

AMENDMENTS TO LB811

(Amendments to AM2567)

Introduced by Avery

1 1. Insert the following sections:
2 Sec. 18. Section 43-254, Revised Statutes Supplement,
3 2013, is amended to read:
4 43-254 Pending the adjudication of any case, and subject
5 to subdivision (5) of section 43-251.01, if it appears that the
6 need for placement or further detention exists, the juvenile may
7 be (1) placed or detained a reasonable period of time on order
8 of the court in the temporary custody of either the person having
9 charge of the juvenile or some other suitable person, (2) kept in
10 some suitable place provided by the city or county authorities,
11 (3) placed in any proper and accredited charitable institution,
12 (4) placed in a state institution, except any adult correctional
13 facility, when proper facilities are available and the only local
14 facility is a city or county jail, at the expense of the committing
15 county on a per diem basis as determined from time to time
16 by the head of the particular institution, (5) placed in the
17 temporary care and custody of the Department of Health and Human
18 Services when it does not appear that there is any need for secure
19 detention, except that beginning October 1, 2013, no juvenile
20 alleged to be a juvenile described in subdivision (1), (2), (3)(b),
21 or (4) of section 43-247 shall be placed in the care and custody
22 or under the supervision of the Department of Health and Human

1 Services, or (6) beginning October 1, 2013, offered supervision
2 options as determined pursuant to section 43-260.01, through the
3 Office of Probation Administration as ordered by the court and
4 agreed to in writing by the parties, if the juvenile is alleged to
5 be a juvenile described in subdivision (1), (2), (3)(b), or (4) of
6 section 43-247 and it does not appear that there is any need for
7 secure detention. The court may assess the cost of such placement
8 or detention in whole or in part to the parent of the juvenile as
9 provided in section 43-290.

10 If a juvenile has been removed from his or her parent,
11 guardian, or custodian pursuant to subdivision (2) of section
12 43-248, the court may enter an order continuing detention or
13 placement upon a written determination that continuation of the
14 juvenile in his or her home would be contrary to the health,
15 safety, or welfare of such juvenile and that reasonable efforts
16 were made to preserve and reunify the family if required under
17 ~~subsections (1) through (4) of~~ section 43-283.01.

18 Sec. 19. Section 43-283.01, Revised Statutes Cumulative
19 Supplement, 2012, is amended to read:

20 43-283.01 (1) In determining whether reasonable efforts
21 have been made to preserve and reunify the family and in making
22 such reasonable efforts, the juvenile's health and safety are the
23 paramount concern.

24 (2) Except as provided in ~~subsection~~ subsections (4) and
25 (5) of this section, reasonable efforts shall be made to preserve
26 and reunify families prior to the placement of a juvenile in foster
27 care to prevent or eliminate the need for removing the juvenile

1 from the juvenile's home and to make it possible for a juvenile to
2 safely return to the juvenile's home.

3 (3) If continuation of reasonable efforts to preserve
4 and reunify the family is determined to be inconsistent with the
5 permanency plan determined for the juvenile in accordance with a
6 permanency hearing under section 43-1312, efforts shall be made
7 to place the juvenile in a timely manner in accordance with the
8 permanency plan and to complete whatever steps are necessary to
9 finalize the permanent placement of the juvenile.

10 (4) Reasonable efforts to preserve and reunify the
11 family are not required if a court of competent jurisdiction
12 has determined that:

13 (a) The parent of the juvenile has subjected the juvenile
14 or another minor child to aggravated circumstances, including, but
15 not limited to, abandonment, torture, chronic abuse, or sexual
16 abuse;

17 (b) The parent of the juvenile has (i) committed first or
18 second degree murder to another child of the parent, (ii) committed
19 voluntary manslaughter to another child of the parent, (iii) aided
20 or abetted, attempted, conspired, or solicited to commit murder, or
21 aided or abetted voluntary manslaughter of the juvenile or another
22 child of the parent, (iv) committed a felony assault which results
23 in serious bodily injury to the juvenile or another minor child of
24 the parent, or (v) been convicted of felony sexual assault of the
25 other parent of the juvenile under section 28-319.01 or 28-320.01
26 or a comparable crime in another state; or

27 (c) The parental rights of the parent to a sibling of the

1 juvenile have been terminated involuntarily.

