

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 294

FINAL READING

Introduced by Scheer, 19; Pansing Brooks, 28; Garrett, 3; Watermeier, 1.

Read first time January 15, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to law; to amend sections 21-20,177, 29-812,
2 29-815, 86-2,108, and 86-2,112, Reissue Revised Statutes of
3 Nebraska, and sections 21-2,212, 27-413, 28-801.01, 28-802, 28-804,
4 28-831, 43-250, and 43-1303, Revised Statutes Cumulative Supplement,
5 2014; to adopt the Human Trafficking Victims Civil Remedy Act; to
6 change certain service of process provisions; to redefine offense of
7 sexual assault; to change penalties for solicitation of
8 prostitution, pandering, keeping a place of prostitution, and human
9 trafficking; to change provisions relating to search warrants,
10 temporary custody requirements for juveniles, and foster care
11 placement reports; to provide for forfeiture of assets for persons
12 engaged in human trafficking; to create a fund; to harmonize
13 provisions; to provide operative dates; to repeal the original
14 sections; to outright repeal section 21-20,177, Reissue Revised
15 Statutes of Nebraska, as amended by this legislative bill; and to
16 declare an emergency.
17 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 5 of this act shall be known and may be
2 cited as the Human Trafficking Victims Civil Remedy Act.

3 Sec. 2. For purposes of the Human Trafficking Victims Civil Remedy
4 Act:

5 (1) Human trafficking means labor trafficking, labor trafficking of
6 a minor, sex trafficking, or sex trafficking of a minor, as those terms
7 are defined in section 28-830; and

8 (2) Trafficking victim has the same meaning as in section 28-830.

9 Sec. 3. (1) Any trafficking victim or his or her parent or legal
10 guardian who suffered or continues to suffer personal or psychological
11 injury as a result of such human trafficking may bring a civil action
12 against any person who knowingly (a) engaged in human trafficking of such
13 victim within this state or (b) aided or assisted with the human
14 trafficking of such victim within this state.

15 (2) A plaintiff who prevails in a civil action brought pursuant to
16 the Human Trafficking Victims Civil Remedy Act may recover his or her
17 actual damages plus any and all attorney's fees and costs reasonably
18 associated with the civil action. In addition to all other remedies
19 available under the act, the court may also award temporary, preliminary,
20 and permanent injunctive relief as the court deems necessary and
21 appropriate.

22 Sec. 4. Notwithstanding any other provision of law, any action to
23 recover damages under the Human Trafficking Victims Civil Remedy Act
24 shall be filed within ten years after the later of:

25 (1) The conclusion of any related criminal prosecution against the
26 person or persons from whom recovery is sought;

27 (2) The receipt of actual or constructive notice sent or given to
28 the trafficking victim or his or her parent or legal guardian by a member
29 of a law enforcement entity informing the victim or his or her parent or
30 legal guardian that the entity has identified the person who knowingly
31 (a) engaged in human trafficking of such victim or (b) aided or assisted

1 with the human trafficking of such victim;

2 (3) The time at which the human trafficking of the trafficking
3 victim ended if he or she was eighteen years of age or older; or

4 (4) The victim reaching the age of majority if the victim was under
5 eighteen years of age at the time he or she was a victim of human
6 trafficking.

7 Sec. 5. In any action brought pursuant to the Human Trafficking
8 Victims Civil Remedy Act, a plaintiff may request to use a pseudonym
9 instead of his or her legal name in all court proceedings and records.
10 Upon finding that the use of a pseudonym is proper, the court shall
11 ensure that the pseudonym is used in all court proceedings and records.

12 Sec. 6. Section 21-2,212, Revised Statutes Cumulative Supplement,
13 2014, is amended to read:

14 21-2,212 (MBCA 15.10) (a) The registered agent of a foreign
15 corporation authorized to transact business in this state is the
16 corporation's agent for service of process, notice, or demand required or
17 permitted by law to be served on the foreign corporation. By being
18 authorized to transact business in this state, the foreign corporation's
19 agent for service of process also consents to service of process directed
20 to the foreign corporation's agent in this state for a search warrant
21 issued pursuant to sections 29-812 to 29-821 ~~28-807 to 28-829~~, or for any
22 other validly issued and properly served court order or subpoena,
23 including those authorized under sections 86-2,106 and section 86-2,112,
24 for records or documents that are in the possession of the foreign
25 corporation and are located inside or outside of this state. The consent
26 to service of a court order, subpoena, or search warrant applies to a
27 foreign corporation that is a party or nonparty to the matter for which
28 the court order, subpoena, or search warrant is sought.

29 (b) A foreign corporation may be served by registered or certified
30 mail, return receipt requested, addressed to the secretary of the foreign
31 corporation or the designated custodian of records at its principal

1 office shown in its application for a certificate of authority or in its
2 most recent biennial report if the foreign corporation:

3 (1) Has no registered agent or its registered agent cannot with
4 reasonable diligence be served;

5 (2) Has withdrawn from transacting business in this state under
6 section 21-2,213; or

7 (3) Has had its certificate of authority revoked under section
8 21-2,218.

9 (c) Service is perfected under subsection (b) of this section at the
10 earliest of:

11 (1) The date the foreign corporation receives the mail;

12 (2) The date shown on the return receipt, if signed on behalf of the
13 foreign corporation; or

14 (3) Five days after its deposit in the United States mail, as
15 evidenced by the postmark, if mailed postpaid and correctly addressed.

16 (d) This section does not prescribe the only means, or necessarily
17 the required means, of serving a foreign corporation.

