

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 188

Introduced by Howard, 9.

Read first time January 10, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to sexual assault; to amend sections 43-254,
2 43-283.01, 43-292.02, 43-1411.01, and 43-2933, Reissue Revised
3 Statutes of Nebraska; to change provisions relating to paternity of
4 a child conceived as a result of sexual assault; to harmonize
5 provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-254, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 43-254 Pending the adjudication of any case, and subject to
4 subdivision (5) of section 43-251.01, if it appears that the need for
5 placement or further detention exists, the juvenile may be (1) placed or
6 detained a reasonable period of time on order of the court in the
7 temporary custody of either the person having charge of the juvenile or
8 some other suitable person, (2) kept in some suitable place provided by
9 the city or county authorities, (3) placed in any proper and accredited
10 charitable institution, (4) placed in a state institution, except any
11 adult correctional facility, when proper facilities are available and the
12 only local facility is a city or county jail, at the expense of the
13 committing county on a per diem basis as determined from time to time by
14 the head of the particular institution, (5) placed in the temporary care
15 and custody of the Department of Health and Human Services when it does
16 not appear that there is any need for secure detention, except that
17 beginning October 1, 2013, no juvenile alleged to be a juvenile described
18 in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed
19 in the care and custody or under the supervision of the Department of
20 Health and Human Services, or (6) beginning October 1, 2013, offered
21 supervision options as determined pursuant to section 43-260.01, through
22 the Office of Probation Administration as ordered by the court and agreed
23 to in writing by the parties, if the juvenile is alleged to be a juvenile
24 described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and
25 it does not appear that there is any need for secure detention. The court
26 may assess the cost of such placement or detention in whole or in part to
27 the parent of the juvenile as provided in section 43-290.

28 If a juvenile has been removed from his or her parent, guardian, or
29 custodian pursuant to subdivision (2) of section 43-248, the court may
30 enter an order continuing detention or placement upon a written
31 determination that continuation of the juvenile in his or her home would

1 be contrary to the health, safety, or welfare of such juvenile and that
2 reasonable efforts were made to preserve and reunify the family if
3 required under ~~subsections (1) through (4)~~ of section 43-283.01.

4 Sec. 2. Section 43-283.01, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 43-283.01 (1) In determining whether reasonable efforts have been
7 made to preserve and reunify the family and in making such reasonable
8 efforts, the juvenile's health and safety are the paramount concern.

9 (2) Except as provided in subsections (4) and (5) ~~subsection (4)~~ of
10 this section, reasonable efforts shall be made to preserve and reunify
11 families prior to the placement of a juvenile in foster care to prevent
12 or eliminate the need for removing the juvenile from the juvenile's home
13 and to make it possible for a juvenile to safely return to the juvenile's
14 home.

15 (3) If continuation of reasonable efforts to preserve and reunify
16 the family is determined to be inconsistent with the permanency plan
17 determined for the juvenile in accordance with a permanency hearing under
18 section 43-1312, efforts shall be made to place the juvenile in a timely
19 manner in accordance with the permanency plan and to complete whatever
20 steps are necessary to finalize the permanent placement of the juvenile.

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

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

26 (b) The parent of the juvenile has (i) committed first or second
27 degree murder to another child of the parent, (ii) committed voluntary
28 manslaughter to another child of the parent, (iii) aided or abetted,
29 attempted, conspired, or solicited to commit murder, or aided or abetted
30 voluntary manslaughter of the juvenile or another child of the parent,
31 (iv) committed a felony assault which results in serious bodily injury to

1 the juvenile or another minor child of the parent, or (v) been convicted
2 of felony sexual assault of the other parent of the juvenile under
3 section 28-319.01 or 28-320.01 or a comparable crime in another state; or

4 (c) The parental rights of the parent to a sibling of the juvenile
5 have been terminated involuntarily.

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

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

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

23 Sec. 3. Section 43-292.02, Reissue Revised Statutes of Nebraska, is
24 amended to read:

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

31 (a) A juvenile has been in foster care under the responsibility of

1 the state for fifteen or more months of the most recent twenty-two
2 months; or

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

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

22 (3) The petition is not required to be filed on behalf of the state
23 or if a petition is filed the state shall not be required to join in a
24 petition to terminate parental rights or to concurrently find a qualified
25 family to adopt the juvenile under this section if:

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

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

31 (c) The family of the juvenile has not had a reasonable opportunity

1 to avail themselves of the services deemed necessary in the case plan or
2 permanency plan approved by the court if reasonable efforts to preserve
3 and reunify the family are required under section 43-283.01.

4 (4) If a child is conceived by the victim of a sexual assault, a
5 petition for termination of parental rights of the perpetrator shall be
6 granted if such termination is in the best interests of the child and (a)
7 the perpetrator has been convicted of or pled guilty or nolo contendere
8 to sexual assault of the child's birth mother under section 28-320 or a
9 similar statute in another jurisdiction or (b) the perpetrator has been
10 found beyond a reasonable doubt to have fathered the child as a result of
11 such sexual assault.

12 Sec. 4. Section 43-1411.01, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 43-1411.01 (1) An action for paternity or parental support under
15 sections 43-1401 to 43-1418 may be initiated by filing a complaint with
16 the clerk of the district court as provided in section 25-2740. Such
17 proceeding may be heard by the county court or the district court as
18 provided in section 25-2740. A paternity determination under sections
19 43-1411 to 43-1418 may also be decided in a county court or separate
20 juvenile court if the county court or separate juvenile court already has
21 jurisdiction over the child whose paternity is to be determined.

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

25 (3) The court shall stay the paternity action if there is a pending
26 criminal allegation of sexual assault under section 28-320 against the
27 alleged father with regard to the conception of the child. If the alleged
28 father is not found guilty, the paternity action shall proceed. If the
29 alleged father is found guilty, the paternity of the child is established
30 by the conviction and the parental rights of the biological father may be
31 terminated.

1 Sec. 5. Section 43-2933, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 43-2933 (1)(a) No person shall be granted custody of, or
4 unsupervised parenting time, visitation, or other access with, a child if
5 the person is required to be registered as a sex offender under the Sex
6 Offender Registration Act for an offense that would make it contrary to
7 the best interests of the child for such access or for an offense in
8 which the victim was a minor or if the person has been convicted under
9 section 28-311, 28-319.01, 28-320, 28-320.01, or 28-320.02, unless the
10 court finds that there is no significant risk to the child and states its
11 reasons in writing or on the record.

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

20 (c) The fact that a child is permitted unsupervised contact with a
21 person who is required, as a result of a felony conviction in which the
22 victim was a minor, to be registered as a sex offender under the Sex
23 Offender Registration Act shall be prima facie evidence that the child is
24 at significant risk. When making a determination regarding significant
25 risk to the child, the prima facie evidence shall constitute a
26 presumption affecting the burden of producing evidence. However, this
27 presumption shall not apply if there are factors mitigating against its
28 application, including whether the other party seeking custody, parenting
29 time, visitation, or other access is also required, as the result of a
30 felony conviction in which the victim was a minor, to register as a sex
31 offender under the Sex Offender Registration Act.

1 (2) No person shall be granted custody, parenting time, visitation,
2 or other access with a child if the person has been convicted under
3 section 28-319 or 28-320 and the child was conceived as a result of that
4 violation unless the custodial parent or guardian consents.

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

7 Sec. 6. Original sections 43-254, 43-283.01, 43-292.02, 43-1411.01,
8 and 43-2933, Reissue Revised Statutes of Nebraska, are repealed.