

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 356

Introduced by Dubas, 34; Gloor, 35.

Read first time January 16, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to children; to amend sections 43-245, 43-247,
2 and 43-2,129, Reissue Revised Statutes of Nebraska;
3 to provide for behavioral health services for certain
4 children without parental relinquishment of custody under
5 the Juvenile Code; to define terms; to provide duties for
6 the Department of Health and Human Services; to harmonize
7 provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) A behavioral health region shall provide
2 for the appropriate wrap-around services or other behavioral
3 health services for a child who is the subject of a voluntary
4 service agreement. The regional administrator shall enter into
5 a voluntary service agreement with a stated duration of ninety
6 days or less at the request of a parent, guardian, or other
7 legal custodian of a child. For the initial ninety days of a
8 voluntary service agreement, the child shall assume a presumptive
9 eligibility status from the department and the behavioral health
10 region for behavioral health services, and the child shall
11 receive immediate and expedited care. The behavioral health region
12 responsible for providing services for the child shall assess and
13 determine financial eligibility according to department rules and
14 regulations, including the sliding fee schedule.

15 (2) Under a voluntary service agreement the department
16 shall assume financial responsibility for the child's care.
17 Behavioral health services including, but not limited to, case
18 management shall be provided by the behavioral health region to
19 the child.

20 (3) The department or a behavioral health region shall
21 not require a parent, guardian, or other legal custodian to
22 permanently relinquish legal or physical custody of a child to
23 obtain behavioral health services for the child from the behavioral
24 health region under a voluntary placement agreement.

25 Sec. 2. (1) If it appears that the child will require

1 more than ninety days of wrap-around services or other behavioral
2 health services and has been receiving such services pursuant
3 to a voluntary service agreement and one or more parties are
4 not agreeable to extending voluntary services, then the regional
5 administrator of the behavioral health region providing services
6 for the child shall notify the county attorney who shall file a
7 petition for review of behavioral health services with the juvenile
8 court as provided in sections 4 to 6 of this act. After filing the
9 petition and summons are served as provided in such sections, the
10 court shall conduct a review of the behavioral health services and
11 may extend the voluntary service agreement for the needed duration
12 if documentation is shown that the child suffers from a behavioral
13 health disorder which necessitates behavioral health services of
14 a longer duration. The review of any decree of placement of a
15 child subsequent to the judicial review may be conducted as an
16 administrative review by the department. Any party may object to
17 an administrative review, and if there is an objection, the review
18 shall be conducted by the court.

19 (2) The parent, guardian, or other legal custodian of
20 the child, or the court on its own motion, may request a court
21 review or hearing at any time while the voluntary service agreement
22 is in effect to determine whether the voluntary service agreement
23 or behavioral health services should be continued or changed and
24 whether the voluntary placement agreement and behavioral health
25 services are in the best interests of the child.

1 Sec. 3. The petition under section 2 of this act and
2 all subsequent court documents in any proceeding brought under
3 sections 1 to 6 of this act shall be titled: The People of the
4 State of Nebraska, In the Interest of, a Child or Children,
5 and Concerning, Respondent. The petition shall be verified
6 and the statements in the petition may be made upon information
7 and belief. A petition filed pursuant to such sections shall be
8 classified as a petition under the juvenile court's jurisdiction
9 pursuant to subdivision (3)(d) of section 43-247, the child being
10 a child whose parent, guardian, or custodian is requesting a
11 voluntary service agreement made necessary by a behavioral health
12 disorder of the juvenile. The petition and any subsequent court
13 documents relating to the action shall be confidential and shall
14 not be considered public records.

15 Sec. 4. (1) The petition under section 2 of this act
16 shall set forth plainly the facts which bring the child within
17 the court's jurisdiction, specifying that the child needs immediate
18 in-home or out-of-home wrap-around services or other behavioral
19 health services or has been receiving such services pursuant to a
20 voluntary placement agreement and it appears that continuation of
21 such services are necessary for a time exceeding ninety days and
22 that continuation of such services is necessary and is in the best
23 interests of the child. The petition shall also state the name,
24 age, and residence of the child and the names and residences of
25 the child's parents, guardian, or other legal custodian or nearest

1 known relative if no parent, guardian, or other legal custodian is
2 known, and the petition shall include a statement of such person's
3 right to request a court review or hearing at any time.

4 (2) For purposes of determining proper placement of the
5 child, the petition shall be accompanied by an evaluation for
6 placement prepared by the behavioral health region charged with
7 providing services for the child. The evaluation shall include an
8 assessment of the child's physical and mental status, development
9 status, family and social history, and educational status. The
10 evaluation shall also be accompanied by recommended services and
11 placements for the child and a treatment plan which contains, at
12 minimum, the goals to be achieved by the placement, the behavioral
13 health services which can be provided, and the recommended duration
14 of the services.

15 (3) The petition shall be accompanied by a court fee, to
16 be charged to the parents if the court finds them able to pay, of
17 not more than sixty-four dollars.