18 Sec. 7. Section 21-20,177, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 21-20,177 (1) The registered agent of a foreign corporation
21 authorized to transact business in this state shall be the corporation's
22 agent for service of process, notice, or demand required or permitted by
23 law to be served on the foreign corporation. By being authorized to
24 transact business in this state, the foreign corporation's agent for
25 service of process shall also consent to service of process directed to
26 the foreign corporation's agent in Nebraska for a search warrant issued
27 pursuant to sections 29-812 to 29-821 ~~28-807 to 28-829~~, or for any other
28 validly issued and properly served court order or subpoena, including
29 those authorized under sections 86-2,106 and section 86-2,112, for
30 records or documents that are in the possession of the foreign
31 corporation and are located inside or outside of this state. The consent

1 to service of a court order, subpoena, or search warrant applies to a
2 foreign corporation that is a party or nonparty to the matter for which
3 the court order, subpoena, or search warrant is sought.

4 (2) A foreign corporation may be served by registered or certified
5 mail, return receipt requested, addressed to the secretary of the foreign
6 corporation or the designated custodian of records at its principal
7 office shown in its application for a certificate of authority or in its
8 most recent annual report if the foreign corporation has:

9 (a) No registered agent or its registered agent cannot with
10 reasonable diligence be served;

11 (b) Withdrawn from transacting business in this state under section
12 21-20,178; or

13 (c) Had its certificate of authority revoked under section
14 21-20,180.

15 (3) Service shall be perfected under subsection (2) of this section
16 at the earliest of:

17 (a) The date the foreign corporation receives the mail;

18 (b) The date shown on the return receipt if signed on behalf of the
19 foreign corporation; or

20 (c) Five days after its deposit in the United States mail as
21 evidenced by the postmark if mailed postage prepaid and correctly
22 addressed.

23 (4) This section shall not be construed to prescribe the only means
24 or necessarily the required means of serving a foreign corporation.

25 Sec. 8. Section 27-413, Revised Statutes Cumulative Supplement,
26 2014, is amended to read:

27 27-413 For purposes of sections 27-414 and 27-415, offense of sexual
28 assault means sexual assault under section 28-319 or 28-320, sexual
29 assault of a child under section 28-319.01 or 28-320.01, sexual assault
30 by use of an electronic communication device under section 28-320.02,
31 sexual abuse of an inmate or parolee under sections 28-322.01 to

1 28-322.03, ~~and~~ sexual abuse of a protected individual under section
2 28-322.04, an attempt or conspiracy to commit any of the crimes listed in
3 this section, or the commission of or conviction for a crime in another
4 jurisdiction that is substantially similar to any crime listed in this
5 section.

6 Sec. 9. Section 28-801.01, Revised Statutes Cumulative Supplement,
7 2014, is amended to read:

8 28-801.01 (1) Any person who solicits another person not his or her
9 spouse to perform any act of sexual contact or sexual penetration, as
10 those terms are defined in section 28-318, in exchange for money or other
11 thing of value, commits solicitation of prostitution.

12 (2) Any person convicted of violating subsection (1) of this section
13 shall be punished as follows:

14 (a) If such person has had no prior convictions, such person shall
15 be guilty of a Class I misdemeanor and pay a fine of not less than two
16 hundred fifty dollars, unless the person solicited is under the age of
17 eighteen years, in which case such person violating this section shall be
18 guilty of a Class IV felony. If the court places such person on
19 probation, such order of probation shall include in ~~, as one of its~~
20 conditions (i) ~~,~~ the payment of a fine of not less than two hundred fifty
21 dollars, (ii) that ~~and~~ such person shall satisfactorily attend and
22 complete an appropriate mental health and substance abuse assessment
23 conducted by a licensed mental health professional or substance abuse
24 professional authorized to complete such assessment, and (iii) that such
25 person shall satisfactorily attend and complete, at his or her own
26 expense, an educational program designed to educate participants on the
27 effect of prostitution on the participants' health, on the person
28 solicited, and on the community; and

29 (b) If such person has had one or more prior convictions, such
30 person shall be guilty of a Class IV felony and pay a fine of not less
31 than five hundred dollars. If the court places such person on probation,

1 such order of probation shall include in ~~, as one of~~ its conditions (i) ~~,~~
2 the payment of a fine of not less than five hundred dollars, (ii) that
3 ~~and~~ such person shall satisfactorily attend and complete an appropriate
4 mental health and substance abuse assessment conducted by a licensed
5 mental health professional or substance abuse professional authorized to
6 complete such assessment, and (iii) that such person shall satisfactorily
7 attend and complete, at his or her own expense, an educational program
8 designed to educate participants on the effect of prostitution on the
9 participants' health, on the person solicited, and on the community.

10 (3) It is an affirmative defense to prosecution under this section
11 that such person was a trafficking victim as defined in section 28-830.

12 Sec. 10. Section 28-802, Revised Statutes Cumulative Supplement,
13 2014, is amended to read:

14 28-802 (1) A person commits pandering if such person:

15 (a) Entices another person to become a prostitute; or

16 (b) Procures or harbors therein an inmate for a house of
17 prostitution or for any place where prostitution is practiced or allowed;
18 or

19 (c) Inveigles, entices, persuades, encourages, or procures any
20 person to come into or leave this state for the purpose of prostitution
21 or debauchery; or

22 (d) Receives or gives or agrees to receive or give any money or
23 other thing of value for procuring or attempting to procure any person to
24 become a prostitute or commit an act of prostitution or come into this
25 state or leave this state for the purpose of prostitution or debauchery.

26 (2) Pandering is a Class ~~III~~ IV felony for a first offense, unless
27 the person being enticed, procured, harbored, or otherwise persuaded to
28 become a prostitute is under the age of eighteen years, in which case
29 pandering is a Class ~~II~~ III felony for a first offense. Pandering is a
30 Class ~~II~~ III felony for a second or subsequent offense.

