

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 482**

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 prohibit the use of instruments of restraint as prescribed; to  
7 harmonize 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, deescalation, and respite care services.

13 Sec. 3. (1) Instruments of restraint, such as handcuffs, chains,  
14 irons, or straitjackets, may not be used on a juvenile during a court  
15 proceeding and shall be removed prior to the juvenile's appearance before  
16 the court unless the court finds that:

17 (a) The use of restraints is necessary due to one of the following  
18 factors:

19 (i) Instruments of restraint are necessary to prevent physical harm  
20 to the juvenile or another person;

21 (ii) The juvenile has a history of disruptive courtroom behavior  
22 that has placed others in potentially harmful situations or presents a  
23 substantial risk of inflicting physical harm on himself or herself or  
24 others as evidenced by recent behavior; or

25 (iii) There is a reasonable belief that the juvenile presents a  
26 substantial risk of flight from the courtroom; and

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

31 (2) The court shall provide the juvenile's attorney an opportunity

1 to be heard before the court orders the use of restraints. If restraints  
2 are ordered, the court shall make findings of fact in support of the  
3 order.

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

6 43-252 (1) The fingerprints of any juvenile less than fourteen years  
7 of age, who has been taken into custody in the investigation of a  
8 suspected unlawful act, shall not be taken unless the consent of any  
9 district, county, associate county, associate separate juvenile court, or  
10 separate juvenile court judge has first been obtained.

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

14 (3 2) If the judge permits the fingerprinting, the fingerprints must  
15 be filed by law enforcement officers in files kept separate from those of  
16 persons of the age of majority.

17 (4 3) The fingerprints of any juvenile shall not be sent to a state  
18 or federal depository by a law enforcement agency of this state unless:  
19 (a) The juvenile has been convicted of or adjudged to have committed a  
20 felony; (b) the juvenile has unlawfully terminated his or her commitment  
21 to a youth rehabilitation and treatment center; or (c) the juvenile is a  
22 runaway and a fingerprint check is needed for identification purposes to  
23 return the juvenile to his or her parent.

24 Sec. 5. Section 43-276, Revised Statutes Cumulative Supplement,  
25 2014, is amended to read:

26 43-276 (1) The county attorney or city attorney, in making the  
27 determination whether to file a criminal charge, file a juvenile court  
28 petition, offer juvenile pretrial diversion or mediation, or transfer a  
29 case to or from juvenile court, and the juvenile court, county court, or  
30 district court in making the determination whether to transfer a case,  
31 shall consider: (a 1) The type of treatment such juvenile would most

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

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

28 Sec. 6. Section 43-2,129, Revised Statutes Cumulative Supplement,  
29 2014, is amended to read:

30 43-2,129 Sections 43-245 to 43-2,129 and sections 2 and 3 of this  
31 act shall be known and may be cited as the Nebraska Juvenile Code.

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