2 (5) If the family includes a child who was conceived
3 by the victim of a sexual assault and the biological father
4 is convicted of the crime under section 28-319 or 28-320, the
5 biological father of such child shall not be considered a part of
6 the child's family for purposes of requiring reasonable efforts to
7 preserve and reunify the family.

8 ~~(5)~~ (6) If reasonable efforts to preserve and reunify the
9 family are not required because of a ~~court~~ determination made under
10 subsection (4) or (5) of this section, a permanency hearing, as
11 provided in section 43-1312, shall be held for the juvenile within
12 thirty days after the determination, reasonable efforts shall be
13 made to place the juvenile in a timely manner in accordance with
14 the permanency plan, and whatever steps are necessary to finalize
15 the permanent placement of the juvenile shall be made.

16 ~~(6)~~ (7) Reasonable efforts to place a juvenile for
17 adoption or with a guardian may be made concurrently with
18 reasonable efforts to preserve and reunify the family, but priority
19 shall be given to preserving and reunifying the family as provided
20 in this section.

21 Sec. 20. Section 43-292.02, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 43-292.02 (1) A petition shall be filed on behalf of the
24 state to terminate the parental rights of the juvenile's parents
25 or, if such a petition has been filed by another party, the
26 state shall join as a party to the petition, and the state shall
27 concurrently identify, recruit, process, and approve a qualified

1 family for an adoption of the juvenile, if:

2 (a) A juvenile has been in foster care under the
3 responsibility of the state for fifteen or more months of the
4 most recent twenty-two months; or

5 (b) A court of competent jurisdiction has determined the
6 juvenile to be an abandoned infant or has made a determination that
7 the parent has committed murder of another child of the parent,
8 committed voluntary manslaughter of another child of the parent,
9 aided or abetted, attempted, conspired, or solicited to commit
10 murder, or aided or abetted voluntary manslaughter of the juvenile
11 or another child of the parent, or committed a felony assault that
12 has resulted in serious bodily injury to the juvenile or another
13 minor child of the parent. For purposes of this subdivision, infant
14 means a child eighteen months of age or younger.

15 (2) A petition shall not be filed on behalf of the state
16 to terminate the parental rights of the juvenile's parents or, if
17 such a petition has been filed by another party, the state shall
18 not join as a party to the petition if the sole factual basis for
19 the petition is that (a) the parent or parents of the juvenile
20 are financially unable to provide health care for the juvenile or
21 (b) the parent or parents of the juvenile are incarcerated. The
22 fact that a qualified family for an adoption of the juvenile has
23 been identified, recruited, processed, and approved shall have no
24 bearing on whether parental rights shall be terminated.

25 (3) The petition is not required to be filed on behalf
26 of the state or if a petition is filed the state shall not be
27 required to join in a petition to terminate parental rights or to

1 concurrently find a qualified family to adopt the juvenile under
2 this section if:

3 (a) The child is being cared for by a relative;

4 (b) The Department of Health and Human Services has
5 documented in the case plan or permanency plan, which shall be
6 available for court review, a compelling reason for determining
7 that filing such a petition would not be in the best interests of
8 the juvenile; or

9 (c) The family of the juvenile has not had a reasonable
10 opportunity to avail themselves of the services deemed necessary
11 in the case plan or permanency plan approved by the court if
12 reasonable efforts to preserve and reunify the family are required
13 under section 43-283.01.