31 Sec. 11. Section 28-804, Revised Statutes Cumulative Supplement,

1 2014, is amended to read:

2 28-804 (1) Any person who has or exercises control over the use of
3 any place which offers seclusion or shelter for the practice of
4 prostitution and who knowingly grants or permits the use of such place
5 for the purpose of prostitution commits the offense of keeping a place of
6 prostitution.

7 (2) Keeping a place of prostitution is a Class IV felony ~~I~~
8 ~~misdemeanor~~, unless any person using such place for the practice of
9 prostitution is under the age of eighteen years, in which case any person
10 convicted of keeping a place of prostitution shall be guilty of a Class
11 III ~~IV~~ felony.

12 Sec. 12. Section 28-831, Revised Statutes Cumulative Supplement,
13 2014, is amended to read:

14 28-831 (1) Any person who engages in labor trafficking of a minor or
15 sex trafficking of a minor is guilty of a Class II felony if the actor
16 uses overt force or the threat of force or the trafficking victim has not
17 yet attained the age of sixteen years. Any person who otherwise engages
18 in labor trafficking of a minor or sex trafficking of a minor is guilty
19 of a Class IIA felony.

20 (2) Any person who engages in labor trafficking or sex trafficking
21 by inflicting or threatening to inflict serious personal injury, as
22 defined in section 28-318, on another person or physically restrains or
23 threatens to physically restrain another person is guilty of a Class IIA
24 felony. Any person who otherwise engages in labor trafficking or sex
25 trafficking is guilty of a Class III felony.

26 (3) Any person who knowingly benefits from or participates in a
27 venture which has, as part of the venture, an act that is in violation of
28 this section is guilty of a Class IIIA felony.

29 ~~(1) No person shall knowingly engage in labor trafficking or sex~~
30 ~~trafficking.~~

31 ~~(2) If an actor knowingly engages in labor trafficking or sex~~

1 trafficking by:

2 ~~(a) Inflicting or threatening to inflict serious personal injury, as~~
3 ~~defined by section 28-318, on another person, the actor is guilty of a~~
4 ~~Class III felony;~~

5 ~~(b) Physically restraining or threatening to physically restrain the~~
6 ~~other person, the actor is guilty of a Class III felony;~~

7 ~~(c) Abusing or threatening to abuse the legal process against~~
8 ~~another person to cause arrest or deportation for violation of federal~~
9 ~~immigration law, the actor is guilty of a Class IV felony;~~

10 ~~(d) Controlling or threatening to control another person's access to~~
11 ~~a controlled substance listed in Schedule I, II or III of section 28-405,~~
12 ~~the actor is guilty of a Class IV felony;~~

13 ~~(e) Exploiting another person's substantial functional impairment as~~
14 ~~defined in section 28-368 or substantial mental impairment as defined in~~
15 ~~section 28-369, the actor is guilty of a Class IV felony;~~

16 ~~(f) Knowingly destroying, concealing, removing, confiscating, or~~
17 ~~possessing any actual or purported passport or other immigration~~
18 ~~document, or any other actual or purported government identification~~
19 ~~document, of the other person, the actor is guilty of a Class IV felony;~~
20 ~~or~~

21 ~~(g) Causing or threatening to cause financial harm to another~~
22 ~~person, including debt bondage, the actor is guilty of a Class I~~
23 ~~misdemeanor.~~

24 ~~(3) No person shall engage in labor trafficking of a minor or sex~~
25 ~~trafficking of a minor. An actor who engages in labor trafficking of a~~
26 ~~minor or sex trafficking of a minor shall be punished as follows:~~

27 ~~(a) In cases in which the actor uses overt force or the threat of~~
28 ~~force against the trafficking victim, the actor is guilty of a Class II~~
29 ~~felony;~~

30 ~~(b) In cases in which the trafficking victim has not attained the~~
31 ~~age of fifteen years, the actor is guilty of a Class II felony; or~~

1 ~~(c) In cases involving a trafficking victim between the ages of~~
2 ~~fifteen and eighteen years, and the actor does not use overt force or~~
3 ~~threat of force against the trafficking victim, the actor is guilty of a~~
4 ~~Class III felony.~~

5 ~~(4) Any person who benefits, financially or by receiving anything of~~
6 ~~value, from participation in a venture which has, as part of the venture,~~
7 ~~an act that is in violation of this section, is guilty of a Class IV~~
8 ~~felony.~~

9 Sec. 13. Section 29-812, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 29-812 A search warrant authorized by sections 29-812 to 29-821 may
12 be issued by any judge of the county court, district court, Court of
13 Appeals, or Supreme Court for execution anywhere within the State of
14 Nebraska or for service upon any publicly or privately held corporation,
15 partnership, or other legal entity located within or outside the State of
16 Nebraska. A similar search warrant authorized by such sections may be
17 issued, subject to section 24-519, by any clerk magistrate within the
18 county in which the property sought is located.

19 Sec. 14. Section 29-815, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 29-815 (1) The warrant must be executed and returned within ten
22 days after its date. The officer taking property under the warrant shall
23 give to the person from whom or from whose premises the property was
24 taken a copy of the warrant and a receipt for the property or shall leave
25 the copy and the receipt at the place from which the property was taken.
26 The return shall be made promptly and shall be accompanied by a written
27 inventory of any property taken. The inventory shall be made in the
28 presence of the applicant for the warrant and the person from whose
29 possession or premises the property was taken if they are present, or in
30 the presence of at least one credible witness other than the applicant
31 for the warrant or the person from whose possession or premises the

1 property was taken, and shall be verified by the officer. The judge or
2 magistrate shall deliver a copy of the inventory upon request to the
3 person from whom or from whose premises the property was taken and to the
4 applicant for the warrant.

