

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 482

FINAL READING

Introduced by Krist, 10.

Read first time January 20, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to juveniles; to amend section 43-252, Reissue
2 Revised Statutes of Nebraska, and sections 43-251.01, 43-276, and
3 43-2,129, Revised Statutes Cumulative Supplement, 2014; to change
4 provisions relating to placements, commitments, fingerprints, and
5 petitions; to provide for assistance for certain juveniles; to
6 regulate the use of restraints; to define a term; to harmonize
7 provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-251.01, Revised Statutes Cumulative
2 Supplement, 2014, is amended to read:

3 43-251.01 All placements and commitments of juveniles for
4 evaluations or as temporary or final dispositions are subject to the
5 following:

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

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

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

17 (4) A juvenile under the age of fourteen years shall not be placed
18 with or committed to a youth rehabilitation and treatment center; ~~and~~

19 (5) A juvenile shall not be detained in secure detention or placed
20 at a youth rehabilitation and treatment center unless detention or
21 placement of such juvenile is a matter of immediate and urgent necessity
22 for the protection of such juvenile or the person or property of another
23 or if it appears that such juvenile is likely to flee the jurisdiction of
24 the court; -

25 (6) A juvenile alleged to be a juvenile as described in subdivision
26 (3)(b) of section 43-247 shall not be placed in a juvenile detention
27 facility, including a wing labeled as staff secure at such facility,
28 unless the designated staff secure portion of the facility fully complies
29 with subdivision (3) of section 83-4,125 and the ingress and egress to
30 the facility are restricted solely through staff supervision; and

31 (7) A juvenile alleged to be a juvenile as described in subdivision

1 (3)(b) of section 43-247 shall not be placed out of his or her home as a
2 dispositional order of the court unless:

3 (a) All available community-based resources have been exhausted to
4 assist the juvenile and his or her family; and

5 (b) Maintaining the juvenile in the home presents a significant risk
6 of harm to the juvenile or community.

7 Sec. 2. A peace officer, upon making contact with a child who has
8 not committed a criminal offense but who appears to be a juvenile as
9 described in subdivision (3)(b) of section 43-247 and who is in need of
10 assistance, may refer the child and child's parent or parents or guardian
11 to a clinically credentialed community-based provider for immediate
12 crisis intervention, de-escalation, and respite care services.

13 Sec. 3. (1) Restraints shall not be used on a juvenile during a
14 juvenile court proceeding and shall be removed prior to the juvenile's
15 appearance before the juvenile court, unless the juvenile court makes a
16 finding of probable cause that:

17 (a) The use of restraints is necessary:

18 (i) To prevent physical harm to the juvenile or another person;

19 (ii) Because the juvenile:

20 (A) Has a history of disruptive courtroom behavior that has placed
21 others in potentially harmful situations; or

22 (B) Presents a substantial risk of inflicting physical harm on
23 himself or herself or others as evidenced by recent behavior; or

24 (iii) Because the juvenile presents a substantial risk of flight
25 from the courtroom; and

26 (b) There is no less restrictive alternative to restraints that will
27 prevent flight or physical harm to the juvenile or another person,
28 including, but not limited to, the presence of court personnel, law
29 enforcement officers, or bailiffs.

30 (2) The court shall provide the juvenile's attorney an opportunity
31 to be heard before the court orders the use of restraints. If restraints

1 are ordered, the court shall make written findings of fact in support of
2 the order.

3 (3) For purposes of this section, restraints includes, but is not
4 limited to, handcuffs, chains, irons, straitjackets, and electronic
5 restraint devices.

6 Sec. 4. Section 43-252, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 43-252 (1) The fingerprints of any juvenile less than fourteen years
9 of age, who has been taken into custody in the investigation of a
10 suspected unlawful act, shall not be taken unless the consent of any
11 district, county, associate county, associate separate juvenile court, or
12 separate juvenile court judge has first been obtained.

13 (2) The fingerprints of any juvenile alleged or found to be a
14 juvenile as described in subdivision (3)(b) of section 43-247 shall not
15 be taken.

16 (3 2) If the judge permits the fingerprinting, the fingerprints must
17 be filed by law enforcement officers in files kept separate from those of
18 persons of the age of majority.

19 (4 3) The fingerprints of any juvenile shall not be sent to a state
20 or federal depository by a law enforcement agency of this state unless:
21 (a) The juvenile has been convicted of or adjudged to have committed a
22 felony; (b) the juvenile has unlawfully terminated his or her commitment
23 to a youth rehabilitation and treatment center; or (c) the juvenile is a
24 runaway and a fingerprint check is needed for identification purposes to
25 return the juvenile to his or her parent.

26 Sec. 5. Section 43-276, Revised Statutes Cumulative Supplement,
27 2014, is amended to read:

28 43-276 (1) The county attorney or city attorney, in making the
29 determination whether to file a criminal charge, file a juvenile court
30 petition, offer juvenile pretrial diversion or mediation, or transfer a
31 case to or from juvenile court, and the juvenile court, county court, or

1 district court in making the determination whether to transfer a case,
2 shall consider: (a 1) The type of treatment such juvenile would most
3 likely be amenable to; (b 2) whether there is evidence that the alleged
4 offense included violence; (c 3) the motivation for the commission of the
5 offense; (d 4) the age of the juvenile and the ages and circumstances of
6 any others involved in the offense; (e 5) the previous history of the
7 juvenile, including whether he or she had been convicted of any previous
8 offenses or adjudicated in juvenile court; (f 6) the best interests of
9 the juvenile; (g 7) consideration of public safety; (h 8) consideration
10 of the juvenile's ability to appreciate the nature and seriousness of his
11 or her conduct; (i 9) whether the best interests of the juvenile and the
12 security of the public may require that the juvenile continue in secure
13 detention or under supervision for a period extending beyond his or her
14 minority and, if so, the available alternatives best suited to this
15 purpose; (j 10) whether the victim agrees to participate in mediation; (k
16 11) whether there is a juvenile pretrial diversion program established
17 pursuant to sections 43-260.02 to 43-260.07; (l 12) whether the juvenile
18 has been convicted of or has acknowledged unauthorized use or possession
19 of a firearm; (m 13) whether a juvenile court order has been issued for
20 the juvenile pursuant to section 43-2,106.03; (n 14) whether the juvenile
21 is a criminal street gang member; and (o 15) such other matters as the
22 parties deem relevant to aid in the decision.

23 (2) Prior to filing a petition alleging that a juvenile is a
24 juvenile as described in subdivision (3)(b) of section 43-247, the county
25 attorney shall make reasonable efforts to refer the juvenile and family
26 to community-based resources available to address the juvenile's
27 behaviors, provide crisis intervention, and maintain the juvenile safely
28 in the home. Failure to describe the efforts required by this subsection
29 shall be a defense to adjudication.

30 Sec. 6. Section 43-2,129, Revised Statutes Cumulative Supplement,
31 2014, is amended to read:

1 43-2,129 Sections 43-245 to 43-2,129 and sections 2 and 3 of this
2 act shall be known and may be cited as the Nebraska Juvenile Code.

3 Sec. 7. Original section 43-252, Reissue Revised Statutes of
4 Nebraska, and sections 43-251.01, 43-276, and 43-2,129, Revised Statutes
5 Cumulative Supplement, 2014, are repealed.