

LEGISLATIVE BILL 1140

Approved by the Governor August 06, 2020

Introduced by Health and Human Services Committee: Howard, 9, Chairperson; Arch, 14; Cavanaugh, 6; Hansen, B., 16; Murman, 38; Walz, 15; Williams, 36.

A BILL FOR AN ACT relating to juveniles; to amend sections 43-401 and 43-403, Reissue Revised Statutes of Nebraska, and section 43-251.01, Revised Statutes Cumulative Supplement, 2018; to provide requirements for operating a youth rehabilitation and treatment center; to require youth rehabilitation and treatment center operations plans and emergency placement plans from the Department of Health and Human Services under the Health and Human Services, Office of Juvenile Services Act; to authorize a needs assessment and cost analysis for an inpatient adolescent psychiatric unit; to change provisions relating to transportation to youth rehabilitation and treatment centers; to provide a duty for the Revisor of Statutes; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. (1) Youth rehabilitation and treatment centers shall be operated to provide programming and services to rehabilitate and treat juveniles committed under the Nebraska Juvenile Code. Each youth rehabilitation and treatment center shall be considered a separate placement. Each youth rehabilitation and treatment center shall provide:

(a) Safe and sanitary space for sleeping, hygiene, education, programming, treatment, recreation, and visitation for each juvenile;

(b) Health care and medical services;

(c) Appropriate physical separation and segregation of juveniles based on gender;

(d) Sufficient staffing to comply with state and federal law and protect the safety and security of each juvenile;

(e) Training that is specific to the population being served at the youth rehabilitation and treatment center;

(f) A facility administrator for each youth rehabilitation and treatment center who has the sole responsibility for administration of a single youth rehabilitation and treatment center;

(g) An evaluation process for the development of an individualized treatment plan within fourteen days after admission to the youth rehabilitation and treatment center;

(h) An age-appropriate and developmentally appropriate education program for each juvenile that can award relevant and necessary credits toward high school graduation that will be accepted by the juvenile's home school district;

(i) A case management and coordination process, designed to assure appropriate reintegration of the juvenile with his or her family, school, and community;

(j) Compliance with the requirements stated in Title XIX and Title IV-E of the federal Social Security Act, as such act existed on January 1, 2020, the Special Education Act, or other funding guidelines as appropriate;

(k) Research-based or evidence-based programming for all juveniles that includes a strong academic program and classes in health education, living skills, vocational training, behavior management and modification, money management, family and parent responsibilities, substance use awareness, physical education, job skills training, and job placement assistance; and

(l) Research-based or evidence-based treatment service for behavioral impairment, severe emotional disturbance, sex offender behavior, other mental health or psychiatric disorder, drug and alcohol addiction, physical or sexual abuse, and any other treatment indicated by a juvenile's individualized treatment plan.

(2) Each youth rehabilitation and treatment center shall be accredited by a nationally recognized entity that provides accreditation for juvenile facilities.

(3) Each youth rehabilitation and treatment center shall electronically submit a report of its activities for the preceding fiscal year to the Clerk of the Legislature on or before July 15 of each year beginning on July 15, 2021. The annual report shall include, but not be limited to, the following information:

(a) Data on the population served, including, but not limited to, admissions, average daily census, average length of stay, race, and ethnicity;

(b) An overview of programming and services; and

(c) An overview of any facility issues or facility improvements.

Sec. 2. (1) The Department of Health and Human Services shall develop a five-year operations plan for the youth rehabilitation and treatment centers and submit such operations plans electronically to the Health and Human Services Committee of the Legislature on or before March 15, 2021.

(2) The operations plan shall be developed with input from key stakeholders and shall include, but not be limited to:

(a) A description of the population served at each youth rehabilitation and treatment center;

(b) An organizational chart of supervisors and operations staff. The operations plan shall not allow for administrative staff to have oversight over more than one youth rehabilitation and treatment center and shall not allow for clinical staff to have responsibility over more than one youth rehabilitation and treatment center;

(c) Staff who shall be centralized offsite or managed onsite, including facility and maintenance staff;

(d) A facility plan that considers taxpayer investments already made in the facility and the community support and acceptance of the juveniles in the community surrounding the youth rehabilitation and treatment center;

(e) A description of each rehabilitation program offered at the youth rehabilitation and treatment center;

(f) A description of each mental health treatment plan offered at the youth rehabilitation and treatment center;

(g) A description of reentry and discharge planning;

(h) A staffing plan that ensures adequate staffing;

(i) An education plan developed in collaboration with the State Department of Education;

(j) A capital improvements budget;

(k) An operating budget;

(l) A disaster recovery plan;

(m) A plan to segregate the juveniles by gender on separate campuses;

(n) A parenting plan for juveniles placed in a youth rehabilitation and treatment center who are parenting;

(o) A statement of the rights of juveniles placed at the youth rehabilitation and treatment centers, including a right to privacy, and the rights of parents or guardians;

(p) Quality and outcome measurements for tracking outcomes for juveniles when they are discharged from the youth rehabilitation and treatment center, including an exit survey of such juveniles;

(q) Key performance indicators to be included in the annual report required under this section;

(r) A requirement for trauma-informed training provided to staff;

(s) Methods and procedures for investigations at the youth rehabilitation and treatment center; and

(t) A grievance process for juveniles placed at the youth rehabilitation and treatment centers.

