

## LEGISLATIVE BILL 638

Approved by the Governor May 29, 1987

Introduced by Scofield, 49; Landis, 46; Moore, 24; Higgins, 9; Hall, 7; Marsh, 29; Withem, 14; Morehead, 30; Warner, 25; Barrett, 39; Smith, 33

AN ACT relating to juveniles; to amend sections 43-274, 43-284, 43-286, 43-290, and 43-2,101, Reissue Revised Statutes of Nebraska, 1943, and sections 43-245, 43-254, and 43-258, Revised Statutes Supplement, 1986; to redefine a term; to provide for parental payments and use of health care benefits for certain expenses; to specify powers and jurisdiction of the juvenile court; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 43-245, Revised Statutes Supplement, 1986, be amended to read as follows:

43-245. As used in the Nebraska Juvenile Code, unless the context otherwise requires:

(1) Parent shall mean one or both parents or a stepparent when such stepparent is married to the custodial parent as of the filing of the petition;

(2) Parties shall mean the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;

(3) Juvenile court shall mean the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,129 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common law, or chancery jurisdiction or jurisdiction acquired in an action for divorce, legal separation, or annulment;

(4) Traffic offense shall mean any nonfelonious act in violation of a law or ordinance regulating vehicular or pedestrian travel, whether designated a misdemeanor or a traffic infraction;

(5) Juvenile shall mean any person under the age of eighteen; and

(6) Age of majority shall mean nineteen years of age.

Sec. 2. That section 43-254, Revised Statutes Supplement, 1986, be amended to read as follows:

43-254. Pending the adjudication of any case, if it appears that the need for placement or further detention exists, the juvenile may be (1) placed or detained a reasonable period of time on order of the court in the temporary custody of either the person having charge of the juvenile or some other suitable person, (2) kept in some suitable place provided by the city or county authorities, (3) placed in any proper and accredited charitable institution, (4) placed in a state institution, except any adult penal institution, when proper facilities are available and the only local facility is a city or county jail, at the expense of the committing county on a per diem basis as determined from time to time by the head of the particular institution, or (5) placed in the temporary care and custody of the Department of Social Services when it does not appear that there is any need for detention in a locked facility. The court may assess the cost of such placement or detention in whole or in part to the parent of the juvenile as provided in section 43-290.

Sec. 3. That section 43-258, Revised Statutes Supplement, 1986, be amended to read as follows:

43-258. (1) Pending the adjudication of any case under the Nebraska Juvenile Code, the court may order the juvenile examined by a physician, surgeon, psychiatrist, duly authorized community mental health service program, or psychologist to aid the court in determining (a) a material allegation in the petition relating to the juvenile's physical or mental condition, (b) the juvenile's competence to participate in the proceedings, (c) the juvenile's responsibility for his or her acts, or (d) whether or not to provide emergency medical treatment.

(2) Pending the adjudication of any case under the Nebraska Juvenile Code and after a showing of probable cause that the juvenile is within the court's jurisdiction, for the purposes of subsection (1) of this section, the court may order such juvenile to be placed in one of the facilities or institutions of the State of Nebraska. Such juvenile shall not be placed in an adult penal institution, either of the youth development centers, or the Nebraska Center for Children and Youth, except as provided in section 43-913. Any placement for evaluation may be made on an inpatient or outpatient basis for a period not to exceed thirty days. The head



of any facility or institution shall make a complete evaluation of the juvenile, including any authorized area of inquiry requested by the court.

(3) Upon the expiration of the commitment period or such additional periods as the court may authorize, which shall not exceed thirty days each, the juvenile shall be returned to the court together with a written report of the results of the evaluation. Such evaluation shall include an assessment of the basic needs of the juvenile and recommendations for continuous and long-term care and shall be made to effectuate the purposes in subdivision (1) of section 43-246.

(4) In order to encourage the use of the procedure provided in this section, all costs incurred during the period the juvenile is being evaluated at a state facility or institution shall be the responsibility of the state unless otherwise ordered by the court pursuant to section 43-290. The county in which the case is pending shall be liable only for the cost of delivering the juvenile to the facility or institution and the cost of returning him or her to the court for disposition.

