

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 748

Introduced by Avery, 28.

Read first time January 09, 2014

Committee:

A BILL

1 FOR AN ACT relating to sexual assault; to amend sections 43-292.02
2 and 43-2933, Reissue Revised Statutes of Nebraska,
3 section 43-283.01, Revised Statutes Cumulative
4 Supplement, 2012, and sections 43-254 and 43-1411.01,
5 Revised Statutes Supplement, 2013; to change provisions
6 relating to paternity of a child conceived as a result of
7 sexual assault; to harmonize provisions; and to repeal
8 the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-254, Revised Statutes Supplement,
2 2013, is amended to read:

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

1 (b), or (4) of section 43-247 and it does not appear that there is
2 any need for secure detention. The court may assess the cost of such
3 placement or detention in whole or in part to the parent of the
4 juvenile as provided in section 43-290.

5 If a juvenile has been removed from his or her parent,
6 guardian, or custodian pursuant to subdivision (2) of section 43-248,
7 the court may enter an order continuing detention or placement upon a
8 written determination that continuation of the juvenile in his or her
9 home would be contrary to the health, safety, or welfare of such
10 juvenile and that reasonable efforts were made to preserve and
11 reunify the family if required under ~~subsections (1) through (4) of~~
12 section 43-283.01.

13 Sec. 2. Section 43-283.01, Revised Statutes Cumulative
14 Supplement, 2012, is amended to read:

15 43-283.01 (1) In determining whether reasonable efforts
16 have been made to preserve and reunify the family and in making such
17 reasonable efforts, the juvenile's health and safety are the
18 paramount concern.

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

25 (3) If continuation of reasonable efforts to preserve and

1 reunify the family is determined to be inconsistent with the
2 permanency plan determined for the juvenile in accordance with a
3 permanency hearing under section 43-1312, efforts shall be made to
4 place the juvenile in a timely manner in accordance with the
5 permanency plan and to complete whatever steps are necessary to
6 finalize the permanent placement of the juvenile.

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

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

13 (b) The parent of the juvenile has (i) committed first or
14 second degree murder to another child of the parent, (ii) committed
15 voluntary manslaughter to another child of the parent, (iii) aided or
16 abetted, attempted, conspired, or solicited to commit murder, or
17 aided or abetted voluntary manslaughter of the juvenile or another
18 child of the parent, (iv) committed a felony assault which results in
19 serious bodily injury to the juvenile or another minor child of the
20 parent, or (v) been convicted of felony sexual assault of the other
21 parent of the juvenile under section 28-319.01 or 28-320.01 or a
22 comparable crime in another state; or

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

25 (5) If the family includes a child who was conceived by

1 the victim of a sexual assault and the biological father is convicted
2 of the crime under section 28-319 or 28-320, the biological father of
3 such child shall not be considered a part of the child's family for
4 purposes of requiring reasonable efforts to preserve and reunify the
5 family.

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

14 ~~(6)~~(7) Reasonable efforts to place a juvenile for
15 adoption or with a guardian may be made concurrently with reasonable
16 efforts to preserve and reunify the family, but priority shall be
17 given to preserving and reunifying the family as provided in this
18 section.

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

21 43-292.02 (1) A petition shall be filed on behalf of the
22 state to terminate the parental rights of the juvenile's parents or,
23 if such a petition has been filed by another party, the state shall
24 join as a party to the petition, and the state shall concurrently
25 identify, recruit, process, and approve a qualified family for an

1 adoption of the juvenile, if:

2 (a) A juvenile has been in foster care under the
3 responsibility of the state for fifteen or more months of the most
4 recent twenty-two months; or

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

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

25 (3) The petition is not required to be filed on behalf of

1 the state or if a petition is filed the state shall not be required
2 to join in a petition to terminate parental rights or to concurrently
3 find a qualified family to adopt the juvenile under this section if:

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

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

10 (c) The family of the juvenile has not had a reasonable
11 opportunity to avail themselves of the services deemed necessary in
12 the case plan or permanency plan approved by the court if reasonable
13 efforts to preserve and reunify the family are required under section
14 43-283.01.

15 (4) If a child is conceived by the victim of a sexual
16 assault and the biological father is convicted of the crime under
17 section 28-319 or 28-320, the county attorney shall file a petition
18 on behalf of the state to terminate the parental rights of the
19 biological father and the conviction shall be conclusive evidence
20 that the parental rights of the biological father should be
21 terminated, unless the child's biological mother or guardian consents
22 otherwise and the court finds that not terminating the parental
23 rights of the biological father is in the best interests of the
24 child.

25 Sec. 4. Section 43-1411.01, Revised Statutes Supplement,

1 2013, is amended to read:

2 43-1411.01 (1) An action for paternity or parental
3 support under sections 43-1401 to 43-1418 may be initiated by filing
4 a complaint with the clerk of the district court as provided in
5 section 25-2740. Such proceeding may be heard by the county court or
6 the district court as provided in section 25-2740. A paternity
7 determination under sections 43-1411 to 43-1418 may also be decided
8 in a county court or separate juvenile court if the county court or
9 separate juvenile court already has jurisdiction over the child whose
10 paternity is to be determined.

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

15 (3) The court shall stay the paternity action if there is
16 a pending criminal allegation of sexual assault under section 28-319
17 or 28-320 against the alleged father with regard to the conception of
18 the child. If the alleged father is not found guilty, the paternity
19 action shall proceed. If the alleged father is found guilty, the
20 paternity of the child is established by the conviction and the
21 parental rights of the biological father may be terminated.

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

24 43-2933 (1)(a) No person shall be granted custody of, or
25 unsupervised parenting time, visitation, or other access with, a

1 child if the person is required to be registered as a sex offender
2 under the Sex Offender Registration Act for an offense that would
3 make it contrary to the best interests of the child for such access
4 or for an offense in which the victim was a minor or if the person
5 has been convicted under section 28-311, 28-319.01, 28-320,
6 28-320.01, or 28-320.02, unless the mother or guardian consents and
7 the court finds that there is no significant risk to the child and
8 states its reasons in writing or on the record.

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

18 (c) The fact that a child is permitted unsupervised
19 contact with a person who is required, as a result of a felony
20 conviction in which the victim was a minor, to be registered as a sex
21 offender under the Sex Offender Registration Act shall be prima facie
22 evidence that the child is at significant risk. When making a
23 determination regarding significant risk to the child, the prima
24 facie evidence shall constitute a presumption affecting the burden of
25 producing evidence. However, this presumption shall not apply if

1 there are factors mitigating against its application, including
2 whether the other party seeking custody, parenting time, visitation,
3 or other access is also required, as the result of a felony
4 conviction in which the victim was a minor, to register as a sex
5 offender under the Sex Offender Registration Act.

6 (2) No person shall be granted custody, parenting time,
7 visitation, or other access with a child if the person has been
8 convicted under section 28-319 and the child was conceived as a
9 result of that violation.

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

13 Sec. 6. Original sections 43-292.02 and 43-2933, Reissue
14 Revised Statutes of Nebraska, section 43-283.01, Revised Statutes
15 Cumulative Supplement, 2012, and sections 43-254 and 43-1411.01,
16 Revised Statutes Supplement, 2013, are repealed.