(3) The department shall submit a report electronically to the Clerk of the Legislature on or before December 15, 2021, and each December 15 thereafter regarding such operations plan and key performance indicators.

(4) The department shall not establish a new youth rehabilitation and treatment center or establish or move a youth rehabilitation and treatment center to a new or existing state or private facility until March 30, 2021, after the completion of the planning process required under this section. Youth committed to the Office of Juvenile Services and residing at a youth rehabilitation and treatment center may be moved to an existing state or private facility on a temporary basis in the event of an emergency, pursuant to the emergency plans created under section 6 of this act, and in compliance with the requirements and restrictions in sections 7 and 8 of this act.

Sec. 3. Section 43-251.01, Revised Statutes Cumulative Supplement, 2018, is amended to read:

43-251.01 All placements and commitments of juveniles for evaluations or as temporary or final dispositions are subject to the following:

(1) No juvenile shall be confined in an adult correctional facility as a disposition of the court;

(2) A juvenile who is found to be a juvenile as described in subdivision (3) of section 43-247 shall not be placed in an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, or a youth rehabilitation and treatment center or committed to the Office of Juvenile Services;

(3) A juvenile who is found to be a juvenile as described in subdivision (1), (2), or (4) of section 43-247 shall not be assigned or transferred to an adult correctional facility or the secure youth confinement facility operated by the Department of Correctional Services;

(4) A juvenile under the age of fourteen years shall not be placed with or committed to a youth rehabilitation and treatment center;

(5)(a) Before July 1, 2019, a juvenile shall not be detained in secure detention or placed at a youth rehabilitation and treatment center unless detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court; and

(b) On and after July 1, 2019:

(i) A juvenile shall not be detained unless the physical safety of persons in the community would be seriously threatened or detention is necessary to secure the presence of the juvenile at the next hearing, as evidenced by a demonstrable record of willful failure to appear at a scheduled court hearing within the last twelve months;

(ii) A child twelve years of age or younger shall not be placed in detention under any circumstances; and

(iii) A juvenile shall not be placed into detention:

(A) To allow a parent or guardian to avoid his or her legal responsibility;

(B) To punish, treat, or rehabilitate such juvenile;

(C) To permit more convenient administrative access to such juvenile;

(D) To facilitate further interrogation or investigation; or

(E) Due to a lack of more appropriate facilities except in case of an emergency as provided in section 8 of this act;

(6) A juvenile alleged to be a juvenile as described in subdivision (3) of section 43-247 shall not be placed in a juvenile detention facility, including a wing labeled as staff secure at such facility, unless the designated staff secure portion of the facility fully complies with subdivision (5) of section 83-4,125 and the ingress and egress to the facility are restricted solely through staff supervision; and

(7) A juvenile alleged to be a juvenile as described in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall not be placed out of his or her home as a dispositional order of the court unless:

(a) All available community-based resources have been exhausted to assist the juvenile and his or her family; and

(b) Maintaining the juvenile in the home presents a significant risk of harm to the juvenile or community.

Sec. 4. Section 43-401, Reissue Revised Statutes of Nebraska, is amended to read:

43-401 Sections 43-401 to 43-424 and sections 2, 6 to 8, and 10 of this act shall be known and may be cited as the Health and Human Services, Office of Juvenile Services Act.

Sec. 5. Section 43-403, Reissue Revised Statutes of Nebraska, is amended to read:

43-403 For purposes of the Health and Human Services, Office of Juvenile Services Act:

(1) Aftercare means the control, supervision, and care exercised over juveniles who have been paroled;

(2) Committed means an order by a court committing a juvenile to the care and custody of the Office of Juvenile Services for treatment;

(3) Community supervision means the control, supervision, and care exercised over juveniles committed to the Office of Juvenile Services when a commitment to the level of treatment of a youth rehabilitation and treatment center has not been ordered by the court;

(4) Emergency means a public health emergency or a situation, including fire, flood, tornado, natural disaster, or damage to a youth rehabilitation and treatment center, that renders the youth rehabilitation and treatment center uninhabitable. Emergency does not include inadequate staffing;

(5) ~~(4)~~ Evaluation means assessment of the juvenile's social, physical, psychological, and educational development and needs, including a recommendation as to an appropriate treatment plan;

(6) ~~(5)~~ Parole means a conditional release of a juvenile from a youth rehabilitation and treatment center to aftercare or transferred to Nebraska for parole supervision by way of interstate compact;

(7) ~~(6)~~ Placed for evaluation means a placement with the Office of Juvenile Services or the Department of Health and Human Services for purposes of an evaluation of the juvenile; and

(8) ~~(7)~~ Treatment means type of supervision, care, confinement, and rehabilitative services for the juvenile.

