

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 843

Introduced by Pansing Brooks, 28.

Read first time January 08, 2016

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
- 2 28-801 and 43-248, Revised Statutes Cumulative Supplement, 2014, and
- 3 section 43-1303, Revised Statutes Supplement, 2015; to change
- 4 provisions relating to prostitution; to harmonize provisions; and to
- 5 repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-801, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 28-801 (1) Except as provided in subsection (4 5) of this section,
4 any person who performs, offers, or agrees to perform any act of sexual
5 contact or sexual penetration, as those terms are defined in section
6 28-318, with any person not his or her spouse, in exchange for money or
7 other thing of value, commits prostitution, if such person was not
8 subject to labor trafficking, labor trafficking of a minor, sex
9 trafficking, or sex trafficking of a minor as such terms are defined in
10 section 28-830.

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

13 (a) If such person has had no prior convictions or has had one prior
14 conviction, such person shall be guilty of a Class II misdemeanor. If the
15 court places such person on probation, such order of probation shall
16 include, as one of its conditions, that such person shall satisfactorily
17 attend and complete an appropriate mental health and substance abuse
18 assessment conducted by a licensed mental health professional or
19 substance abuse professional authorized to complete such assessment; and

20 (b) If such person has had two or more prior convictions, such
21 person shall be guilty of a Class I misdemeanor. If the court places such
22 person on probation, such order of probation shall include, as one of its
23 conditions, that such person shall satisfactorily attend and complete an
24 appropriate mental health and substance abuse assessment conducted by a
25 licensed mental health professional or substance abuse professional
26 authorized to complete such assessment.

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

29 (3 4) For purposes of this section, prior conviction means any
30 conviction on or after July 14, 2006, for violation of subsection (1) of
31 this section or any conviction on or after July 14, 2006, for violation

1 of a city or village ordinance relating to prostitution.

2 (4 5) If the law enforcement officer determines, after a reasonable
3 detention for investigative purposes, that a person suspected of or
4 charged with a violation of subsection (1) of this section is a person
5 under eighteen years of age, such person shall be immune from prosecution
6 for a prostitution offense under this section and shall be subject to
7 temporary custody under section 43-248 and further disposition under the
8 Nebraska Juvenile Code. A law enforcement officer who takes a person
9 under eighteen years of age into custody under this section shall
10 immediately report an allegation of a violation of section 28-831 to the
11 Department of Health and Human Services which shall commence an
12 investigation within twenty-four hours under the Child Protection and
13 Family Safety Act.

14 Sec. 2. Section 43-248, Revised Statutes Cumulative Supplement,
15 2014, is amended to read:

16 43-248 A peace officer may take a juvenile into temporary custody
17 without a warrant or order of the court and proceed as provided in
18 section 43-250 when:

19 (1) A juvenile has violated a state law or municipal ordinance and
20 the officer has reasonable grounds to believe such juvenile committed
21 such violation;

22 (2) A juvenile is seriously endangered in his or her surroundings
23 and immediate removal appears to be necessary for the juvenile's
24 protection;

25 (3) The officer believes the juvenile to be mentally ill and
26 dangerous as defined in section 71-908 and that the harm described in
27 that section is likely to occur before proceedings may be instituted
28 before the juvenile court;

29 (4) The officer has reasonable grounds to believe that the juvenile
30 has run away from his or her parent, guardian, or custodian;

31 (5) A probation officer has reasonable cause to believe that a

1 juvenile is in violation of probation and that the juvenile will attempt
2 to leave the jurisdiction or place lives or property in danger;

3 (6) The officer has reasonable grounds to believe the juvenile is
4 truant from school; or

5 (7) The officer has reasonable grounds to believe the juvenile is
6 immune from prosecution for prostitution under subsection (4 5) of
7 section 28-801.