5 (2) The return and inventory required by subsection (1) of this
6 section may be submitted to the magistrate or judge in person or by
7 facsimile or other electronic means.

8 Sec. 15. Section 43-250, Revised Statutes Cumulative Supplement,
9 2014, is amended to read:

10 43-250 (1) A peace officer who takes a juvenile into temporary
11 custody under section 29-401 or subdivision (1), (4), or (5) of section
12 43-248 shall immediately take reasonable measures to notify the
13 juvenile's parent, guardian, custodian, or relative and shall proceed as
14 follows:

15 (a) The peace officer may release a juvenile taken into temporary
16 custody under section 29-401 or subdivision (1) or (4) of section 43-248;

17 (b) The peace officer may require a juvenile taken into temporary
18 custody under section 29-401 or subdivision (1) or (4) of section 43-248
19 to appear before the court of the county in which such juvenile was taken
20 into custody at a time and place specified in the written notice prepared
21 in triplicate by the peace officer or at the call of the court. The
22 notice shall also contain a concise statement of the reasons such
23 juvenile was taken into custody. The peace officer shall deliver one copy
24 of the notice to such juvenile and require such juvenile or his or her
25 parent, guardian, other custodian, or relative, or both, to sign a
26 written promise that such signer will appear at the time and place
27 designated in the notice. Upon the execution of the promise to appear,
28 the peace officer shall immediately release such juvenile. The peace
29 officer shall, as soon as practicable, file one copy of the notice with
30 the county attorney or city attorney and, when required by the court,
31 also file a copy of the notice with the court or the officer appointed by

1 the court for such purpose; or

2 (c) The peace officer may retain temporary custody of a juvenile
3 taken into temporary custody under section 29-401 or subdivision (1),
4 (4), or (5) of section 43-248 and deliver the juvenile, if necessary, to
5 the probation officer and communicate all relevant available information
6 regarding such juvenile to the probation officer. The probation officer
7 shall determine the need for detention of the juvenile as provided in
8 section 43-260.01. Upon determining that the juvenile should be placed in
9 a secure or nonsecure placement and securing placement in such secure or
10 nonsecure setting by the probation officer, the peace officer shall
11 implement the probation officer's decision to release or to detain and
12 place the juvenile. When secure detention of a juvenile is necessary,
13 such detention shall occur within a juvenile detention facility except:

14 (i) When a juvenile described in subdivision (1) or (2) of section
15 43-247, except for a status offender, is taken into temporary custody
16 within a metropolitan statistical area and where no juvenile detention
17 facility is reasonably available, the juvenile may be delivered, for
18 temporary custody not to exceed six hours, to a secure area of a jail or
19 other facility intended or used for the detention of adults solely for
20 the purposes of identifying the juvenile and ascertaining his or her
21 health and well-being and for safekeeping while awaiting transport to an
22 appropriate juvenile placement or release to a responsible party;

23 (ii) When a juvenile described in subdivision (1) or (2) of section
24 43-247, except for a status offender, is taken into temporary custody
25 outside of a metropolitan statistical area and where no juvenile
26 detention facility is reasonably available, the juvenile may be
27 delivered, for temporary custody not to exceed twenty-four hours
28 excluding nonjudicial days and while awaiting an initial court
29 appearance, to a secure area of a jail or other facility intended or used
30 for the detention of adults solely for the purposes of identifying the
31 juvenile and ascertaining his or her health and well-being and for

1 safekeeping while awaiting transport to an appropriate juvenile placement
2 or release to a responsible party;

3 (iii) Whenever a juvenile is held in a secure area of any jail or
4 other facility intended or used for the detention of adults, there shall
5 be no verbal, visual, or physical contact between the juvenile and any
6 incarcerated adult and there shall be adequate staff to supervise and
7 monitor the juvenile's activities at all times. This subdivision shall
8 not apply to a juvenile charged with a felony as an adult in county or
9 district court if he or she is sixteen years of age or older;

10 (iv) If a juvenile is under sixteen years of age or is a juvenile as
11 described in subdivision (3) of section 43-247, he or she shall not be
12 placed within a secure area of a jail or other facility intended or used
13 for the detention of adults;

14 (v) If, within the time limits specified in subdivision (1)(c)(i) or
15 (1)(c)(ii) of this section, a felony charge is filed against the juvenile
16 as an adult in county or district court, he or she may be securely held
17 in a jail or other facility intended or used for the detention of adults
18 beyond the specified time limits;

19 (vi) A status offender or nonoffender taken into temporary custody
20 shall not be held in a secure area of a jail or other facility intended
21 or used for the detention of adults. Until January 1, 2013, a status
22 offender accused of violating a valid court order may be securely
23 detained in a juvenile detention facility longer than twenty-four hours
24 if he or she is afforded a detention hearing before a court within
25 twenty-four hours, excluding nonjudicial days, and if, prior to a
26 dispositional commitment to secure placement, a public agency, other than
27 a court or law enforcement agency, is afforded an opportunity to review
28 the juvenile's behavior and possible alternatives to secure placement and
29 has submitted a written report to the court; and

30 (vii) A juvenile described in subdivision (1) or (2) of section
31 43-247, except for a status offender, may be held in a secure area of a

1 jail or other facility intended or used for the detention of adults for
2 up to six hours before and six hours after any court appearance.