Sec. 6. (1) The Department of Health and Human Services shall develop an emergency plan for the Youth Rehabilitation and Treatment Center-Geneva, the Youth Rehabilitation and Treatment Center-Kearney, and any other facility operated and utilized as a youth rehabilitation and treatment center in compliance with state law.

(2) Each emergency plan shall:

(a) Identify and designate temporary placement facilities for the placement of juveniles in the event a youth rehabilitation and treatment center must be evacuated due to an emergency as defined in section 43-403. The administrator of a proposed temporary placement facility shall consent to be designated as a temporary placement facility in the emergency plan. A criminal detention facility or a juvenile detention facility shall only be designated as a temporary placement facility pursuant to section 8 of this act;

(b) Identify barriers to implementation of an effective emergency plan, including necessary administrative or legislative changes;

(c) Include procedures for the Office of Juvenile Services to provide reliable, effective, and timely notification that an emergency plan is to be implemented to:

(i) Staff at the youth rehabilitation and treatment center where the emergency plan is implemented and the administrator and staff at the temporary placement facility;

(ii) Juveniles placed at the youth rehabilitation and treatment center;

(iii) Families and legal guardians of juveniles placed at the youth rehabilitation and treatment center;

(iv) The State Court Administrator, in a form and manner prescribed by the State Court Administrator;

(v) The committing court of each juvenile placed at the youth rehabilitation and treatment center;

(vi) The chairperson of the Health and Human Services Committee of the Legislature; and

(vii) The office of Public Counsel and the office of Inspector General of

Nebraska Child Welfare;

(d) Detail the plan for transportation of juveniles to a temporary placement facility; and

(e) Include methods and schedules for implementing the emergency plan.

(3) Each emergency plan shall be developed on or before December 15, 2020.

Sec. 7. (1) The Department of Health and Human Services shall ensure that the administrator of each temporary placement facility described in an emergency plan required under section 6 of this act consents to the temporary placement of juveniles placed in such facility pursuant to the emergency plan. Prior to inclusion in an emergency plan as a temporary placement facility, the department and the administrator of the temporary placement facility shall agree on a cost-reimbursement plan for the temporary placement of juveniles at such facility.

(2) If an emergency plan required under section 6 of this act is implemented, the Office of Juvenile Services shall, at least twenty-four hours prior to implementation, if practical, and otherwise within twenty-four hours after implementation of such emergency plan, notify the persons and entities listed in subdivision (2)(c) of section 6 of this act.

Sec. 8. In the event of an emergency and only after all other temporary placement options have been exhausted, the Office of Juvenile Services may provide for the placement of a juvenile for a period not to exceed seven days at a criminal detention facility, if allowed by law, or a juvenile detention facility, as such terms are defined in section 83-4,125.

Sec. 9. (1) The Department of Health and Human Services may conduct a needs assessment and cost analysis for the establishment of an inpatient adolescent psychiatric unit housed within the Lincoln Regional Center. If the department chooses to conduct such needs assessment and cost analysis, the department shall contract with an outside consultant with expertise in needs assessment and cost analysis of health care facilities for the purpose of conducting such assessment and analysis.

(2) If a needs assessment and cost analysis is conducted by the department, the department shall submit a report electronically to the Health and Human Services Committee of the Legislature and the Clerk of the Legislature ninety days after the completion of such needs assessment and cost analysis. Such report shall contain the following information:

(a) A needs assessment, including the number of adolescents expected to use such inpatient adolescent psychiatric unit;

(b) The cost of opening an existing facility at the Lincoln Regional Center for use as an inpatient adolescent psychiatric unit;

(c) The cost of reopening the facility at the Lincoln Regional Center, including the costs for necessary construction, upgrades, or repairs;

(d) Annual operating costs of such unit, including, but not limited to, any federal funds available to operate the unit in addition to General Fund appropriations; and

(e) Cost savings realized by moving adolescents from out-of-state institutions back to Nebraska for treatment at such unit.

(3) For purposes of this section, adolescent means a person under the jurisdiction of the juvenile court.

Sec. 10. Policies and procedures of the Department of Health and Human Services regarding the transportation of juveniles placed at the youth rehabilitation and treatment centers shall apply to any private contractor utilized by the Office of Juvenile Services to transport juveniles placed at the youth rehabilitation and treatment centers.

Sec. 11. The Revisor of Statutes shall assign sections 1 and 9 of this act to Chapter 83, article 1.

Sec. 12. Sections 1, 9, and 10 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 13. Original sections 43-401 and 43-403, Reissue Revised Statutes of Nebraska, and section 43-251.01, Revised Statutes Cumulative Supplement, 2018, are repealed.

Sec. 14. Since an emergency exists, this act takes effect when passed and approved according to law.