8 Sec. 3. Section 43-1303, Revised Statutes Supplement, 2015, is
9 amended to read:

10 43-1303 (1) The office shall maintain the statewide register of all
11 foster care placements occurring within the state, and there shall be a
12 weekly report made to the registry of all foster care placements by the
13 Department of Health and Human Services, any child-placing agency, or any
14 court in a form as developed by the office in consultation with
15 representatives of entities required to make such reports. For each child
16 entering and leaving foster care, such report shall consist of
17 identifying information, placement information, the plan or permanency
18 plan developed by the person or court in charge of the child pursuant to
19 section 43-1312, and information on whether any such child was a person
20 immune from criminal prosecution under subsection (4 5) of section 28-801
21 or was considered a trafficking victim as defined in subdivision (16) of
22 section 28-830. The department, the Office of Probation Administration,
23 and every court and child-placing agency shall report any foster care
24 placement within three working days. The report shall contain the
25 following information:

26 (a) Child identification information, including name, date of birth,
27 gender, race, religion, and ethnicity;

28 (b) Identification information for parents and stepparents,
29 including name, address, and status of parental rights;

30 (c) Placement information, including initial placement date, current
31 placement date, and the name and address of the foster care placement;

1 (d) Court status information, including which court has
2 jurisdiction, initial custody date, court hearing date, and results of
3 the court hearing;

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

5 (f) Case worker, probation officer, or person providing direct case
6 management or supervision functions.

7 (2)(a) The Foster Care Review Office shall designate a local board
8 to conduct foster care file audit case reviews for each case of children
9 in foster care placement.

10 (b) The office may adopt and promulgate rules and regulations for
11 the following:

12 (i) Establishment of training programs for local board members which
13 shall include an initial training program and periodic inservice training
14 programs;

15 (ii) Development of procedures for local boards;

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

18 (iv) Accumulation of data and the making of annual reports on
19 children in foster care placements. Such reports shall include, but not
20 be limited to, (A) personal data on length of time in foster care, (B)
21 number of placements, (C) frequency and results of foster care file audit
22 case reviews and court review hearings, (D) number of children supervised
23 by the foster care programs in the state annually, (E) trend data
24 impacting foster care, services, and placements, (F) analysis of the
25 data, and (G) recommendations for improving the foster care system in
26 Nebraska;

27 (v) Accumulation of data and the making of quarterly reports
28 regarding the children in foster care placements;

29 (vi) To the extent not prohibited by section 43-1310, evaluation of
30 the judicial and administrative data collected on foster care and the
31 dissemination of such data to the judiciary, public and private agencies,

1 the department, and members of the public; and

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

4 (3) A local board shall send a written report to the office for each
5 foster care file audit case review conducted by the local board. A court
6 shall send a written report to the office for each foster care review
7 hearing conducted by the court.

8 (4) The office shall report and make recommendations to the
9 Legislature, the department, the Office of Probation Administration, the
10 courts, local boards, and county welfare offices. Such reports and
11 recommendations shall include, but not be limited to, the annual judicial
12 and administrative data collected on foster care pursuant to subsections
13 (2) and (3) of this section and the annual evaluation of such data. The
14 report and recommendations submitted to the Legislature shall be
15 submitted electronically. In addition, the Foster Care Review Office
16 shall provide copies of such reports and recommendations to each court
17 having the authority to make foster care placements. The executive
18 director of the office shall also provide, at a time specified by the
19 Health and Human Services Committee of the Legislature, regular
20 electronic updates regarding child welfare data and information at least
21 quarterly, and a fourth-quarter report which shall be the annual report.
22 The executive director shall include issues, policy concerns, and
23 problems which have come to the office and the executive director from
24 analysis of the data. The executive director shall recommend alternatives
25 to the identified problems and related needs of the office and the foster
26 care system to the committee. The Health and Human Services Committee
27 shall coordinate and prioritize data and information requests submitted
28 to the office by members of the Legislature. The annual report of the
29 office shall be completed by December 1 each year and shall be submitted
30 electronically to the committee.

31 (5) The executive director of the office or his or her designees

1 from the office may visit and observe foster care facilities in order to
2 ascertain whether the individual physical, psychological, and
3 sociological needs of each foster child are being met.

4 (6) At the request of any state agency, the executive director of
5 the office or his or her designees from the office may conduct a case
6 file review process and data analysis regarding any state ward or ward of
7 the court whether placed in-home or out-of-home at the time of the case
8 file review.

9 Sec. 4. Original sections 28-801 and 43-248, Revised Statutes
10 Cumulative Supplement, 2014, and section 43-1303, Revised Statutes
11 Supplement, 2015, are repealed.