18 Sec. 5. After the petition delineated in sections 2 to
19 4 of this act has been filed, the court shall promptly issue
20 a summons reciting briefly the substance of the petition. The
21 summons shall also set forth the constitutional and other legal
22 rights of the child and the child's parents, guardian, other legal
23 custodian, or any other respondent, including the right to have an
24 attorney present at the hearing on the petition. The petitioner
25 shall send the summons to the child and his or her parents,

1 guardian, other legal custodian, or other respondent by certified
2 mail. Notice of the hearing shall be given to the appropriate
3 regional administrator of the behavioral health region charged with
4 providing services for the child. Notice of the hearing shall also
5 be given to any other person who has physical custody of the child
6 and any attorney or guardian ad litem of record. Nothing in this
7 section requires the presence of any person before the court unless
8 the court so directs.

9 Sec. 6. Procedural requirements for sections 1 to 6
10 of this act are found in such sections and are not subject to
11 other adjudication or disposition procedural requirements under the
12 Nebraska Juvenile Code.

13 Sec. 7. Section 43-245, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 43-245 For purposes of the Nebraska Juvenile Code, unless
16 the context otherwise requires:

17 (1) Age of majority means nineteen years of age;

18 (2) Approved center means a center that has applied for
19 and received approval from the Director of the Office of Dispute
20 Resolution under section 25-2909;

21 (3) Behavioral health disorder has the same meaning as in
22 section 71-804;

23 (4) Behavioral health region has the same meaning as in
24 section 71-804;

25 (5) Behavioral health services has the same meaning as in

1 section 71-804 and includes wrap-around services;

2 (6) Child means a resident of the State of Nebraska under
3 nineteen years of age;

4 ~~(3)~~ (7) Cost or costs means (a) the sum or equivalent
5 expended, paid, or charged for goods or services, or expenses
6 incurred, or (b) the contracted or negotiated price;

7 (8) Department means the Department of Health and Human
8 Services;

9 ~~(4)~~ (9) Juvenile means any person under the age of
10 eighteen;

11 ~~(5)~~ (10) Juvenile court means the separate juvenile court
12 where it has been established pursuant to sections 43-2,111 to
13 43-2,127 and the county court sitting as a juvenile court in all
14 other counties. Nothing in the Nebraska Juvenile Code shall be
15 construed to deprive the district courts of their habeas corpus,
16 common-law, or chancery jurisdiction or the county courts and
17 district courts of jurisdiction of domestic relations matters as
18 defined in section 25-2740;

19 ~~(6)~~ (11) Juvenile detention facility has the same meaning
20 as in section 83-4,125;

21 ~~(7)~~ (12) Mediator for juvenile offender and victim
22 mediation means a person who (a) has completed at least thirty
23 hours of training in conflict resolution techniques, neutrality,
24 agreement writing, and ethics set forth in section 25-2913, (b) has
25 an additional eight hours of juvenile offender and victim mediation

1 training, and (c) meets the apprenticeship requirements set forth
2 in section 25-2913;

3 ~~(8)~~ (13) Mental health facility means a treatment
4 facility as defined in section 71-914 or a government, private, or
5 state hospital which treats mental illness;

6 ~~(9)~~ (14) Nonoffender means a juvenile who is subject
7 to the jurisdiction of the juvenile court for reasons other
8 than legally prohibited conduct, including, but not limited to,
9 juveniles described in subdivision (3)(a) of section 43-247;

10 ~~(10)~~ (15) Nonsecure detention means detention
11 characterized by the absence of restrictive hardware, construction,
12 and procedure. Nonsecure detention services may include a range
13 of placement and supervision options, such as home detention,
14 electronic monitoring, day reporting, drug court, tracking and
15 monitoring supervision, staff secure and temporary holdover
16 facilities, and group homes;

17 ~~(11)~~ (16) Parent means one or both parents or a
18 stepparent when such stepparent is married to the custodial parent
19 as of the filing of the petition;

20 ~~(12)~~ (17) Parties means the juvenile as described in
21 section 43-247 and his or her parent, guardian, or custodian;

22 ~~(13)~~ (18) Except in proceedings under the Nebraska Indian
23 Child Welfare Act, relative means father, mother, grandfather,
24 grandmother, brother, sister, stepfather, stepmother, stepbrother,
25 stepsister, uncle, aunt, first cousin, nephew, or niece;

1 ~~(14)~~ (19) Secure detention means detention in a highly
2 structured, residential, hardware-secured facility designed to
3 restrict a juvenile's movement;

4 ~~(15)~~ (20) Status offender means a juvenile who has been
5 charged with or adjudicated for conduct which would not be a crime
6 if committed by an adult, including, but not limited to, juveniles
7 charged under subdivision (3)(b) of section 43-247 and sections
8 53-180.01 and 53-180.02; ~~and~~

9 ~~(16)~~ (21) Traffic offense means any nonfelonious act in
10 violation of a law or ordinance regulating vehicular or pedestrian
11 travel, whether designated a misdemeanor or a traffic infraction;
12 ~~and-~~

13 (22) Voluntary placement agreement means a voluntary,
14 temporary, written agreement wherein a parent, guardian, or other
15 legal custodian of a child who has a behavioral health disorder
16 requests behavior health services for the child; and

17 (23) Wrap-around services means strength-based,
18 individualized community-based services for a family with a child
19 with a behavioral health disorder.

