

AMENDMENTS TO LB 463

Introduced by Judiciary

1 1. Strike the original sections and insert the following
2 sections:

3 Section 1. Section 28-416, Revised Statutes Cumulative
4 Supplement, 2010, is amended to read:

5 28-416 (1) Except as authorized by the Uniform Controlled
6 Substances Act, it shall be unlawful for any person knowingly or
7 intentionally: (a) To manufacture, distribute, deliver, dispense,
8 or possess with intent to manufacture, distribute, deliver, or
9 dispense a controlled substance; or (b) to create, distribute,
10 or possess with intent to distribute a counterfeit controlled
11 substance.

12 (2) Except as provided in subsections (4), (5), (7), (8),
13 (9), and (10) of this section, any person who violates subsection
14 (1) of this section with respect to: (a) A controlled substance
15 classified in Schedule I, II, or III of section 28-405 which is an
16 exceptionally hazardous drug shall be guilty of a Class II felony;
17 (b) any other controlled substance classified in Schedule I, II, or
18 III of section 28-405 shall be guilty of a Class III felony; or (c)
19 a controlled substance classified in Schedule IV or V of section
20 28-405 shall be guilty of a Class IIIA felony.

21 (3) A person knowingly or intentionally possessing a
22 controlled substance, except marijuana, unless such substance was
23 obtained directly or pursuant to a medical order issued by a

1 practitioner authorized to prescribe while acting in the course of
2 his or her professional practice, or except as otherwise authorized
3 by the act, shall be guilty of a Class IV felony.

4 (4) (a) Except as authorized by the Uniform Controlled
5 Substances Act, any person eighteen years of age or older who
6 knowingly or intentionally manufactures, distributes, delivers,
7 dispenses, or possesses with intent to manufacture, distribute,
8 deliver, or dispense a controlled substance or a counterfeit
9 controlled substance (i) to a person under the age of eighteen
10 years, (ii) in, on, or within one thousand feet of the real
11 property comprising a public or private elementary, vocational, or
12 secondary school, a community college, a public or private college,
13 junior college, or university, or a playground, or (iii) within one
14 hundred feet of a public or private youth center, public swimming
15 pool, or video arcade facility shall be punished by the next higher
16 penalty classification than the penalty prescribed in subsection
17 (2), (7), (8), (9), or (10) of this section, depending upon the
18 controlled substance involved, for the first violation and for a
19 second or subsequent violation shall be punished by the next higher
20 penalty classification than that prescribed for a first violation
21 of this subsection, but in no event shall such person be punished
22 by a penalty greater than a Class IB felony.

23 (b) For purposes of this subsection:

24 (i) Playground shall mean any outdoor facility, including
25 any parking lot appurtenant to the facility, intended for
26 recreation, open to the public, and with any portion containing
27 three or more apparatus intended for the recreation of children,

1 including sliding boards, swingsets, and teeterboards;

2 (ii) Video arcade facility shall mean any facility
3 legally accessible to persons under eighteen years of age, intended
4 primarily for the use of pinball and video machines for amusement,
5 and containing a minimum of ten pinball or video machines; and

6 (iii) Youth center shall mean any recreational facility
7 or gymnasium, including any parking lot appurtenant to the facility
8 or gymnasium, intended primarily for use by persons under eighteen
9 years of age which regularly provides athletic, civic, or cultural
10 activities.

11 (5) (a) Except as authorized by the Uniform Controlled
12 Substances Act, it shall be unlawful for any person eighteen
13 years of age or older to knowingly and intentionally employ, hire,
14 use, cause, persuade, coax, induce, entice, seduce, or coerce any
15 person under the age of eighteen years to manufacture, transport,
16 distribute, carry, deliver, dispense, prepare for delivery, offer
17 for delivery, or possess with intent to do the same a controlled
18 substance or a counterfeit controlled substance.

19 (b) Except as authorized by the Uniform Controlled
20 Substances Act, it shall be unlawful for any person eighteen years
21 of age or older to knowingly and intentionally employ, hire, use,
22 cause, persuade, coax, induce, entice, seduce, or coerce any person
23 under the age of eighteen years to aid and abet any person in
24 the manufacture, transportation, distribution, carrying, delivery,
25 dispensing, preparation for delivery, offering for delivery, or
26 possession with intent to do the same of a controlled substance or
27 a counterfeit controlled substance.

1 (c) Any person who violates subdivision (a) or (b) of
2 this subsection shall be punished by the next higher penalty
3 classification than the penalty prescribed in subsection (2), (7),
4 (8), (9), or (10) of this section, depending upon the controlled
5 substance involved, for the first violation and for a second or
6 subsequent violation shall be punished by the next higher penalty
7 classification than that prescribed for a first violation of this
8 subsection, but in no event shall such person be punished by a
9 penalty greater than a Class IB felony.

10 (6) It shall not be a defense to prosecution for
11 violation of subsection (4) or (5) of this section that the
12 defendant did not know the age of the person through whom the
13 defendant violated such subsection.

14 (7) Any person who violates subsection (1) of this
15 section with respect to cocaine or any mixture or substance
16 containing a detectable amount of cocaine in a quantity of:

17 (a) One hundred forty grams or more shall be guilty of a
18 Class IB felony;

19 (b) At least twenty-eight grams but less than one hundred
20 forty grams shall be guilty of a Class IC felony; or

21 (c) At least ten grams but less than twenty-eight grams
22 shall be guilty of a Class ID felony.

23 (8) Any person who violates subsection (1) of this
24 section with respect to base cocaine (crack) or any mixture or
25 substance containing a detectable amount of base cocaine in a
26 quantity of:

27 (a) One hundred forty grams or more shall be guilty of a

1 Class IB felony;

2 (b) At least twenty-eight grams but less than one hundred
3 forty grams shall be guilty of a Class IC felony; or

4 (c) At least ten grams but less than twenty-eight grams
5 shall be guilty of a Class ID felony.