Sec. 4. That section 43-274, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-274. The county attorney or any reputable person residing in the county, with the consent of the county attorney, having knowledge of a juvenile in his or her county who appears to be a juvenile described in subdivision (1), (2), (3), or (4) of section 43-247 may file with the clerk of the court having jurisdiction in the matter, a petition in writing specifying which subdivision of section 43-247 is alleged, and setting forth the facts verified by affidavit, and requesting the court to determine whether support will be ordered pursuant to section 43-290. Allegations under subdivisions (1), (2), and (4) of section 43-247 shall be made with the same specificity as a criminal complaint. It shall be sufficient if the affidavit is based upon information and belief. Such petition and all subsequent proceedings shall be entitled In the Interest of ....., a Juvenile Under Eighteen Years of Age, inserting the juvenile's name in the blank. In all cases involving violation of a city or village ordinance, the city or village prosecutor may file a petition in juvenile court.

Sec. 5. That section 43-284, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-284. When any juvenile is adjudged to be under subdivision (3) of section 43-247, the court may permit such juvenile to remain in his or her own home subject to supervision or may make an order committing the juvenile to the (1) care of some suitable institution, (2) care of some reputable citizen of good moral character, (3) care of some association willing to receive the juvenile embracing in its objects the purpose of caring for or obtaining homes for such juveniles, which association shall have been accredited as provided in section 43-296, (4) care of a suitable family, except that under subdivision (1), (2), (3), or (4) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, education, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, education, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until suitable provisions may be made for the juvenile without such payment, or (5) care and custody of the Department of Social Services. The Department of Social Services shall file with the court a written report within thirty days of the commitment of any child to the department. The report shall contain the Department of Social Services' initial plan of care, placement, and services which are to be provided to such child. The Department of Social Services shall file with the court a progress report on each child at regular six-month intervals or shorter intervals if ordered by the court or deemed appropriate by the department. The Department of Social Services shall have the authority to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each child committed to it. The amount to be paid by a county for education pursuant to this section shall not exceed the average cost for education of a public school student in the county in which the juvenile is placed, and shall be paid only for education in kindergarten through grade twelve.

Sec. 6. That section 43-286, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-286. Notwithstanding the provisions of sections 43-251 and 43-253 to 43-257, no juvenile shall be confined in any jail as a disposition of the court. When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, ~~the court may~~



(1) The court may continue ~~Continue~~ the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged when the same is in the interest of the juvenile's reformation or rehabilitation and, subject to the further order of the court, may:

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

(b) Permit the juvenile to remain in his or her own home, subject to the supervision of the probation officer; or

(c) Cause the juvenile to be placed in a suitable family home or institution, subject to the supervision of the probation officer, except that under subdivision (1)(a), (1)(b), or (1)(c) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until a suitable provision may be made for the juvenile without such payment;

(2) Except as provided in section 43-287, the court may commit such juvenile to the care and custody of the Department of Correctional Services, but a juvenile under the age of twelve years shall not be committed to the Youth Development Center-Geneva or to the Youth Development Center-Kearney unless he or she has violated the terms of probation or has committed an additional offense and the court finds that the interests of the juvenile and the welfare of the community demand his or her commitment. This minimum age provision shall not apply if the act in question is murder or manslaughter;

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

(4) When a juvenile is placed on probation or under the supervision of the court for conduct under subdivision (1), (2), (3)(b), or (4) of section 43-247 and it is alleged that the juvenile has violated a term

of probation or supervision, or that the juvenile has violated an order of the court, a motion to revoke probation or supervision or to change the disposition may be filed and proceedings held as follows:

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

(b) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations set forth pursuant to subdivision (4)(a) of this section. At such hearing the juvenile shall be entitled to those rights relating to counsel provided by section ~~43-271~~ 43-272 and those rights relating to detention provided by sections 43-254, 43-255, and 43-256. The juvenile shall also be entitled to speak and present documents, witnesses, or other evidence on his or her own behalf. He or she may confront persons who have given adverse information concerning the alleged violations, may cross-examine such persons, and may show that he or she did not violate the conditions of his or her probation or, if he or she did, that mitigating circumstances suggest that the violation does not warrant revocation. The revocation hearing must be held within a reasonable time after the juvenile is taken into custody;

