

AMENDMENTS TO LB 598

1           1.     Strike the original sections and all amendments  
2 thereto and insert the following new sections:

3           "Section 1.   Section 43-286, Revised Statutes Supplement,  
4 2000, is amended to read:

5           43-286.   (1) When any juvenile is adjudicated to be a  
6 juvenile described in subdivision (1), (2), or (4) of section  
7 43-247:

8           (a) The court may continue the dispositional portion of  
9 the hearing, from time to time upon such terms and conditions as  
10 the court may prescribe, including an order of restitution of any  
11 property stolen or damaged or an order requiring the juvenile to  
12 participate in community service programs, if such order is in the  
13 interest of the juvenile's reformation or rehabilitation, and,  
14 subject to the further order of the court, may:

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

17           (ii) Permit the juvenile to remain in his or her own home  
18 or be placed in a suitable family home, subject to the supervision  
19 of the probation officer; or

20           (iii) Cause the juvenile to be placed in a suitable  
21 family home or institution, subject to the supervision of the  
22 probation officer. If the court has committed the juvenile to the  
23 care and custody of the Department of Health and Human Services,  
24 the department shall pay the costs of the suitable family home or

1 institution which are not otherwise paid by the juvenile's parents.

2 Under subdivision (1)(a) of this section, upon a  
3 determination by the court that there are no parental, private, or  
4 other public funds available for the care, custody, and maintenance  
5 of a juvenile, the court may order a reasonable sum for the care,  
6 custody, and maintenance of the juvenile to be paid out of a fund  
7 which shall be appropriated annually by the county where the  
8 petition is filed until a suitable provision may be made for the  
9 juvenile without such payment; or

10 (b)(i) The court may ~~commit such juvenile to the Office~~  
11 ~~of Juvenile Services, but a~~ order the Office of Juvenile Services  
12 to prepare and file with the court a proposed plan for the level of  
13 treatment and specific placement to be provided to the juvenile and  
14 the court may commit such juvenile to the office for temporary care  
15 and custody prior to disposition. If any other party, including,  
16 but not limited to, the parents or county attorney, proves by a  
17 preponderance of the evidence that the office's plan is not in the  
18 juvenile's best interests, the court shall disapprove the plan.  
19 The court may modify the plan by ordering a different level of  
20 treatment and order that the office develop an alternative plan.  
21 Rules of evidence shall not apply at the dispositional hearing when  
22 the court considers the plan. At the disposition hearing, the  
23 court may commit the juvenile to carry out the plan or the court  
24 may choose an alternative disposition. The office or any other  
25 party may request a review of the court's order concerning the  
26 juvenile by a juvenile review panel as provided in section  
27 43-287.04.

1           (ii) A juvenile under the age of twelve years shall not  
2 be placed at the Youth Rehabilitation and Treatment Center-Geneva  
3 or the Youth Rehabilitation and Treatment Center-Kearney unless he  
4 or she has violated the terms of probation or has committed an  
5 additional offense and the court finds that the interests of the  
6 juvenile and the welfare of the community demand his or her  
7 commitment. This minimum age provision shall not apply if the act  
8 in question is murder or manslaughter.

9           (iii) Within thirty days after an order committing a  
10 juvenile to the care and custody of the Office of Juvenile Services  
11 and at least once each six months thereafter until the juvenile  
12 reaches the age of majority, the office shall file with the court a  
13 report stating the location of the juvenile's placement and the  
14 level of treatment the juvenile is receiving. If the office  
15 proposes a change in the place or level of treatment, the procedure  
16 provided in section 43-408 shall be followed.

17           (2) When any juvenile is found by the court to be a  
18 juvenile described in subdivision (3)(b) of section 43-247, the  
19 court may enter such order as it is empowered to enter under  
20 subdivision (1)(a) of this section or enter an order committing or  
21 placing the juvenile to the care and custody of the Department of  
22 Health and Human Services.

23           (3) Beginning July 15, 1998, when any juvenile is  
24 adjudicated to be a juvenile described in subdivision (1), (2),  
25 (3)(b), or (4) of section 43-247 because of a nonviolent act or  
26 acts and the juvenile has not previously been adjudicated to be  
27 such a juvenile because of a violent act or acts, the court may,

1 with the agreement of the victim, order the juvenile to attend  
2 juvenile offender and victim mediation with a mediator or at an  
3 approved center selected from the roster made available pursuant to  
4 section 25-2908.