6 (9) Any person who violates subsection (1) of this
7 section with respect to heroin or any mixture or substance
8 containing a detectable amount of heroin in a quantity of:

9 (a) One hundred forty grams or more shall be guilty of a
10 Class IB felony;

11 (b) At least twenty-eight grams but less than one hundred
12 forty grams shall be guilty of a Class IC felony; or

13 (c) At least ten grams but less than twenty-eight grams
14 shall be guilty of a Class ID felony.

15 (10) Any person who violates subsection (1) of this
16 section with respect to amphetamine, its salts, optical isomers,
17 and salts of its isomers, or with respect to methamphetamine, its
18 salts, optical isomers, and salts of its isomers, in a quantity of:

19 (a) One hundred forty grams or more shall be guilty of a
20 Class IB felony;

21 (b) At least twenty-eight grams but less than one hundred
22 forty grams shall be guilty of a Class IC felony; or

23 (c) At least ten grams but less than twenty-eight grams
24 shall be guilty of a Class ID felony.

25 (11) Any person knowingly or intentionally possessing
26 marijuana weighing more than one ounce but not more than one pound
27 shall be guilty of a Class III misdemeanor.

1 (12) Any person knowingly or intentionally possessing
2 marijuana weighing more than one pound shall be guilty of a Class
3 IV felony.

4 (13) Any person knowingly or intentionally possessing
5 marijuana weighing one ounce or less shall:

6 (a) For the first offense, be guilty of an infraction,
7 receive a citation, be fined three hundred dollars, and be assigned
8 to attend a course as prescribed in section 29-433 if the judge
9 determines that attending such course is in the best interest of
10 the individual defendant;

11 (b) For the second offense, be guilty of a Class IV
12 misdemeanor, receive a citation, and be fined four hundred dollars
13 and may be imprisoned not to exceed five days; and

14 (c) For the third and all subsequent offenses, be guilty
15 of a Class IIIA misdemeanor, receive a citation, be fined five
16 hundred dollars, and be imprisoned not to exceed seven days.

17 (14) Any person convicted of violating this section,
18 if placed on probation, shall, as a condition of probation,
19 satisfactorily attend and complete appropriate treatment and
20 counseling on drug abuse provided by a program authorized under
21 the Nebraska Behavioral Health Services Act or other licensed drug
22 treatment facility.

23 (15) Any person convicted of violating this section, if
24 sentenced to the Department of Correctional Services, shall attend
25 appropriate treatment and counseling on drug abuse.

26 (16) Any person knowingly or intentionally possessing a
27 firearm while in violation of subsection (1) of this section shall

1 be punished by the next higher penalty classification than the
2 penalty prescribed in subsection (2), (7), (8), (9), or (10) of
3 this section, but in no event shall such person be punished by a
4 penalty greater than a Class IB felony.

5 (17) A person knowingly or intentionally in possession
6 of money used or intended to be used to facilitate a violation
7 of subsection (1) of this section shall be guilty of a Class IV
8 felony.

9 (18) In addition to the penalties provided in this
10 section:

11 (a) If the person convicted or adjudicated of violating
12 this section is eighteen years of age or younger and has one or
13 more licenses or permits issued under the Motor Vehicle Operator's
14 License Act:

15 (i) For the first offense, the court may, as a part of
16 the judgment of conviction or adjudication, (A) impound any such
17 licenses or permits for thirty days and (B) require such person to
18 attend a drug education class;

19 (ii) For a second offense, the court may, as a part of
20 the judgment of conviction or adjudication, (A) impound any such
21 licenses or permits for ninety days and (B) require such person
22 to complete no fewer than twenty and no more than forty hours of
23 community service and to attend a drug education class; and

24 (iii) For a third or subsequent offense, the court may,
25 as a part of the judgment of conviction or adjudication, (A)
26 impound any such licenses or permits for twelve months and (B)
27 require such person to complete no fewer than sixty hours of

1 community service, to attend a drug education class, and to submit
2 to a drug assessment by a licensed alcohol and drug counselor; and

3 (b) If the person convicted or adjudicated of violating
4 this section is eighteen years of age or younger and does not
5 have a permit or license issued under the Motor Vehicle Operator's
6 License Act:

7 (i) For the first offense, the court may, as part of the
8 judgment of conviction or adjudication, (A) prohibit such person
9 from obtaining any permit or any license pursuant to the act for
10 which such person would otherwise be eligible until thirty days
11 after the date of such order and (B) require such person to attend
12 a drug education class;

13 (ii) For a second offense, the court may, as part of the
14 judgment of conviction or adjudication, (A) prohibit such person
15 from obtaining any permit or any license pursuant to the act for
16 which such person would otherwise be eligible until ninety days
17 after the date of such order and (B) require such person to
18 complete no fewer than twenty hours and no more than forty hours of
19 community service and to attend a drug education class; and

20 (iii) For a third or subsequent offense, the court may,
21 as part of the judgment of conviction or adjudication, (A) prohibit
22 such person from obtaining any permit or any license pursuant
23 to the act for which such person would otherwise be eligible
24 until twelve months after the date of such order and (B) require
25 such person to complete no fewer than sixty hours of community
26 service, to attend a drug education class, and to submit to a drug
27 assessment by a licensed alcohol and drug counselor.

1 A copy of an abstract of the court's conviction or
2 adjudication shall be transmitted to the Director of Motor Vehicles
3 pursuant to sections 60-497.01 to 60-497.04 if a license or permit
4 is impounded or a juvenile is prohibited from obtaining a license
5 or permit under this subsection.

