establish a procedure for receiving community input
9 and complaints regarding the learning community;

10 (15) Establish a procedure to assist parents, citizens,
11 and member school districts in accessing an approved center pursuant
12 to the Dispute Resolution Act to resolve disputes involving member
13 school districts or the learning community. Such procedure may
14 include payment by the learning community for some mediation
15 services; ~~and~~

16 (16) Establish and administer pilot projects related to
17 enhancing the academic achievement of elementary students,
18 particularly students who face challenges in the educational
19 environment due to factors such as poverty, limited English skills,
20 and mobility; and -

21 (17) Provide funding to public or private entities
22 engaged in the juvenile justice system providing prefiling and
23 diversion programming designed to reduce excessive absenteeism and
24 unnecessary involvement with the juvenile justice system.

25 Sec. 21. Section 79-2104.02, Revised Statutes Cumulative

1 Supplement, 2010, is amended to read:

2 79-2104.02 Each learning community coordinating council
3 shall use any funds received after January 15, 2011, pursuant to
4 section 79-1241.03 for evaluation and research pursuant to plans
5 developed by the learning community coordinating council with
6 assistance from the educational service unit coordinating council and
7 the student achievement coordinator and adjusted on an ongoing basis.
8 The evaluation shall be conducted by one or more other entities or
9 individuals who are not employees of the learning community and shall
10 measure progress toward the goals and objectives of the learning
11 community, which goals and objectives shall include reduction of
12 excessive absenteeism of students in the member school districts of
13 the learning community and closing academic achievement gaps based on
14 socioeconomic status, and the effectiveness of the approaches used by
15 the learning community or pilot project to reach such goals and
16 objectives. Any research conducted pursuant to this section shall
17 also be related to such goals and objectives. After the first full
18 year of operation, each learning community shall report evaluation
19 and research results to the Education Committee of the Legislature on
20 or before December 1 of each year.

21 Sec. 22. The superintendents of any school districts that
22 are members of a learning community shall develop and participate in
23 a plan by August 1, 2011, to reduce excessive absenteeism including a
24 process to share information regarding at-risk youth with the goal of
25 improving educational outcomes, providing effective interventions

1 that impact risk factors, and reducing unnecessary penetration deeper
2 into the juvenile justice system. For purposes of this section, at-
3 risk youth means children who are under the supervision of the Office
4 of Probation Administration, are committed to the care, custody, or
5 supervision of the Department of Health and Human Services, are
6 otherwise involved in the juvenile justice system, or have been
7 absent from school for more than five days per quarter or the hourly
8 equivalent except when excused by school authorities or when a
9 documented illness makes attendance impossible or impracticable.

10 Sec. 23. Sections 6, 7, 8, 9, 10, 12, 13, and 25 of this
11 act become operative three calendar months after the adjournment of
12 this legislative session. The other sections of this act become
13 operative on their effective date.

14 Sec. 24. Original sections 43-286 and 43-3701, Reissue
15 Revised Statutes of Nebraska, and sections 28-416, 29-2258,
16 29-2262.08, 29-3921, 43-2,129, 79-209, 79-2104, and 79-2104.02,
17 Revised Statutes Cumulative Supplement, 2010, are repealed.

18 Sec. 25. Original sections 43-412 and 43-416, Reissue
19 Revised Statutes of Nebraska, and sections 43-2,108.01, 43-2,108.02,
20 43-2,108.03, 43-2,108.04, and 43-2,108.05, Revised Statutes
21 Cumulative Supplement, 2010, are repealed.

22 Sec. 26. Since an emergency exists, this act takes effect
23 when passed and approved according to law.