

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 108

Introduced by Crawford, 45.

Read first time January 06, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to incarceration; to amend section 29-410,
2 Reissue Revised Statutes of Nebraska, and section 83-186.01, Revised
3 Statutes Cumulative Supplement, 2016; section 29-2261, Revised
4 Statutes Cumulative Supplement, 2014, as amended by Laws 2015,
5 LB504, section 1, to require guidelines to ensure safety of minor or
6 dependent children upon arrest of a parent or guardian; to provide
7 powers and duties; to harmonize provisions; and to repeal the
8 original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Beginning July 1, 2018, each police department, each
2 county sheriff, and the Nebraska State Patrol shall establish guidelines
3 for law enforcement officers to ensure child safety upon the arrest of a
4 parent or guardian. A police department or county sheriff or the Nebraska
5 State Patrol may consult with the Division of Children and Family
6 Services of the Department of Health and Human Services when preparing
7 such guidelines for answers, suggestions, and other feedback. The
8 guidelines shall include, but not be limited to:

9 (1) Procedures to ensure that law enforcement officers inquire
10 whether arrestees have minor or dependent children who may be present or
11 at another location at the time of the arrest;

12 (2) Procedures for the proper arrangement of temporary care for
13 minor or dependent children to ensure their safety and well-being; and

14 (3) Education on how the effects of witnessing a violent crime or
15 other event causes emotional harm to children and how law enforcement can
16 assist in mitigating the long-term effects of the trauma.

17 An initial copy of these guidelines shall be filed with the Nebraska
18 Commission on Law Enforcement and Criminal Justice on November 15, 2018,
19 and updated with any changes to the guidelines each year on November 15.

20 Sec. 2. Section 29-410, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 29-410 Any officer or other person having in lawful custody any
23 person accused of an offense for the purpose of bringing him or her
24 before the proper magistrate or court, may place and detain such prisoner
25 in any county jail of this state for one night or longer, as the occasion
26 may require, so as to answer the purposes of the arrest and custody.

27 If, upon questioning during the booking process at such county jail,
28 the arrested person is identified as a custodial parent or guardian with
29 responsibility for minor or dependent children, the arrested person shall
30 be entitled to make two phone calls at no expense if the calls are
31 completed to a relative or other person for the purpose of arranging for

1 the care of the minor or dependent children in the parent's or guardian's
2 absence. Such telephone calls shall be offered immediately during the
3 booking process or as soon as practicable thereafter.

4 Sec. 3. Section 29-2261, Revised Statutes Cumulative Supplement,
5 2014, as amended by Laws 2015, LB504, section 1, is amended to read:

6 29-2261 (1) Unless it is impractical to do so, when an offender has
7 been convicted of a felony other than murder in the first degree, the
8 court shall not impose sentence without first ordering a presentence
9 investigation of the offender and according due consideration to a
10 written report of such investigation. When an offender has been convicted
11 of murder in the first degree and (a) a jury renders a verdict finding
12 the existence of one or more aggravating circumstances as provided in
13 section 29-2520 or (b)(i) the information contains a notice of
14 aggravation as provided in section 29-1603 and (ii) the offender waives
15 his or her right to a jury determination of the alleged aggravating
16 circumstances, the court shall not commence the sentencing determination
17 proceeding as provided in section 29-2521 without first ordering a
18 presentence investigation of the offender and according due consideration
19 to a written report of such investigation.

20 (2) A court may order a presentence investigation in any case,
21 except in cases in which an offender has been convicted of a Class IIIA
22 misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic
23 infraction, or any corresponding city or village ordinance.

24 (3) The presentence investigation and report shall include, when
25 available, an analysis of the circumstances attending the commission of
26 the crime, the offender's history of delinquency or criminality, physical
27 and mental condition, family situation and background including whether
28 and how any minor or dependent children could be impacted by sentencing,
29 economic status, education, occupation, and personal habits, and any
30 other matters that the probation officer deems relevant or the court
31 directs to be included. All local and state police agencies and

1 Department of Correctional Services adult correctional facilities shall
2 furnish to the probation officer copies of such criminal records, in any
3 such case referred to the probation officer by the court of proper
4 jurisdiction, as the probation officer shall require without cost to the
5 court or the probation officer.

6 Such investigation shall also include:

7 (a) Any written statements submitted to the county attorney by a
8 victim; and

9 (b) Any written statements submitted to the probation officer by a
10 victim.

11 (4) If there are no written statements submitted to the probation
12 officer, he or she shall certify to the court that:

13 (a) He or she has attempted to contact the victim; and

14 (b) If he or she has contacted the victim, such officer offered to
15 accept the written statements of the victim or to reduce such victim's
16 oral statements to writing.

17 For purposes of subsections (3) and (4) of this section, the term
18 victim shall be as defined in section 29-119.

19 (5) Before imposing sentence, the court may order the offender to
20 submit to psychiatric observation and examination for a period of not
21 exceeding sixty days or such longer period as the court determines to be
22 necessary for that purpose. The offender may be remanded for this purpose
23 to any available clinic or mental hospital, or the court may appoint a
24 qualified psychiatrist to make the examination. The report of the
25 examination shall be submitted to the court.