6 Sec. 2. Section 29-2258, Revised Statutes Cumulative
7 Supplement, 2010, is amended to read:

8 29-2258 A district probation officer shall:

9 (1) Conduct juvenile intake interviews and investigations
10 in accordance with ~~section 43-253~~ utilizing a standardized juvenile
11 detention screening instrument described in section sections 43-253
12 and 43-260.01;

13 (2) Make presentence and other investigations, as may be
14 required by law or directed by a court in which he or she is
15 serving;

16 (3) Supervise probationers in accordance with the rules
17 and regulations of the office and the directions of the sentencing
18 court;

19 (4) Advise the sentencing court, in accordance with
20 the Nebraska Probation Administration Act and such rules and
21 regulations of the office, of violations of the conditions of
22 probation by individual probationers;

23 (5) Advise the sentencing court, in accordance with the
24 rules and regulations of the office and the direction of the court,
25 when the situation of a probationer may require a modification of
26 the conditions of probation or when a probationer's adjustment is
27 such as to warrant termination of probation;

1 (6) Provide each probationer with a statement of the
2 period and conditions of his or her probation;

3 (7) Whenever necessary, exercise the power of arrest or
4 temporary custody as provided in section ~~29-2262.08~~ ~~ex~~ 29-2266 or
5 section 5 of this act;

6 (8) Establish procedures for the direction and guidance
7 of deputy probation officers under his or her jurisdiction and
8 advise such officers in regard to the most effective performance of
9 their duties;

10 (9) Supervise and evaluate deputy probation officers
11 under his or her jurisdiction;

12 (10) Delegate such duties and responsibilities to a
13 deputy probation officer as he or she deems appropriate;

14 (11) Make such reports as required by the administrator,
15 the judges of the probation district in which he or she serves, or
16 the Supreme Court;

17 (12) Keep accurate and complete accounts of all money or
18 property collected or received from probationers and give receipts
19 therefor;

20 (13) Cooperate fully with and render all reasonable
21 assistance to other probation officers;

22 (14) In counties with a population of less than
23 twenty-five thousand people, participate in pretrial diversion
24 programs established pursuant to sections 29-3601 to 29-3604
25 and juvenile pretrial diversion programs established pursuant
26 to sections 43-260.02 to 43-260.07 as requested by judges of
27 the probation district in which he or she serves, except that

1 participation in such programs shall not require appointment of
2 additional personnel and shall be consistent with the probation
3 officer's current caseload;

4 (15) Participate, at the direction of the probation
5 administrator pursuant to an interlocal agreement which meets the
6 requirements of section 29-2255, in non-probation-based programs
7 and services;

8 (16) Perform such other duties not inconsistent with the
9 Nebraska Probation Administration Act or the rules and regulations
10 of the office as a court may from time to time direct; and

11 (17) Exercise all powers and perform all duties necessary
12 and proper to carry out his or her responsibilities.

13 Sec. 3. Section 29-3921, Revised Statutes Cumulative
14 Supplement, 2010, is amended to read:

15 29-3921 (1) The Commission on Public Advocacy Operations
16 Cash Fund is created. The fund shall be used for the operations
17 of the commission, except that transfers may be made from the fund
18 to the General Fund at the direction of the Legislature through
19 June 30, 2011. The Commission on Public Advocacy Operations Cash
20 Fund shall consist of money remitted pursuant to section 33-156.
21 It is the intent of the Legislature that the commission shall
22 be funded solely from the fund. Any money in the fund available
23 for investment shall be invested by the state investment officer
24 pursuant to the Nebraska Capital Expansion Act and the Nebraska
25 State Funds Investment Act.

26 (2) The State Treasurer shall transfer the following
27 amounts from the Commission on Public Advocacy Operations Cash Fund

1 to the Court Appointed Special Advocate Fund:

2 (a) On July 1, 2011, or as soon thereafter as
3 administratively possible, one hundred thousand dollars; and

4 (b) On July 1, 2012, or as soon thereafter as
5 administratively possible, two hundred thousand dollars.

6 The State Treasurer shall transfer two hundred fifty
7 thousand dollars from the Commission on Public Advocacy Operations
8 Cash Fund to the University Cash Fund within fifteen days after
9 May 1, 2008. Such funds shall be used for a study of the
10 juvenile legal defense and guardian ad litem systems utilizing
11 the University of Nebraska Public Policy Center to create,
12 administer, and review a Request for Proposals to select from
13 a national search a research consultant that is qualified to
14 provide a methodologically sound and objective assessment of
15 Nebraska's juvenile justice system. The assessment shall include:
16 (1) Gathering of general data and information about the structure
17 and funding mechanisms for juvenile legal defense and guardian ad
18 litem representation; (2) a review of caseloads; (3) examining
19 issues related to the timing of appointment of counsel and
20 guardians ad litem; (4) supervision of attorneys; (5) charging
21 and trying juveniles as adults; (6) frequency with which juveniles
22 waive their right to counsel and under what conditions they do
23 so; (7) allocation of resources; (8) adequacy of juvenile court
24 facilities; (9) compensation of attorneys; (10) supervising and
25 training of attorneys; (11) access to investigators, experts,
26 social workers, and support staff; (12) access to educational
27 officers, teachers, educational staff, and truancy officers; (13)

1 the relationship between a guardian ad litem, a juvenile's legal
2 counsel, and the judicial system with identified educational
3 staff regarding a juvenile's educational status, (14) examining
4 issues related to truancy and the relationship between the school
5 districts and the juvenile court system, (15) recidivism, (16) time
6 to permanency and time in court, especially when a guardian ad
7 litem is appointed, and (17) coordination of representation for
8 those juveniles that may have been appointed an attorney in a
9 juvenile delinquency matter and a guardian ad litem because of
10 abuse or neglect. The assessment shall also highlight promising
11 approaches and innovative practices within the state and offer
12 recommendations to improve weak areas.