20 Sec. 8. Section 43-247, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 43-247 The juvenile court shall have exclusive original
23 jurisdiction as to any juvenile defined in subdivision (1) of this
24 section who is under the age of sixteen, as to any juvenile defined
25 in subdivision (3) of this section, and as to the parties and

1 proceedings provided in subdivisions (5), (6), and (8) of this
2 section. As used in this section, all references to the juvenile's
3 age shall be the age at the time the act which occasioned the
4 juvenile court action occurred. The juvenile court shall have
5 concurrent original jurisdiction with the district court as to any
6 juvenile defined in subdivision (2) of this section. The juvenile
7 court shall have concurrent original jurisdiction with the district
8 court and county court as to any juvenile defined in subdivision
9 (1) of this section who is age sixteen or seventeen, any juvenile
10 defined in subdivision (4) of this section, and any proceeding
11 under subdivision (7) or (11) of this section. The juvenile court
12 shall have concurrent original jurisdiction with the county court
13 as to any proceeding under subdivision (9) or (10) of this section.
14 Notwithstanding any disposition entered by the juvenile court
15 under the Nebraska Juvenile Code, the juvenile court's jurisdiction
16 over any individual adjudged to be within the provisions of this
17 section shall continue until the individual reaches the age of
18 majority or the court otherwise discharges the individual from its
19 jurisdiction.

20 The juvenile court in each county as herein provided
21 shall have jurisdiction of:

22 (1) Any juvenile who has committed an act other than
23 a traffic offense which would constitute a misdemeanor or an
24 infraction under the laws of this state, or violation of a city or
25 village ordinance;

1 (2) Any juvenile who has committed an act which would
2 constitute a felony under the laws of this state;

3 (3) Any juvenile (a) who is homeless or destitute, or
4 without proper support through no fault of his or her parent,
5 guardian, or custodian; who is abandoned by his or her parent,
6 guardian, or custodian; who lacks proper parental care by reason of
7 the fault or habits of his or her parent, guardian, or custodian;
8 whose parent, guardian, or custodian neglects or refuses to provide
9 proper or necessary subsistence, education, or other care necessary
10 for the health, morals, or well-being of such juvenile; whose
11 parent, guardian, or custodian is unable to provide or neglects
12 or refuses to provide special care made necessary by the mental
13 condition of the juvenile; or who is in a situation or engages
14 in an occupation dangerous to life or limb or injurious to the
15 health or morals of such juvenile, (b) who, by reason of being
16 wayward or habitually disobedient, is uncontrolled by his or her
17 parent, guardian, or custodian; who departs himself or herself
18 so as to injure or endanger seriously the morals or health of
19 himself, herself, or others; or who is habitually truant from home
20 or school, ~~or~~ (c) who is mentally ill and dangerous as defined
21 in section 71-908, or (d) whose parent, guardian, or custodian
22 is requesting a voluntary service agreement made necessary by a
23 behavioral health disorder of the juvenile;

24 (4) Any juvenile who has committed an act which would
25 constitute a traffic offense as defined in section 43-245;

1 (5) The parent, guardian, or custodian of any juvenile
2 described in this section;

3 (6) The proceedings for termination of parental rights as
4 provided in the Nebraska Juvenile Code;

5 (7) The proceedings for termination of parental rights as
6 provided in section 42-364;

7 (8) Any juvenile who has been voluntarily relinquished,
8 pursuant to section 43-106.01, to the Department of Health and
9 Human Services or any child placement agency licensed by the
10 Department of Health and Human Services;

11 (9) Any juvenile who was a ward of the juvenile court at
12 the inception of his or her guardianship and whose guardianship has
13 been disrupted or terminated;

14 (10) The adoption or guardianship proceedings for a
15 child over which the juvenile court already has jurisdiction under
16 another provision of the Nebraska Juvenile Code; and

17 (11) The paternity or custody determination for a child
18 over which the juvenile court already has jurisdiction.

19 Notwithstanding the provisions of the Nebraska Juvenile
20 Code, the determination of jurisdiction over any Indian child as
21 defined in section 43-1503 shall be subject to the Nebraska Indian
22 Child Welfare Act; and the district court shall have exclusive
23 jurisdiction in proceedings brought pursuant to section 71-510.

24 Sec. 9. Section 43-2,129, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 43-2,129 Sections 43-245 to 43-2,129 and sections 1 to
2 6 of this act shall be known and may be cited as the Nebraska
3 Juvenile Code.

4 Sec. 10. Original sections 43-245, 43-247, and 43-2,129,
5 Reissue Revised Statutes of Nebraska, are repealed.