3 (2) When a juvenile is taken into temporary custody pursuant to
4 subdivision (2) or (7) of section 43-248, the peace officer shall deliver
5 the custody of such juvenile to the Department of Health and Human
6 Services which shall make a temporary placement of the juvenile in the
7 least restrictive environment consistent with the best interests of the
8 juvenile as determined by the department. The department shall supervise
9 such placement and, if necessary, consent to any necessary emergency
10 medical, psychological, or psychiatric treatment for such juvenile. The
11 department shall have no other authority with regard to such temporary
12 custody until or unless there is an order by the court placing the
13 juvenile in the custody of the department. If the peace officer delivers
14 temporary custody of the juvenile pursuant to this subsection, the peace
15 officer shall make a full written report to the county attorney within
16 twenty-four hours of taking such juvenile into temporary custody. If a
17 court order of temporary custody is not issued within forty-eight hours
18 of taking the juvenile into custody, the temporary custody by the
19 department shall terminate and the juvenile shall be returned to the
20 custody of his or her parent, guardian, custodian, or relative.

21 (3) If the peace officer takes the juvenile into temporary custody
22 pursuant to subdivision (3) of section 43-248, the peace officer may
23 place the juvenile at a mental health facility for evaluation and
24 emergency treatment or may deliver the juvenile to the Department of
25 Health and Human Services as provided in subsection (2) of this section.
26 At the time of the admission or turning the juvenile over to the
27 department, the peace officer responsible for taking the juvenile into
28 custody pursuant to subdivision (3) of section 43-248 shall execute a
29 written certificate as prescribed by the Department of Health and Human
30 Services which will indicate that the peace officer believes the juvenile
31 to be mentally ill and dangerous, a summary of the subject's behavior

1 supporting such allegations, and that the harm described in section
2 71-908 is likely to occur before proceedings before a juvenile court may
3 be invoked to obtain custody of the juvenile. A copy of the certificate
4 shall be forwarded to the county attorney. The peace officer shall notify
5 the juvenile's parents, guardian, custodian, or relative of the
6 juvenile's placement.

7 (4) When a juvenile is taken into temporary custody pursuant to
8 subdivision (6) of section 43-248, the peace officer shall deliver the
9 juvenile to the enrolled school of such juvenile.

10 (5) A juvenile taken into custody pursuant to a legal warrant of
11 arrest shall be delivered to a probation officer who shall determine the
12 need for detention of the juvenile as provided in section 43-260.01. If
13 detention is not required, the juvenile may be released without bond if
14 such release is in the best interests of the juvenile, the safety of the
15 community is not at risk, and the court that issued the warrant is
16 notified that the juvenile had been taken into custody and was released.

17 (6) In determining the appropriate temporary placement of a juvenile
18 under this section, the peace officer shall select the placement which is
19 least restrictive of the juvenile's freedom so long as such placement is
20 compatible with the best interests of the juvenile and the safety of the
21 community.

22 Sec. 16. Section 43-1303, Revised Statutes Cumulative Supplement,
23 2014, is amended to read:

24 43-1303 (1) The office shall maintain the statewide register of all
25 foster care placements occurring within the state, and there shall be a
26 monthly report made to the registry of all foster care placements by the
27 Department of Health and Human Services, any child-placing agency, or any
28 court in a form as developed by the office in consultation with
29 representatives of entities required to make such reports. For each child
30 entering and leaving foster care, such monthly report shall consist of
31 identifying information, placement information, and the plan or

1 permanency plan developed by the person or court in charge of the child
2 pursuant to section 43-1312, and information on whether any such child
3 was a person immune from criminal prosecution under subsection (5) of
4 section 28-801 or was considered a trafficking victim as defined in
5 subdivision (16) of section 28-830. The department and every court and
6 child-placing agency shall report any foster care placement within three
7 working days. The report shall contain the following information:

8 (a) Child identification information, including name, social
9 security number, date of birth, gender, race, and religion;

10 (b) Identification information for parents and stepparents,
11 including name, social security number, address, and status of parental
12 rights;

13 (c) Placement information, including initial placement date, current
14 placement date, and the name and address of the foster care provider;

15 (d) Court status information, including which court has
16 jurisdiction, initial custody date, court hearing date, and results of
17 the court hearing;

18 (e) Agency or other entity having custody of the child;

19 (f) Case worker; and

20 (g) Permanency plan objective.

21 (2)(a) The office shall designate a local board to conduct foster
22 care file audit case reviews for each case of children in foster care
23 placement.

24 (b) The office may adopt and promulgate rules and regulations for
25 the following:

26 (i) Establishment of training programs for local board members which
27 shall include an initial training program and periodic inservice training
28 programs;

29 (ii) Development of procedures for local boards;

30 (iii) Establishment of a central record-keeping facility for all
31 local board files, including foster care file audit case reviews;

1 (iv) Accumulation of data and the making of annual reports on
2 children in foster care. Such reports shall include (A) personal data on
3 length of time in foster care, (B) number of placements, (C) frequency
4 and results of foster care file audit case reviews and court review
5 hearings, (D) number of children supervised by the foster care programs
6 in the state annually, (E) trend data impacting foster care, services,
7 and placements, (F) analysis of the data, and (G) recommendations for
8 improving the foster care system in Nebraska;

9 (v) To the extent not prohibited by section 43-1310, evaluation of
10 the judicial and administrative data collected on foster care and the
11 dissemination of such data to the judiciary, public and private agencies,
12 the department, and members of the public; and

13 (vi) Manner in which the office shall determine the appropriateness
14 of requesting a court review hearing as provided for in section 43-1313.

15 (3) A local board shall send a written report to the office for each
16 foster care file audit case review conducted by the local board. A court
17 shall send a written report to the office for each foster care review
18 hearing conducted by the court.