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

13 (b) When a juvenile is placed on probation or under the  
14 supervision of the court for conduct under subdivision (1), (2),  
15 (3)(b), or (4) of section 43-247 and it is alleged that the  
16 juvenile has violated a term of probation or supervision or that  
17 the juvenile has violated an order of the court, a motion to revoke  
18 probation or supervision or to change the disposition may be filed  
19 and proceedings held as follows:

20 (i) The motion shall set forth specific factual  
21 allegations of the alleged violations and a copy of such motion  
22 shall be served on all persons required to be served by sections  
23 43-262 to 43-267;

24 (ii) The juvenile shall be entitled to a hearing before  
25 the court to determine the validity of the allegations. At such  
26 hearing the juvenile shall be entitled to those rights relating to  
27 counsel provided by section 43-272 and those rights relating to

1 detention provided by sections 43-254 to 43-256. The juvenile  
2 shall also be entitled to speak and present documents, witnesses,  
3 or other evidence on his or her own behalf. He or she may confront  
4 persons who have given adverse information concerning the alleged  
5 violations, may cross-examine such persons, and may show that he or  
6 she did not violate the conditions of his or her probation or, if  
7 he or she did, that mitigating circumstances suggest that the  
8 violation does not warrant revocation. The revocation hearing  
9 shall be held within a reasonable time after the juvenile is taken  
10 into custody;

11 (iii) The hearing shall be conducted in an informal  
12 manner and shall be flexible enough to consider evidence, including  
13 letters, affidavits, and other material, that would not be  
14 admissible in an adversarial criminal trial;

15 (iv) The juvenile shall be given a preliminary hearing in  
16 all cases when the juvenile is confined, detained, or otherwise  
17 significantly deprived of his or her liberty as a result of his or  
18 her alleged violation of probation. Such preliminary hearing shall  
19 be held before an impartial person other than his or her probation  
20 officer or any person directly involved with the case. If, as a  
21 result of such preliminary hearing, probable cause is found to  
22 exist, the juvenile shall be entitled to a hearing before the court  
23 in accordance with this subsection;

24 (v) If the juvenile is found by the court to have  
25 violated the terms of his or her probation, the court may modify  
26 the terms and conditions of the probation order, extend the period  
27 of probation, or enter any order of disposition that could have

1 been made at the time the original order of probation was entered;  
2 and

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

6 Sec. 2. Section 43-287.01, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 43-287.01. The purpose of sections 43-287.01 to  
9 43-287.06 is to provide for an expedited review of juvenile  
10 dispositions by the courts. It is the intent to allow such review  
11 only when a court orders the implementation of a plan different  
12 than the plan prepared by the Department of Health and Human  
13 Services or Office of Juvenile Services for the care, placement,  
14 and services to be provided to such juvenile and the department,  
15 office, or any other party believes such court-ordered plan not to  
16 be in the best interests of the juvenile.

17 It is the intent of sections 43-287.01 to 43-287.06 to  
18 remove contested dispositional plans from the appellate process for  
19 the purpose of expediting review by a juvenile review panel.  
20 Nothing in such sections shall otherwise limit the right of any  
21 party to appeal other final orders of a juvenile court pursuant to  
22 sections 43-2,106 and 43-2,106.01.

23 Sec. 3. Section 43-287.03, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 43-287.03. A juvenile review panel shall review a  
26 disposition of a court when the court makes an order directing the  
27 implementation of a plan different from the plan prepared by the

1 Department of Health and Human Services or Office of Juvenile  
2 Services concerning the care, placement, ~~or~~ services, or level of  
3 treatment to be provided to the juvenile and the department,  
4 office, or any other party believes that the court's order is not  
5 in the best interests of the juvenile.

6 Sec. 4. Section 43-287.04, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 43-287.04. If the Department of Health and Human  
9 Services, Office of Juvenile Services, or any other party desires  
10 to have a disposition described in section 43-287.03 reviewed, the  
11 department, office, or other party shall have ten days after  
12 disposition by the court to file a request for review by a juvenile  
13 review panel. Such request for review shall be filed with the  
14 clerk of the county court or separate juvenile court where the  
15 action was originally heard. Upon receipt of the request for  
16 review, the clerk of the county court or separate juvenile court  
17 shall forward a copy of the request to the Clerk of the Supreme  
18 Court.

19 Sec. 5. Section 43-287.05, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 43-287.05. A juvenile review panel shall review the  
22 disposition of a court de novo on the record. The record shall  
23 consist of a transcript and bill of exceptions which shall be  
24 requested and prepared as in appeals from the county court to the  
25 district court. A juvenile review panel shall affirm the  
26 disposition unless it is shown by a preponderance of the evidence  
27 that the disposition was not in the best interests of the juvenile,

1 in which case the panel may modify the court-ordered plan or the  
2 plan of the Department of Health and Human Services or Office of  
3 Juvenile Services or may substitute the department's or office's  
4 plan for the court-ordered plan and remand the case back to the  
5 court with directions to implement such plan. Such review shall  
6 stay the enforcement of any order entered by the court.

7 The review by the juvenile review panel shall be as  
8 expeditious as possible, and a decision shall be made within thirty  
9 days after receiving the bill of exceptions from the court  
10 stenographer. The panel's decision shall be final and binding on  
11 the parties, except that the decision may be appealed as provided  
12 in section 43-287.06.

13 Sec. 6. Section 43-287.06, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 43-287.06. The Department of Health and Human Services,  
16 the Office of Juvenile Services, or any other party may appeal from  
17 any final order or judgment entered by the juvenile review panel.  
18 Such order or judgment shall be reviewed by the Court of Appeals or  
19 the Supreme Court within the same time and in the same manner  
20 prescribed by law for review of an order or judgment of the  
21 district court. The appellate court shall review the disposition  
22 of the juvenile review panel de novo on the record submitted to the  
23 panel. Any appeal made pursuant to this section shall not stay any  
24 order of a juvenile review panel.