26 (6) Any presentence report, substance abuse evaluation, or
27 psychiatric examination shall be privileged and shall not be disclosed
28 directly or indirectly to anyone other than a judge, probation officers
29 to whom an offender's file is duly transferred, the probation
30 administrator or his or her designee, alcohol and drug counselors, mental
31 health practitioners, psychiatrists, and psychologists licensed or

1 certified under the Uniform Credentialing Act to conduct substance abuse
2 evaluations and treatment, or others entitled by law to receive such
3 information, including personnel and mental health professionals for the
4 Nebraska State Patrol specifically assigned to sex offender registration
5 and community notification for the sole purpose of using such report,
6 evaluation, or examination for assessing risk and for community
7 notification of registered sex offenders. For purposes of this
8 subsection, mental health professional means (a) a practicing physician
9 licensed to practice medicine in this state under the Medicine and
10 Surgery Practice Act, (b) a practicing psychologist licensed to engage in
11 the practice of psychology in this state as provided in section 38-3111,
12 or (c) a practicing mental health professional licensed or certified in
13 this state as provided in the Mental Health Practice Act.

14 (7) The court shall permit inspection of the presentence report,
15 substance abuse evaluation, or psychiatric examination or parts of the
16 report, evaluation, or examination, as determined by the court, by the
17 prosecuting attorney and defense counsel. Beginning July 1, 2016, such
18 inspection shall be by electronic access only unless the court determines
19 such access is not available to the prosecuting attorney or defense
20 counsel. The State Court Administrator shall determine and develop the
21 means of electronic access to such presentence reports, evaluations, and
22 examinations. Upon application by the prosecuting attorney or defense
23 counsel, the court may order that addresses, telephone numbers, and other
24 contact information for victims or witnesses named in the report,
25 evaluation, or examination be redacted upon a showing by a preponderance
26 of the evidence that such redaction is warranted in the interests of
27 public safety. The court may permit inspection of the presentence report,
28 substance abuse evaluation, or psychiatric examination or examination of
29 parts of the report, evaluation, or examination by any other person
30 having a proper interest therein whenever the court finds it is in the
31 best interest of a particular offender. The court may allow fair

1 opportunity for an offender to provide additional information for the
2 court's consideration.

3 (8) If an offender is sentenced to imprisonment, a copy of the
4 report of any presentence investigation, substance abuse evaluation, or
5 psychiatric examination shall be transmitted immediately to the
6 Department of Correctional Services. Upon request, the Board of Parole or
7 the Office of Parole Administration may receive a copy of the report from
8 the department.

9 (9) Notwithstanding subsections (6) and (7) of this section, the
10 Supreme Court or an agent of the Supreme Court acting under the direction
11 and supervision of the Chief Justice shall have access to psychiatric
12 examinations, substance abuse evaluations, and presentence investigations
13 and reports for research purposes. The Supreme Court and its agent shall
14 treat such information as confidential, and nothing identifying any
15 individual shall be released.

16 Sec. 4. Section 83-186.01, Revised Statutes Cumulative Supplement,
17 2016, is amended to read:

18 83-186.01 (1) The Legislature finds that:

19 (a) Research reveals that children who have parents involved in
20 their lives perform better academically and socially in school,
21 experience fewer mental health and substance abuse issues, and are less
22 likely to commit serious crime;

23 (b) Strategies to address family stability and intergenerational
24 poverty are specifically needed for children with incarcerated parents;
25 and

26 (c) Research reveals that family-based reentry planning, including
27 relationship development and housing and employment strategies, results
28 in lower recidivism and greater family economic stability.

29 (2) The department shall implement a program for the purpose of
30 providing in Nebraska adult correctional facilities an evidence-based
31 program of parent education, early literacy, relationship skills

1 development, and reentry planning involving family members of
2 incarcerated parents prior to their release. Incarcerated parents or
3 guardians of children between birth and five years of age shall have
4 priority for participation in the program. The department may award a
5 contract to operate the program. Such contract shall be based on
6 competitive bids as provided in sections 73-101 to 73-105. The department
7 shall track data related to program participation and recidivism.

8 (3) The department shall establish policies to support and encourage
9 strong relationships between incarcerated parents or guardians and their
10 minor or dependent children during the period of incarceration,
11 including:

12 (a) When making facility placements at the Diagnostic and Evaluation
13 Center, taking into consideration the incarcerated person's ability to
14 maintain contact with the child;

15 (b) Adopting child-friendly facility visitation policies for
16 children of inmates, including but not limited to, permitting age-
17 appropriate physical contact throughout visitations for children under
18 the age of thirteen years;

19 (c) Adopting policies that encourage communication between the
20 department and children of inmates, which may include, but need not be
21 limited to, the creating of inmate family council programs that allow
22 children of inmates to provide feedback and suggestions to the
23 department; and

24 (d) Adopting policies, in collaboration with the Division of
25 Children and Family Services of the Department of Health and Human
26 Services, to support visitation of a parent or guardian by state wards if
27 such visitation is in the best interests of the state ward.

28 (4) Nothing in subsection (3) of this section supersedes policies in
29 place to protect child victims from visiting or interacting with an
30 inmate if the child was the victim of the crime for which the inmate is
31 incarcerated.

1 Sec. 5. Original section 29-410, Reissue Revised Statutes of
2 Nebraska, and section 83-186.01, Revised Statutes Cumulative Supplement,
3 2016, section 29-2261, Revised Statutes Cumulative Supplement, 2014, as
4 amended by Laws 2015, LB504, section 1, are repealed.