19 (4) The office shall report and make recommendations to the
20 Legislature, department, local boards, and county welfare offices. Such
21 reports and recommendations shall include, but not be limited to, the
22 annual judicial and administrative data collected on foster care pursuant
23 to subsections (2) and (3) of this section and the annual evaluation of
24 such data. The report and recommendations submitted to the Legislature
25 shall be submitted electronically. In addition, the office shall provide
26 copies of such reports and recommendations to each court having the
27 authority to make foster care placements. The executive director of the
28 office or his or her designees from the office may visit and observe
29 foster care facilities in order to ascertain whether the individual
30 physical, psychological, and sociological needs of each foster child are
31 being met. The executive director shall also provide, at a time specified

1 by the Health and Human Services Committee of the Legislature, regular
2 electronic updates regarding child welfare data and information at least
3 quarterly, and a fourth-quarter report which shall be the annual report.
4 The executive director shall include issues, policy concerns, and
5 problems which have come to the office and the executive director from
6 analysis of the data. The executive director shall recommend alternatives
7 to the identified problems and related needs of the office and the foster
8 care system to the committee. The Health and Human Services Committee
9 shall coordinate and prioritize data and information requests submitted
10 to the office by members of the Legislature. The annual report of the
11 office shall be completed by December 1 each year, ~~beginning December 1,~~
12 ~~2012,~~ and shall be submitted electronically to the committee.

13 Sec. 17. Section 86-2,108, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 86-2,108 (1)(a) A governmental entity acting under subsection (2) of
16 section 86-2,106 shall (i) when a court order is sought, include in the
17 application a request, which the court shall grant, for an order delaying
18 the notification required under such subsection for a period not to
19 exceed ninety days if the court determines that there is reason to
20 believe that notification of the existence of the court order may have an
21 adverse result or (ii) when an administrative subpoena is obtained, delay
22 the notification required under such subsection for a period not to
23 exceed ninety days upon the execution of a written certification of a
24 supervisory official that there is reason to believe that notification of
25 the existence of the subpoena may have an adverse result.

26 (b) For purposes of this section:

27 (i) Adverse result means:

28 (A) Endangering the life or physical safety of an individual;

29 (B) Flight from prosecution;

30 (C) Destruction of or tampering with evidence;

31 (D) Intimidation of potential witnesses; or

1 (E) Otherwise seriously jeopardizing an investigation or unduly
2 delaying a trial; and

3 (ii) Supervisory official means the investigative agent in charge,
4 the assistant investigative agent in charge, an equivalent of an
5 investigating agency's headquarters or regional office, the chief
6 prosecuting attorney, the first assistant prosecuting attorney, or an
7 equivalent of a prosecuting attorney's headquarters or regional office.

8 (c) The governmental entity shall maintain a true copy of
9 certification under subdivision (a)(ii) of this subsection.

10 (d) Extensions of the delay of notification provided in sections
11 86-2,106 and 86-2,107 of up to ninety days each may be granted by the
12 court upon application, or by certification by a governmental entity, but
13 only in accordance with subsection (2) of this section.

14 (e) Upon expiration of the period of delay of notification under
15 subdivision (a) or (d) of this subsection, the governmental entity shall
16 serve upon or deliver by registered or first-class mail to the customer
17 or subscriber a copy of the process or request together with notice that:

18 (i) States with reasonable specificity the nature of the law
19 enforcement inquiry; and

20 (ii) Informs such customer or subscriber:

21 (A) That information maintained for such customer or subscriber by
22 the provider named in such process or request was supplied to or
23 requested by that governmental entity and the date on which the supplying
24 or request took place;

25 (B) That notification of such customer or subscriber was delayed;

26 (C) What governmental entity or court made the certification or
27 determination pursuant to which that delay was made; and

28 (D) Which provision of sections 86-2,104 to 86-2,109 allowed such
29 delay.

30 (2) A governmental entity acting under section 86-2,106, except as
31 provided in ~~when it is not required to notify the subscriber or customer~~

1 ~~under subdivision (2)(a) of section 86-2,106 or to the extent that it may~~
2 ~~delay such notice pursuant to~~ subsection (1) of this section, may apply
3 to a court for an order commanding a provider of electronic communication
4 service or remote computing service to whom a warrant, subpoena, or court
5 order is directed, for such period as the court deems appropriate, not to
6 notify any other person of the existence of the warrant, subpoena, or
7 court order. The court shall enter such an order if it determines that
8 there is reason to believe that notification of the existence of the
9 warrant, subpoena, or court order will result in an adverse result.

10 Sec. 18. Section 86-2,112, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 86-2,112 (1) The Attorney General or any county attorney may
13 administer oaths and affirmations, subpoena witnesses and compel their
14 attendance, take evidence, and require the production of records
15 including books, papers, documents, and tangible things which constitute
16 or contain evidence relevant or material to the investigation or
17 enforcement of the laws of this state when it reasonably appears that
18 such action is necessary and proper. The attendance of witnesses and the
19 production of records shall be required from any place within the State
20 of Nebraska, and service of subpoenas may be made upon any publicly or
21 privately held corporation, partnership, or other legal entity located
22 within or outside the State of Nebraska. Witnesses summoned by the
23 Attorney General or a county attorney shall be paid the same fees that
24 are paid witnesses in the courts of the State of Nebraska and mileage at
25 the rate provided in section 81-1176.

26 (2) The Attorney General or a county attorney may apply to a court
27 for an order commanding the person or entity to which a subpoena is
28 directed not to notify any other person of the existence of the subpoena.
29 The court shall enter such an order if it determines that there is reason
30 to believe that notification of the existence of the subpoena will result
31 in an adverse result, as such term is defined in section 86-2,108.