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

(d) The juvenile shall be given a preliminary hearing in all cases when the juvenile is confined, detained, or otherwise significantly deprived of his or her liberty as a result of his or her alleged violation of probation. Such preliminary hearing shall be held before an impartial person other than his or her probation officer or any person directly involved with the case. If, as a result of such preliminary hearing, probable cause is found to exist, the juvenile shall be entitled to a hearing before the court in accordance with subdivisions (4)(b) and (4)(c) of this section;

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



or, in the case of the juvenile adjudicated to be within the definitions of subdivision (3)(b) of section 43-247, the court, after considering the dispositions available, may in addition commit such juvenile to the Department of Public Institutions or the Department of Correctional Services under section 43-287; and

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

Sec. 7. That section 43-290, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-290. It is the purpose of this section to promote parental responsibility and to provide for the most equitable use and availability of public money.

Whenever Pursuant to the petition filed by the county attorney or any reputable person in accordance with section 43-274, whenever the care or custody of a juvenile is given by the court to someone other than his or her parent, which shall include placement with a state agency, or when a juvenile is given medical, psychological, or psychiatric study or treatment under order of the court, and no provision is otherwise made by law for the support of the juvenile or for payment for such study or treatment, compensation for the study and treatment of the juvenile, when approved by order of the court, shall be paid out of a fund which shall be appropriated by the county where the petition is filed the court shall make a determination of support to be paid by a parent for the juvenile at the same proceeding at which placement, study, or treatment is determined or at a separate proceeding. Such proceeding, which may occur prior to, at the same time as, or subsequent to adjudication, shall be in the nature of a disposition hearing.

In the same or subsequent At such proceeding, after summons to the parent of the time and place of hearing served as provided in sections 43-262 to 43-267, the court may order and decree that the parent shall pay, in such manner as the court may direct, a reasonable sum that will cover in whole or part the support, study, and treatment of the juvenile, given after the decree is entered, which amount ordered paid shall be the extent of the liability of the parent. The court in making such order shall give due regard to the cost of study, treatment, and maintenance of the juvenile, and the ability of the parent to pay, and the availability of money for the support of the juvenile from previous judicial decrees, social security

benefits, veterans' benefits, or other sources. Amounts Support thus received by the court shall be transmitted to the person, agency, or institution having financial responsibility for furnishing such study, treatment, or maintenance and, if a state agency or institution, transmitted by such state agency or institution quarterly to the Director of Administrative Services for credit to the proper fund.

Whenever medical, psychological, or psychiatric study or treatment is ordered by the court, whether or not the juvenile is placed with someone other than his or her parent, or if such study or treatment is otherwise provided as determined necessary by the custodian of the juvenile, the court shall inquire as to the availability of insured or uninsured health care coverage or service plans which include the juvenile. The court may order the parent to pay over any plan benefit sums received on coverage for the juvenile. The payment of any deductible under the health care benefit plan covering the juvenile shall be the responsibility of the parent. If the parent willfully fails or refuses to pay such the sum ordered or to pay over any health care plan benefit sums received, the court may proceed against him or her as for contempt, either on the court's own motion or on the motion of the county attorney or authorized attorney as provided in section 43-512, or execution shall issue at the request of any person, agency, or institution treating or maintaining such juvenile. The court may afterwards, because of a change in the circumstances of the parties, revise or alter the order of payment for support, study, or treatment.

If no provision is otherwise made by law for the support or payment for the study or treatment of the juvenile, compensation for the study or treatment shall be paid, when approved by an order of the court, out of a fund which shall be appropriated by the county in which the petition is filed.

The juvenile court shall retain jurisdiction over a parent ordered to pay support for the purpose of enforcing such support order for so long as such support remains unpaid but not to exceed ten years from the nineteenth birthday of the youngest child for whom support was ordered.

Sec. 8. That section 43-2,101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-2,101. Each Unless otherwise ordered by the court pursuant to section 43-290, each county shall



bear all the expenses incident to the transportation of each juvenile from such county to the Department of Social Services, together with such fees and costs as are allowed by law in similar cases. The , which fees, costs, and expenses shall be paid from the county treasury upon itemized vouchers certified by the judge of the juvenile court.

Sec. 9. That original sections 43-274, 43-284, 43-286, 43-290, and 43-2,101, Reissue Revised Statutes of Nebraska, 1943, and sections 43-245, 43-254, and 43-258, Revised Statutes Supplement, 1986, are repealed.

Sec. 10. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.