13 Sec. 4. Section 43-286, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 43-286 (1) When any juvenile is adjudicated to be a
16 juvenile described in subdivision (1), (2), or (4) of section
17 43-247:

18 (a) The court may continue the dispositional portion of
19 the hearing, from time to time upon such terms and conditions as
20 the court may prescribe, including an order of restitution of any
21 property stolen or damaged or an order requiring the juvenile to
22 participate in community service programs, if such order is in
23 the interest of the juvenile's reformation or rehabilitation, and,
24 subject to the further order of the court, may:

25 (i) Place the juvenile on probation subject to the
26 supervision of a probation officer;

27 (ii) Permit the juvenile to remain in his or her own home

1 or be placed in a suitable family home, subject to the supervision
2 of the probation officer; or

3 (iii) Cause the juvenile to be placed in a suitable
4 family home or institution, subject to the supervision of the
5 probation officer. If the court has committed the juvenile to the
6 care and custody of the Department of Health and Human Services,
7 the department shall pay the costs of the suitable family home or
8 institution which are not otherwise paid by the juvenile's parents.

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

17 (b) The court may commit such juvenile to the Office
18 of Juvenile Services, but a juvenile under the age of twelve
19 years shall not be placed at the Youth Rehabilitation and
20 Treatment Center-Geneva or the Youth Rehabilitation and Treatment
21 Center-Kearney unless he or she has violated the terms of probation
22 or has committed an additional offense and the court finds that the
23 interests of the juvenile and the welfare of the community demand
24 his or her commitment. This minimum age provision shall not apply
25 if the act in question is murder or manslaughter.

26 (2) When any juvenile is found by the court to be a
27 juvenile described in subdivision (3)(b) of section 43-247, the

1 court may enter such order as it is empowered to enter under
2 subdivision (1)(a) of this section or enter an order committing or
3 placing the juvenile to the care and custody of the Department of
4 Health and Human Services.

5 (3) ~~Beginning July 15, 1998, when~~ When any juvenile is
6 adjudicated to be a juvenile described in subdivision (1), (2),
7 (3)(b), or (4) of section 43-247 because of a nonviolent act or
8 acts and the juvenile has not previously been adjudicated to be
9 such a juvenile because of a violent act or acts, the court may,
10 with the agreement of the victim, order the juvenile to attend
11 juvenile offender and victim mediation with a mediator or at an
12 approved center selected from the roster made available pursuant to
13 section 25-2908.

14 (4) When a juvenile is placed on probation and a
15 probation officer has reasonable cause to believe that such
16 juvenile has committed or is about to commit a substance abuse
17 violation, a noncriminal violation, or a violation of a condition
18 of his or her probation, the probation officer shall take
19 appropriate measures as provided in section 5 of this act.

20 ~~(4)(a)~~ (5)(a) When a juvenile is placed on probation or
21 under the supervision of the court and it is alleged that the
22 juvenile is again a juvenile described in subdivision (1), (2),
23 (3)(b), or (4) of section 43-247, a petition may be filed and
24 the same procedure followed and rights given at a hearing on the
25 original petition. If an adjudication is made that the allegations
26 of the petition are true, the court may make any disposition
27 authorized by this section for such adjudications.

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

8 (i) The motion shall set forth specific factual
9 allegations of the alleged violations and a copy of such motion
10 shall be served on all persons required to be served by sections
11 43-262 to 43-267;

12 (ii) The juvenile shall be entitled to a hearing before
13 the court to determine the validity of the allegations. At such
14 hearing the juvenile shall be entitled to those rights relating
15 to counsel provided by section 43-272 and those rights relating
16 to detention provided by sections 43-254 to 43-256. The juvenile
17 shall also be entitled to speak and present documents, witnesses,
18 or other evidence on his or her own behalf. He or she may
19 confront persons who have given adverse information concerning the
20 alleged violations, may cross-examine such persons, and may show
21 that he or she did not violate the conditions of his or her
22 probation or supervision or an order of the court or, if he or
23 she did, that mitigating circumstances suggest that the violation
24 does not warrant revocation of probation or supervision or a change
25 of disposition. The ~~revocation~~ hearing shall be held within a
26 reasonable time after the juvenile is taken into custody;

27 (iii) The hearing shall be conducted in an informal

1 manner and shall be flexible enough to consider evidence, including
2 letters, affidavits, and other material, that would not be
3 admissible in an adversarial criminal trial;

4 (iv) The juvenile shall be given a preliminary hearing
5 in all cases when the juvenile is confined, detained, or otherwise
6 significantly deprived of his or her liberty as a result of his
7 or her alleged violation of probation, supervision, or court order.
8 Such preliminary hearing shall be held before an impartial person
9 other than his or her probation officer or any person directly
10 involved with the case. If, as a result of such preliminary
11 hearing, probable cause is found to exist, the juvenile shall be
12 entitled to a hearing before the court in accordance with this
13 subsection;

14 (v) If the juvenile is found by the court to have
15 violated the terms of his or her probation or supervision or an
16 order of the court, the court may modify the terms and conditions
17 of the probation, supervision, or other court order, extend the
18 period of probation, supervision, or other court order, or enter
19 any order of disposition that could have been made at the time the
20 original order of ~~probation~~ was entered; and

21 (vi) In cases when the court revokes probation,
22 supervision, or other court order, it shall enter a written
23 statement as to the evidence relied on and the reasons for
24 revocation.