1 Sec. 19. (1)(a) In addition to any other civil or criminal
2 penalties provided by law, any property used in the commission of a
3 violation of section 28-831 may be forfeited through a civil proceeding
4 as provided in this section.

5 (b) The following property shall be subject to civil forfeiture if
6 used or intended for use as an instrumentality in or used in furtherance
7 of a violation of section 28-831:

8 (i) Conveyances, including aircraft, vehicles, or vessels;

9 (ii) Books, records, telecommunication equipment, or computers;

10 (iii) Money or weapons;

11 (iv) Everything of value furnished, or intended to be furnished, in
12 exchange for an act in violation and all proceeds traceable to the
13 exchange;

14 (v) Negotiable instruments and securities;

15 (vi) Any property, real or personal, directly or indirectly acquired
16 or received in a violation or as an inducement to violate;

17 (vii) Any property traceable to proceeds from a violation; and

18 (viii) Any real property, including any right, title, and interest
19 in the whole of or any part of any lot or tract of land, used in
20 furtherance of a violation of section 28-831.

21 (c)(i) No property used by any person as a common carrier in the
22 transaction of business as a common carrier is subject to forfeiture
23 under this section unless it appears that the owner or other person in
24 charge of the property is a consenting party or privy to a violation of
25 section 28-831.

26 (ii) No property is subject to forfeiture under this section by
27 reason of any act or omission proved by the owner thereof to have been
28 committed or omitted without his or her knowledge or consent. If the
29 confiscating authority has reason to believe that the property is leased
30 or rented property, then the confiscating authority shall notify the
31 owner of the property within five days after the confiscation or within

1 five days after forming reason to believe that the property is leased or
2 rented property.

3 (iii) Forfeiture of property encumbered by a bona fide security
4 interest is subject to the interest of the secured party if such party
5 neither had knowledge of nor consented to the act or omission.

6 (2) No property shall be forfeited under this section, to the extent
7 of the interest of an owner, by reason of any act or omission established
8 by the owner to have been committed or omitted without his or her
9 knowledge or consent.

10 (3) Seizure without process may be made if the seizure is incident
11 to an arrest or a search under a search warrant.

12 (4)(a) When any property is seized under this section, proceedings
13 shall be instituted within a reasonable period of time from the date of
14 seizure or the subject property shall be immediately returned to the
15 party from whom seized.

16 (b) A petition for forfeiture shall be filed by the Attorney General
17 or a county attorney in the name of the State of Nebraska and may be
18 filed in the county in which the seizure is made, the county in which the
19 criminal prosecution is brought, or the county in which the owner of the
20 seized property is found. Forfeiture proceedings may be brought in the
21 district court or the county court. A copy of the petition shall be
22 served upon the following persons by service of process in the same
23 manner as in civil cases:

24 (i) The owner of the property if the owner's address is known;

25 (ii) Any secured party who has registered a lien or filed a
26 financing statement as provided by law if the identity of the secured
27 party can be ascertained by the entity filing the petition by making a
28 good faith effort to ascertain the identity of the secured party;

29 (iii) Any other bona fide lienholder or secured party or other
30 person holding an interest in the property in the nature of a security
31 interest of whom the seizing law enforcement agency has actual knowledge;

1 and

2 (iv) Any person in possession of property subject to forfeiture at
3 the time that it was seized.

4 (5) If the property is a motor vehicle subject to titling under the
5 Motor Vehicle Certificate of Title Act or a vessel subject to titling
6 under the State Boat Act, and if there is any reasonable cause to believe
7 that the motor vehicle or vessel has been titled, inquiry of the
8 Department of Motor Vehicles shall be made as to what the records of the
9 department show as to who is the record owner of the motor vehicle or
10 vessel and who, if anyone, holds any lien or security interest that
11 affects the motor vehicle or vessel.

12 (6) If the property is a motor vehicle or vessel and is not titled
13 in the State of Nebraska, then an attempt shall be made to ascertain the
14 name and address of the person in whose name the motor vehicle or vessel
15 is licensed, and if the motor vehicle or vessel is licensed in a state
16 which has in effect a certificate of title law, inquiry of the
17 appropriate agency of that state shall be made as to what the records of
18 the agency show as to who is the record owner of the motor vehicle or
19 vessel and who, if anyone, holds any lien, security interest, or other
20 instrument in the nature of a security device that affects the motor
21 vehicle or vessel.

22 (7) If the property is of a nature that a financing statement is
23 required by the laws of this state to be filed to perfect a security
24 interest affecting the property and if there is any reasonable cause to
25 believe that a financing statement covering the security interest has
26 been filed under the laws of this state, inquiry shall be made as to what
27 the records show as to who is the record owner of the property and who,
28 if anyone, has filed a financing statement affecting the property.

29 (8) If the property is an aircraft or part thereof and if there is
30 any reasonable cause to believe that an instrument in the nature of a
31 security device affects the property, inquiry shall be made as to what

1 the records of the Federal Aviation Administration show as to who is the
2 record owner of the property and who, if anyone, holds an instrument in
3 the nature of a security device which affects the property.

4 (9) If the answer to an inquiry states that the record owner of the
5 property is any person other than the person who was in possession of it
6 when it was seized or states that any person holds any lien, encumbrance,
7 security interest, other interest in the nature of a security interest,
8 mortgage, or deed of trust that affects the property, the record owner
9 and also any lienholder, secured party, other person who holds an
10 interest in the property in the nature of a security interest, or holder
11 of an encumbrance, mortgage, or deed of trust that affects the property
12 is to be named in the petition of forfeiture and is to be served with
13 process in the same manner as in civil cases.