14 (4) If a child is conceived by the victim of a sexual
15 assault and the biological father is established by DNA evidence
16 and is convicted of the crime under section 28-319 or 28-320, the
17 county attorney shall file a petition on behalf of the state to
18 terminate the parental rights of the biological father and the
19 conviction shall be conclusive evidence that the parental rights
20 of the biological father should be terminated, unless the child's
21 biological mother or guardian consents otherwise and the court
22 finds that not terminating the parental rights of the biological
23 father is in the best interests of the child. If the conviction
24 is later overturned, the county attorney shall file a petition
25 on behalf of the state to reinstate the parental rights of the
26 biological father, and the court may reinstate parental rights if
27 the court finds that reinstatement is in the best interests of the

1 child.

2 Sec. 21. Section 43-1411.01, Revised Statutes Supplement,
3 2013, is amended to read:

4 43-1411.01 (1) An action for paternity or parental
5 support under sections 43-1401 to 43-1418 may be initiated by
6 filing a complaint with the clerk of the district court as provided
7 in section 25-2740. Such proceeding may be heard by the county
8 court or the district court as provided in section 25-2740. A
9 paternity determination under sections 43-1411 to 43-1418 may also
10 be decided in a county court or separate juvenile court if the
11 county court or separate juvenile court already has jurisdiction
12 over the child whose paternity is to be determined.

13 (2) Whenever termination of parental rights is placed in
14 issue in any case arising under sections 43-1401 to 43-1418, the
15 Nebraska Juvenile Code and the Parenting Act shall apply to such
16 proceedings.

17 (3) The court shall stay the paternity action if there
18 is a pending criminal allegation of sexual assault under section
19 28-319 or 28-320 against the alleged father with regard to the
20 conception of the child. If the alleged father is not found
21 guilty, the paternity action shall proceed. If the alleged father
22 is found guilty and paternity is established by DNA evidence, the
23 paternity of the child is established by the conviction and the
24 parental rights of the biological father may be terminated. If the
25 conviction is later overturned, the county attorney shall file a
26 petition on behalf of the state to reinstate the parental rights of
27 the biological father, and the court may reinstate parental rights

1 if the court finds that reinstatement is in the best interests of
2 the child.

3 Sec. 22. Section 43-2933, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 43-2933 (1) (a) No person shall be granted custody of, or
6 unsupervised parenting time, visitation, or other access with, a
7 child if the person is required to be registered as a sex offender
8 under the Sex Offender Registration Act for an offense that would
9 make it contrary to the best interests of the child for such access
10 or for an offense in which the victim was a minor or if the
11 person has been convicted under section 28-311, 28-319.01, 28-320,
12 28-320.01, or 28-320.02, unless the mother or guardian consents and
13 the court finds that there is no significant risk to the child and
14 states its reasons in writing or on the record.

15 (b) No person shall be granted custody of, or
16 unsupervised parenting time, visitation, or other access with, a
17 child if anyone residing in the person's household is required to
18 register as a sex offender under the Sex Offender Registration Act
19 as a result of a felony conviction in which the victim was a minor
20 or for an offense that would make it contrary to the best interests
21 of the child for such access unless the court finds that there is
22 no significant risk to the child and states its reasons in writing
23 or on the record.

24 (c) The fact that a child is permitted unsupervised
25 contact with a person who is required, as a result of a felony
26 conviction in which the victim was a minor, to be registered as
27 a sex offender under the Sex Offender Registration Act shall be

1 prima facie evidence that the child is at significant risk. When
2 making a determination regarding significant risk to the child,
3 the prima facie evidence shall constitute a presumption affecting
4 the burden of producing evidence. However, this presumption shall
5 not apply if there are factors mitigating against its application,
6 including whether the other party seeking custody, parenting time,
7 visitation, or other access is also required, as the result of a
8 felony conviction in which the victim was a minor, to register as a
9 sex offender under the Sex Offender Registration Act.

10 (2) No person shall be granted custody, parenting time,
11 visitation, or other access with a child if the person has been
12 convicted under section 28-319 and the child was conceived as a
13 result of that violation.

14 (3) A change in circumstances relating to subsection (1)
15 or (2) of this section is sufficient grounds for modification of a
16 previous order.

17 2. Renumber the remaining sections and correct the
18 repealer accordingly.