25 Sec. 5. Section 29-2262.08, Revised Statutes Cumulative
26 Supplement, 2010, is amended to read:

27 ~~29-2262.08~~ (1) For purposes of this section:

1 (a) Administrative sanction means additional probation
2 requirements imposed upon a juvenile subject to the supervision
3 of a probation officer by his or her probation officer, with the
4 full knowledge and consent of such juvenile and such juvenile's
5 parents or guardian, designed to hold such juvenile accountable
6 for substance abuse or noncriminal violations of conditions of
7 probation, including, but not limited to:

8 (i) Counseling or reprimand by his or her probation
9 officer;

10 (ii) Increased supervision contact requirements;

11 (iii) Increased substance abuse testing;

12 (iv) Referral for substance abuse or mental health
13 evaluation or other specialized assessment, counseling, or
14 treatment;

15 (v) Modification of a designated curfew for a period not
16 to exceed thirty days;

17 (vi) Community service for a specified number of hours
18 pursuant to sections 29-2277 to 29-2279;

19 (vii) Travel restrictions to stay within his or her
20 residence or county of residence or employment unless otherwise
21 permitted by the supervising probation officer;

22 (viii) Restructuring court-imposed financial obligations
23 to mitigate their effect on the juvenile subject to the supervision
24 of a probation officer; and

25 (ix) Implementation of educational or cognitive
26 behavioral programming;

27 (b) Noncriminal violation means activities or behaviors

1 of a juvenile subject to the supervision of a probation officer
2 which create the opportunity for re-offending or which diminish the
3 effectiveness of probation supervision resulting in a violation of
4 an original condition of probation, including, but not limited to:

5 (i) Moving traffic violations;

6 (ii) Failure to report to his or her probation officer;

7 (iii) Leaving the juvenile's residence, jurisdiction of
8 the court, or the state without the permission of the court or his
9 or her probation officer;

10 (iv) Failure to regularly attend school, vocational
11 training, other training, counseling, treatment, programming, or
12 employment;

13 (v) Noncompliance with school rules;

14 (vi) Continued violations of home rules;

15 (vii) Failure to notify his or her probation officer of
16 change of address, school, or employment;

17 (viii) Frequenting places where controlled substances are
18 illegally sold, used, distributed, or administered and association
19 with persons engaged in illegal activity;

20 (ix) Failure to perform community service as directed;

21 and

22 (x) Curfew or electronic monitoring violations; and

23 (c) Substance abuse violation means activities or
24 behaviors of a juvenile subject to the supervision of a probation
25 officer associated with the use of chemical substances or related
26 treatment services resulting in a violation of an original
27 condition of probation, including, but not limited to:

- 1 (i) Positive breath test for the consumption of alcohol;
2 (ii) Positive urinalysis for the illegal use of drugs;
3 (iii) Failure to report for alcohol testing or drug
4 testing;
5 (iv) Failure to appear for or complete substance abuse
6 or mental health treatment evaluations or inpatient or outpatient
7 treatment; and
8 (v) Tampering with alcohol or drug testing.

9 (2) Whenever a probation officer has reasonable cause to
10 believe that a juvenile subject to the supervision of a probation
11 officer has committed or is about to commit a substance abuse
12 violation or noncriminal violation while on probation, but that
13 such juvenile will not attempt to leave the jurisdiction and will
14 not place lives or property in danger, the probation officer shall
15 either:

16 (a) Impose one or more administrative sanctions with the
17 approval of his or her chief probation officer or such chief's
18 designee. The decision to impose administrative sanctions in lieu
19 of formal revocation proceedings rests with the probation officer
20 and his or her chief probation officer or such chief's designee
21 and shall be based upon such juvenile's risk level, the severity
22 of the violation, and the juvenile's response to the violation.
23 If administrative sanctions are to be imposed, such juvenile shall
24 acknowledge in writing the nature of the violation and agree
25 upon the administrative sanction with approval of such juvenile's
26 parents or guardian. Such juvenile has the right to decline to
27 acknowledge the violation, and if he or she declines to acknowledge

1 the violation, the probation officer shall submit a written report
2 pursuant to subdivision (2)(b) of this section. A copy of the
3 report shall be submitted to the county attorney of the county
4 where probation was imposed; or

5 (b) Submit a written report to the adjudicating court
6 with a copy to the county attorney of the county where probation
7 was imposed, outlining the nature of the probation violation and
8 request that formal revocation proceedings be instituted against
9 the juvenile subject to the supervision of a probation officer.

10 (3) Whenever a probation officer has reasonable cause to
11 believe that a juvenile subject to the supervision of a probation
12 officer has violated or is about to violate a condition of
13 probation other than a substance abuse violation or noncriminal
14 violation and that such juvenile will not attempt to leave the
15 jurisdiction and will not place lives or property in danger, the
16 probation officer shall submit a written report to the adjudicating
17 court, with a copy to the county attorney of the county where
18 probation was imposed, outlining the nature of the probation
19 violation.

20 (4) Whenever a probation officer has reasonable cause to
21 believe that a juvenile subject to the supervision of a probation
22 officer has violated or is about to violate a condition of his
23 or her probation and that such juvenile will attempt to leave
24 the jurisdiction or will place lives or property in danger, the
25 probation officer shall take such juvenile into temporary custody
26 without a warrant and may call on any peace officer for assistance
27 as provided in section 43-248.

1 (5) Immediately after detention pursuant to subsection
2 (4) of this section, the probation officer shall notify the county
3 attorney of the county where probation was imposed and submit
4 a written report of the reason for such detention and of any
5 violation of probation. After prompt consideration of the written
6 report, the county attorney shall:

7 (a) Order the release of the juvenile from confinement
8 subject to the supervision of a probation officer; or

9 (b) File with the adjudicating court a motion or
10 information to revoke the probation.

11 (6) Whenever a county attorney receives a report from a
12 probation officer that a juvenile subject to the supervision of a
13 probation officer has violated a condition of probation, the county
14 attorney may file a motion or information to revoke probation.

15 (7) The probation administrator shall adopt and
16 promulgate rules and regulations to carry out this section.