14 (10) If the owner of the property cannot be found and served with a
15 copy of the petition of forfeiture or if no person was in possession of
16 the property subject to forfeiture at the time that it was seized and the
17 owner of the property is unknown, there shall be filed with the clerk of
18 the court in which the proceeding is pending an affidavit to such effect,
19 whereupon the clerk of the court shall publish notice of the hearing
20 addressed to "the Unknown Owner of, " filling in the blank
21 space with a reasonably detailed description of the property subject to
22 forfeiture. Service by publication shall be completed in the same manner
23 as is provided in the code of civil procedure for the service of process
24 in civil actions in the district courts of this state.

25 (11) No proceedings instituted pursuant to this section shall
26 proceed to hearing unless the judge conducting the hearing is satisfied
27 that this section has been complied with. Any answer received from an
28 inquiry required by this section shall be introduced into evidence at the
29 hearing.

30 (12)(a) An owner of property that has been seized shall file an
31 answer within thirty days after the completion of service of process. If

1 an answer is not filed, the court shall hear evidence that the property
2 is subject to forfeiture and forfeit the property to the seizing law
3 enforcement agency. If an answer is filed, a time for hearing on
4 forfeiture shall be set within thirty days after filing the answer or at
5 the succeeding term of court if court would not be in session within
6 thirty days after filing the answer. The court may postpone the
7 forfeiture hearing to a date past the time any criminal action is pending
8 against the owner upon request of any party.

9 (b) If the owner of the property has filed an answer denying that
10 the property is subject to forfeiture, then the burden is on the
11 petitioner to prove that the property is subject to forfeiture. However,
12 if an answer has not been filed by the owner of the property, the
13 petition for forfeiture may be introduced into evidence and is prima
14 facie evidence that the property is subject to forfeiture. The burden of
15 proof placed upon the petitioner in regard to property forfeited under
16 this section shall be by a preponderance of the evidence.

17 (c) At the hearing any claimant of any right, title, or interest in
18 the property may prove his or her lien, encumbrance, security interest,
19 other interest in the nature of a security interest, mortgage, or deed of
20 trust to be bona fide and created without knowledge or consent that the
21 property was to be used so as to cause the property to be subject to
22 forfeiture.

23 (d) If it is found that the property is subject to forfeiture, then
24 the judge shall forfeit the property. However, if proof at the hearing
25 discloses that the interest of any bona fide lienholder, any secured
26 party, any other person holding an interest in the property in the nature
27 of a security interest, or any holder of a bona fide encumbrance,
28 mortgage, or deed of trust is greater than or equal to the present value
29 of the property, the court shall order the property released to him or
30 her. If the interest is less than the present value of the property and
31 if the proof shows that the property is subject to forfeiture, the court

1 shall order the property forfeited.

2 (13) Unless otherwise provided in this section, all personal
3 property which is forfeited under this section shall be liquidated and,
4 after deduction of court costs and the expense of liquidation, the
5 proceeds shall be remitted to the county treasurer of the county in which
6 the seizure was made. The county treasurer shall remit all such proceeds
7 from property forfeited pursuant to this section to the State Treasurer
8 for distribution in accordance with Article VII, section 5, of the
9 Constitution of Nebraska.

10 (14) All money forfeited under this section shall be remitted in the
11 same manner as provided in subsection (13) of this section.

12 (15) All real estate forfeited under this section shall be sold to
13 the highest bidder at a public auction for cash, the auction to be
14 conducted by the county sheriff or his or her designee at such place, on
15 such notice, and in accordance with the same procedure, as far as
16 practicable, as is required in the case of sales of land under execution
17 at law. The proceeds of the sale shall first be applied to the cost and
18 expense in administering and conducting the sale, then to the
19 satisfaction of all mortgages, deeds of trust, liens, and encumbrances of
20 record on the property. The remaining proceeds shall be remitted in the
21 same manner as provided in subsection (13) of this section.

22 (16) The civil forfeiture procedure set forth in this section is the
23 sole remedy of any claimant, and no court shall have jurisdiction to
24 interfere therewith by replevin, by injunction, by supersedeas, or by any
25 other manner.

26 Sec. 20. The Human Trafficking Victim Assistance Fund is created.
27 The fund shall contain money donated as gifts, bequests, or other
28 contributions from public or private entities. Funds made available by
29 any department or agency of the United States may also be credited to the
30 fund if so directed by such department or agency. The fund shall be
31 administered by the Nebraska Commission on Law Enforcement and Criminal

1 Justice. All money credited to such fund shall be used to support care,
2 treatment, and other services for victims of human trafficking and
3 commercial sexual exploitation of a child. Any money in the fund
4 available for investment shall be invested by the state investment
5 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
6 State Funds Investment Act.

7 Sec. 21. Sections 6, 22, and 25 of this act become operative on
8 January 1, 2017. Sections 12 and 23 of this act become operative three
9 calendar months after the adjournment of this legislative session. The
10 other sections of this act become operative on their effective date.

11 Sec. 22. Original section 21-2,212, Revised Statutes Cumulative
12 Supplement, 2014, is repealed.

13 Sec. 23. Original section 28-831, Revised Statutes Cumulative
14 Supplement, 2014, is repealed.

15 Sec. 24. Original sections 21-20,177, 29-812, 29-815, 86-2,108, and
16 86-2,112, Reissue Revised Statutes of Nebraska, and sections 27-413,
17 28-801.01, 28-802, 28-804, 43-250, and 43-1303, Revised Statutes
18 Cumulative Supplement, 2014, are repealed.

19 Sec. 25. The following section is outright repealed: Section
20 21-20,177, Reissue Revised Statutes of Nebraska, as amended by this
21 legislative bill.

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