25 Sec. 7. Section 43-408, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27 43-408. (1) Whenever any juvenile is committed under any

1 provision of law to the Office of Juvenile Services, to any  
2 facility operated by the Office of Juvenile Services, or to the  
3 custody of the Administrator of the Office of Juvenile Services, a  
4 superintendent of a facility, or an administrator of a program, the  
5 juvenile is deemed committed to the Office of Juvenile Services.  
6 Juveniles committed to the Office of Juvenile Services shall also  
7 be considered committed to the care and custody of the Department  
8 of Health and Human Services for the purpose of obtaining health  
9 care and treatment services.

10           (2) A juvenile may be committed to the Office of Juvenile  
11 Services by a court as a disposition under section 43-286. The  
12 committing court shall order the initial level of treatment for a  
13 juvenile committed to the office. The committing court shall not  
14 order a specific placement for a juvenile committed to the office.  
15 ~~Office of Juvenile Services.~~ The court shall continue to maintain  
16 jurisdiction over any juvenile committed to the Office of Juvenile  
17 Services until such time that the juvenile is discharged from the  
18 Office of Juvenile Services. The court shall conduct review  
19 hearings every six months, or at the request of the juvenile, for  
20 any juvenile committed to the Office of Juvenile Services who is  
21 placed outside his or her home. ~~7 except for a juvenile residing~~  
22 ~~at a youth rehabilitation and treatment center.~~ The court shall  
23 determine whether the out-of-home placement is in the best  
24 interests of the juvenile, with due consideration being given by  
25 the court to public safety.

26           (3) After the initial level of treatment is ordered by  
27 the committing court, the Office of Juvenile Services shall

1 designate suitable placement and treatment services to be provided.

2 (4) For transfer hearings, the burden of proof to justify  
3 the transfer is on the Office of Juvenile Services, the standard of  
4 proof is clear and convincing evidence, and the strict rules of  
5 evidence do not apply. Transfers of juveniles from one place of  
6 treatment to another or from one level of treatment to another is  
7 subject to section 43-251.01 and to the following:

8 (a) Except as provided in subdivision (b) of this  
9 subsection, if the Office of Juvenile Services proposes to transfer  
10 the juvenile from a less restrictive to a more restrictive place of  
11 treatment, a plan outlining the proposed change and the reasons for  
12 the proposed change shall be presented to the court which committed  
13 the juvenile. Such change shall occur only after a hearing and a  
14 finding by the committing court that the change is in the best  
15 interests of the juvenile, with due consideration being given by  
16 the court to public safety. At the hearing, the juvenile has the  
17 right to be represented by counsel;

18 (b) The Office of Juvenile Services may make an immediate  
19 temporary change without prior approval by the committing court  
20 only if the juvenile is in a harmful or dangerous situation, is  
21 suffering a medical emergency, is exhibiting behavior which  
22 warrants temporary removal, or has been placed in a non-state-owned  
23 facility and such facility has requested that the juvenile be  
24 removed. Approval of the committing court shall be sought within  
25 fifteen days of making an immediate temporary change, at which time  
26 a hearing shall occur before the court. The court shall determine  
27 whether it is in the best interests of the juvenile to remain in

1 the new place of treatment, with due consideration being given by  
2 the court to public safety. At the hearing, the juvenile has the  
3 right to be represented by counsel; and

4 (c) If the proposed change seeks to transfer the juvenile  
5 from a more restrictive to a less restrictive place or level of  
6 treatment or to transfer the juvenile from the juvenile's current  
7 place of treatment to another which has the same level of  
8 restriction as the current place of treatment, the Office of  
9 Juvenile Services shall notify the juvenile, the juvenile's  
10 parents, custodian, or legal guardian, the committing court, the  
11 county attorney, the counsel for the juvenile, and the guardian ad  
12 litem of the proposed change. The juvenile has fifteen days after  
13 the date of the notice to request an administrative hearing with  
14 the Office of Juvenile Services, at which time the Office of  
15 Juvenile Services shall determine whether it is in the best  
16 interests of the juvenile for the proposed change to occur, with  
17 due consideration being given by the office to public safety. The  
18 juvenile may be represented by counsel at the juvenile's own  
19 expense. If the juvenile is aggrieved by the administrative  
20 decision of the Office of Juvenile Services, the juvenile may  
21 appeal that decision to the committing court within fifteen days  
22 after the Office of Juvenile Services' decision. At the hearing  
23 before the committing court, the juvenile has the right to be  
24 represented by counsel.

25 (5) The committing court's review of a change of place of  
26 treatment or level of treatment pursuant to this section does not  
27 apply to parole revocation hearings.

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1                   Sec. 8.     Original sections 43-287.01, 43-287.03 to  
2 43-287.06, and 43-408, Reissue Revised Statutes of Nebraska, and  
3 section 43-286, Revised Statutes Supplement, 2000, are repealed.".