17 Sec. 6. Section 43-2,108.05, Revised Statutes Cumulative
18 Supplement, 2010, is amended to read:

19 43-2,108.05 (1) If the court orders the records of a
20 juvenile sealed pursuant to section 43-2,108.04, the juvenile who
21 is the subject of the order properly may, and the court, county
22 attorneys, city attorneys, and institutions, persons, or agencies
23 shall, reply that no record exists with respect to the juvenile
24 upon any public inquiry in the matter, and the court shall do all
25 of the following:

26 (a) Order that any information or other data concerning
27 any proceedings relating to the arrest, taking into custody,

1 petition, complaint, indictment, information, trial, hearing,
2 adjudication, correctional supervision, dismissal, or disposition
3 be deemed never to have occurred; and

4 (b) Send notice of the order to seal the record to the
5 Nebraska Commission on Law Enforcement and Criminal Justice and,
6 if the record includes impoundment or prohibition to obtain a
7 license or permit pursuant to section 43-287, to the Department
8 of Motor Vehicles and to any law enforcement agencies and
9 county attorneys or city attorneys and institutions, persons,
10 or agencies, including treatment providers, therapists, or other
11 service providers, referenced in the court record and order that
12 all original records of the case be sealed.

13 (2) Except as provided in subsection (3) of this section,
14 an order to seal the record applies to every public office or
15 agency that has a record relating to the case, regardless of
16 whether it receives notice of the hearing on the sealing of the
17 record or a copy of the order. Upon the written request of a person
18 whose record has been sealed and the presentation of a copy of such
19 order, a public office or agency shall seal all original records
20 relating to the case.

21 (3) A sealed record is still accessible to law
22 enforcement officers, county attorneys, city attorneys, and the
23 sentencing judge in the investigation of crimes and in the
24 prosecution and sentencing of criminal defendants. Inspection of
25 records that have been ordered sealed under section 43-2,108.04
26 may be made only by the following persons or for the following
27 purposes:

1 (a) By the court or by any person allowed to inspect such
2 records by an order of the court for good cause shown;

3 (b) By the Nebraska Probation System for purposes of
4 juvenile intake services, for presentence and other probation
5 investigations, and for the direct supervision of persons placed on
6 probation;

7 (c) By the Department of Health and Human Services for
8 purposes of juvenile intake services, the preparation of case plans
9 and reports, the preparation of evaluations, or the supervision and
10 protection of persons placed with the department or for licensing
11 or certification purposes under sections 71-1901 to 71-1906.01 or
12 the Child Care Licensing Act;

13 (d) Upon application, by the juvenile who is the subject
14 of the sealed record and by the person that is named in that
15 application;

16 (e) At the request of a party in a civil action that is
17 based on a case the record for which is the subject of a sealing
18 order issued under section 43-2,108.04, as needed for the civil
19 action. The party also may copy the record as needed for the civil
20 action. The sealed record shall be used solely in the civil action
21 and is otherwise confidential and subject to this section; ~~or~~

22 (f) By persons engaged in bona fide research, with
23 the permission of the court, only if the research results
24 in no disclosure of a juvenile's identity and protects the
25 confidentiality of the record; or-

26 (g) By a law enforcement agency if a person whose record
27 has been sealed applies for employment with the law enforcement

1 agency.

2 (4) No person shall knowingly release, disseminate, or
3 make available, for any purpose involving employment, bonding,
4 licensing, or education, to any person or to any department,
5 agency, or other instrumentality of the state or of any of
6 its political subdivisions, any information or other data
7 concerning any arrest, taking into custody, petition, complaint,
8 indictment, information, trial, hearing, adjudication, correctional
9 supervision, dismissal, or disposition, the record of which has
10 been sealed pursuant to section 43-2,108.04 and the release,
11 dissemination, or making available of which is not expressly
12 permitted by this section or court order. Nothing in this section
13 shall prohibit the Department of Health and Human Services from
14 releasing, disseminating, or making available information from
15 sealed records in the performance of its duties with respect to the
16 supervision and protection of persons served by the department. Any
17 person who violates this section may be held in contempt of court.

18 (5) In any application for employment, license, or other
19 right or privilege, any appearance as a witness, or any other
20 inquiry, a person cannot be questioned with respect to any arrest
21 or taking into custody for which the record is sealed. If an
22 inquiry is made in violation of this subsection, the person may
23 respond as if the sealed arrest or taking into custody did not
24 occur, and the person is not subject to any adverse action because
25 of the arrest or taking into custody or the response. Applications
26 for employment shall contain specific language that states that the
27 applicant is not obligated to disclose a sealed juvenile record

1 or sentence. Employers shall not ask if an applicant has had
2 a juvenile record sealed. The Department of Labor shall develop
3 a link on the department's web site to inform employers that
4 employers cannot ask if an applicant had a juvenile record sealed
5 and that an application for employment shall contain specific
6 language that states that the applicant is not obligated to
7 disclose a sealed juvenile record of arrest, custody, complaint,
8 disposition, diversion, adjudication, or sentence.

9 Sec. 7. Section 43-2,129, Revised Statutes Cumulative
10 Supplement, 2010, is amended to read:

11 43-2,129 Sections 43-245 to 43-2,129 and section 5 of
12 this act shall be known and may be cited as the Nebraska Juvenile
13 Code.

14 Sec. 8. The Legislature finds and declares that:

15 (1) The safety and well-being of abused and neglected
16 children throughout the State of Nebraska should be of tantamount
17 concern to the state and its citizens;

18 (2) Court appointed special advocate volunteers provide a
19 unique and vital service to the children they represent and work to
20 ensure the safety and well-being of abused and neglected children;

21 (3) Court appointed special advocate volunteers have
22 provided, in many cases, the judges who adjudicate cases with
23 essential information that has not only ensured the safety and
24 well-being of abused and neglected children throughout Nebraska,
25 but has also saved the state thousands of dollars; and

26 (4) Providing resources through a grant program will
27 increase the savings to the state through these programs.

1 Sec. 9. The Court Appointed Special Advocate Fund is
2 created. The fund shall be under the control of the Supreme Court
3 and administered by the State Court Administrator. The fund shall
4 be used for grants as provided in section 10 of this act. The fund
5 shall consist of transfers authorized under section 29-3921. Any
6 money in the fund available for investment shall be invested by the
7 state investment officer pursuant to the Nebraska Capital Expansion
8 Act and the Nebraska State Funds Investment Act. Interest earned
9 shall be credited back to the fund.

10 Sec. 10. (1) The Supreme Court shall award grants from
11 the Court Appointed Special Advocate Fund as provided in subsection
12 (2) of this section to any court appointed special advocate program
13 that applies for the grant and:

14 (a) Is a nonprofit organization organized under section
15 501(c)(3) of the Internal Revenue Code;

16 (b) Operates statewide; and

17 (c) Has an affiliation agreement with local programs that
18 meet the requirements of section 43-3706.

19 (2) The Supreme Court shall award grants up to the amount
20 credited to the fund as follows:

21 (a) Up to ten thousand dollars may be used by the court
22 to administer this section;

23 (b) Of the remaining amount, eighty percent, but not more
24 than four hundred thousand dollars, shall be awarded as grants
25 used to recruit new court appointed special advocate volunteers and
26 to defray the cost of training court appointed special advocate
27 volunteers;

1 (c) Of the remaining amount, ten percent, but no more
2 than fifty thousand dollars, shall be awarded as grants used to
3 create innovative programming to implement the Court Appointed
4 Special Advocate Act; and

5 (d) Of the remaining amount, ten percent but no more than
6 fifty thousand dollars shall be awarded as grants used to expand
7 court appointed special advocate programs into counties that have
8 no programs or limited programs.

9 Sec. 11. Each applicant who is awarded a grant under
10 section 10 of this act shall provide the Supreme Court, Clerk of
11 the Legislature, and Governor prior to December 31 of each year a
12 report detailing:

13 (1) The number of court appointed special advocate
14 volunteers trained during the previous fiscal year;

15 (2) The cost of training the court appointed special
16 advocate volunteers trained during the previous fiscal year;

17 (3) The number of court appointed special advocate
18 volunteers recruited during the previous fiscal year;

19 (4) A description of any programs described in
20 subdivision (2)(d) of section 10 of this act;

21 (5) The total number of courts being served by court
22 appointed special advocate programs during the previous fiscal
23 year; and

24 (6) The total number of children being served by court
25 appointed special advocate volunteers during the previous fiscal
26 year.

27 Sec. 12. Section 43-3701, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 43-3701 Sections 43-3701 to 43-3716 and sections 8, 9,
3 10, and 11 of this act shall be known and may be cited as the Court
4 Appointed Special Advocate Act.

5 Sec. 13. Section 79-209, Revised Statutes Cumulative
6 Supplement, 2010, is amended to read:

7 79-209 In all school districts in this state, any
8 superintendent, principal, teacher, or member of the school board
9 who knows of any violation of section 79-201 on the part of any
10 child of school age, his or her parent, the person in actual or
11 legal control of such child, or any other person shall within
12 three days report such violation to the attendance officer of
13 the school, who shall investigate the case. When of his or her
14 personal knowledge, by report or complaint from any resident of the
15 district, or by report or complaint as provided in this section,
16 the attendance officer believes that any child is unlawfully absent
17 from school, the attendance officer shall immediately investigate.

18 All school districts shall have a written policy on
19 excessive absenteeism developed in collaboration with the county
20 attorney of the county in which the principal office of the
21 school district is located. The policy shall include a provision
22 indicating how the school district and the county attorney will
23 handle cases in which excessive absences are due to documented
24 illness that makes attendance impossible or impracticable, and
25 the policy shall state the number of absences or the hourly
26 equivalent upon the occurrence of which the school shall render
27 all services in its power to compel such child to attend some

1 public, private, denominational, or parochial school, which the
2 person having control of the child shall designate, in an attempt
3 to address the problem of excessive absenteeism. The number of
4 absences in the policy shall not exceed five days per quarter
5 or the hourly equivalent. School districts may use excused and
6 unexcused absences for purposes of the policy. Such services shall
7 include, but need not be limited to:

8 (1) One or more meetings between a school attendance
9 officer, school social worker or the school principal or a
10 member of the school administrative staff designated by the school
11 administration if such school does not have a school social worker,
12 the child's parent or guardian, and the child, if necessary,
13 to report and to attempt to solve the problem of excessive
14 absenteeism;

15 (2) Educational counseling to determine whether
16 curriculum changes, including, but not limited to, enrolling the
17 child in an alternative education program that meets the specific
18 educational and behavioral needs of the child, would help solve the
19 problem of excessive absenteeism;

20 (3) Educational evaluation, which may include a
21 psychological evaluation, to assist in determining the specific
22 condition, if any, contributing to the problem of excessive
23 absenteeism, supplemented by specific efforts by the school to help
24 remedy any condition diagnosed; and

25 (4) Investigation of the problem of excessive absenteeism
26 by the school social worker, or if such school does not have
27 a school social worker, by the school principal or a member

1 of the school administrative staff designated by the school
2 administration, to identify conditions which may be contributing to
3 the problem. If services for the child and his or her family are
4 determined to be needed, the school social worker or the school
5 principal or a member of the school administrative staff performing
6 the investigation shall meet with the parent or guardian and the
7 child to discuss any referral to appropriate community agencies
8 for economic services, family or individual counseling, or other
9 services required to remedy the conditions that are contributing to
10 the problem of excessive absenteeism.

11 If the child is absent more than twenty days per year
12 or the hourly equivalent, the attendance officer shall file a
13 report with the county attorney of the county in which such person
14 resides. The county attorney may file a complaint against a person
15 violating section 79-201 before the judge of the county court
16 of the county in which such person resides charging such person
17 with violation of section 79-201 or may file a petition under
18 the Nebraska Juvenile Code alleging the person violating section
19 79-201 is a juvenile described in subdivision (3)(a) or (3)(b) of
20 section 43-247. Nothing in this section shall preclude a county
21 attorney from being involved at any stage in the process to address
22 excessive absenteeism.

23 Sec. 14. Section 79-2104, Revised Statutes Cumulative
24 Supplement, 2010, is amended to read:

25 79-2104 A learning community coordinating council shall
26 have the authority to:

27 (1) Levy a common levy for the general funds of member

1 school districts pursuant to sections 77-3442 and 79-1073;

2 (2) Levy a common levy for the special building funds
3 of member school districts pursuant to sections 77-3442 and
4 79-1073.01;

5 (3) Levy for elementary learning center facility leases,
6 for remodeling of leased elementary learning center facilities, and
7 for up to fifty percent of the estimated cost for focus school
8 or program capital projects approved by the learning community
9 coordinating council pursuant to subdivision (2)(h) of section
10 77-3442 and section 79-2111;

11 (4) Levy for elementary learning center employees, for
12 contracts with other entities or individuals who are not employees
13 of the learning community for elementary learning center programs
14 and services, and for pilot projects pursuant to subdivision (2)(i)
15 of section 77-3442, except that not more than ten percent of such
16 levy may be used for elementary learning center employees;

17 (5) Collect, analyze, and report data and information,
18 including, but not limited to, information provided by a school
19 district pursuant to subsection (5) of section 79-201;

20 (6) Approve focus schools and focus programs to be
21 operated by member school districts;

22 (7) Adopt, approve, and implement a diversity plan which
23 shall include open enrollment and may include focus schools, focus
24 programs, magnet schools, and pathways pursuant to section 79-2110;

25 (8) Administer the open enrollment provisions in section
26 79-2110 for the learning community as part of a diversity plan
27 developed by the council to provide educational opportunities which

1 will result in increased diversity in schools across the learning
2 community;

3 (9) Annually conduct school fairs to provide students and
4 parents the opportunity to explore the educational opportunities
5 available at each school in the learning community and develop
6 other methods for encouraging access to such information and
7 promotional materials;

8 (10) Develop and approve reorganization plans for
9 submission pursuant to the Learning Community Reorganization Act;

10 (11) Establish and administer elementary learning centers
11 through achievement subcouncils pursuant to sections 79-2112 to
12 79-2114;

13 (12) Administer the learning community funds distributed
14 to the learning community pursuant to section 79-2111;

15 (13) Approve or disapprove poverty plans and limited
16 English proficiency plans for member school districts through
17 achievement subcouncils established under section 79-2117;

18 (14) Establish a procedure for receiving community input
19 and complaints regarding the learning community;

20 (15) Establish a procedure to assist parents, citizens,
21 and member school districts in accessing an approved center
22 pursuant to the Dispute Resolution Act to resolve disputes
23 involving member school districts or the learning community. Such
24 procedure may include payment by the learning community for some
25 mediation services; and

26 (16) Establish and administer pilot projects related to
27 (a) enhancing the academic achievement of elementary students,

1 particularly students who face challenges in the educational
2 environment due to factors such as poverty, limited English skills,
3 and mobility and (b) truancy initiatives.

4 Sec. 15. Section 79-2104.02, Revised Statutes Cumulative
5 Supplement, 2010, is amended to read:

6 79-2104.02 Each learning community coordinating council
7 shall use any funds received after January 15, 2011, pursuant
8 to section 79-1241.03 for evaluation and research pursuant to
9 plans developed by the learning community coordinating council
10 with assistance from the educational service unit coordinating
11 council and the student achievement coordinator and adjusted on
12 an ongoing basis. The evaluation shall be conducted by one or
13 more other entities or individuals who are not employees of the
14 learning community and shall measure progress toward the goals and
15 objectives of the learning community, which goals and objectives
16 shall include reduction of excessive absenteeism of students in
17 the member school districts of the learning community, closing
18 academic achievement gaps based on socioeconomic status, and the
19 effectiveness of the approaches used by the learning community or
20 pilot project to reach such goals and objectives. Any research
21 conducted pursuant to this section shall also be related to such
22 goals and objectives. After the first full year of operation, each
23 learning community shall report evaluation and research results to
24 the Education Committee of the Legislature on or before December 1
25 of each year.

26 Sec. 16. The superintendents of any school districts
27 that are members of a learning community shall participate in

1 a pilot project to share information regarding at-risk youth
2 with the goal of improving educational outcomes, providing
3 effective interventions that impact risk factors, and reducing
4 unnecessary penetration deeper into the juvenile justice system.
5 The information shall be shared pursuant to a memorandum of
6 understanding entered into by the school districts, the Office
7 of Probation Administration, the Department of Health and
8 Human Services, and the Nebraska Commission on Law Enforcement
9 and Criminal Justice before August 1, 2011. For purposes of
10 this section, at-risk youth means children who are under the
11 jurisdiction of the Office of Probation Administration, are under
12 the jurisdiction of the Department of Health and Human Services,
13 are otherwise involved in the juvenile justice system, or have been
14 absent from school for more than ten days per year or the hourly
15 equivalent for reasons other than documented illness that makes
16 attendance impossible or impracticable.

17 Sec. 17. It is the intent of the Legislature that in
18 fiscal year 2011-12, one hundred fifty thousand dollars shall be
19 decreased from the aid appropriation for the learning community and
20 in fiscal year 2012-13, and every fiscal year thereafter, thirty
21 thousand dollars shall be decreased from the aid appropriation for
22 the learning community and appropriated to the Nebraska Commission
23 on Law Enforcement and Criminal Justice for technology costs
24 related to the Nebraska criminal justice information system.

25 Sec. 18. Original sections 43-286 and 43-3701, Reissue
26 Revised Statutes of Nebraska, and sections 28-416, 29-2258,
27 29-2262.08, 29-3921, 43-2,108.05, 43-2,129, 79-209, 79-2104, and

1 79-2104.02, Revised Statutes Cumulative Supplement, 2010, are
2 repealed.

3 Sec. 19. Since an emergency exists, this act takes effect
4 when passed and approved according to law.