

LEGISLATIVE BILL 598

Approved by the Governor May 21, 2001

Introduced by Dw. Pedersen, 39; at the request of the Governor

AN ACT relating to juveniles; to amend section 43-408, Reissue Revised Statutes of Nebraska, and section 43-3602, Revised Statutes Supplement, 2000; to change provisions relating to determination of placement and treatment services; to provide for an examination of juvenile evaluation practices and a report; and to repeal the original sections.

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

Section 1. Section 43-408, Reissue Revised Statutes of Nebraska, is amended to read:

43-408. (1) Whenever any juvenile is committed under any provision of law to the Office of Juvenile Services, to any facility operated by the Office of Juvenile Services, or to the custody of the Administrator of the Office of Juvenile Services, a superintendent of a facility, or an administrator of a program, the juvenile is deemed committed to the Office of Juvenile Services. Juveniles committed to the Office of Juvenile Services shall also be considered committed to the care and custody of the Department of Health and Human Services for the purpose of obtaining health care and treatment services.

(2) The committing court shall order the initial level of treatment for a juvenile committed to the Office of Juvenile Services. Prior to determining the initial level of treatment for a juvenile, the court may solicit a recommendation regarding the initial level of treatment from the Office of Juvenile Services. Under this section, the committing court shall not order a specific placement for a juvenile. The court shall continue to maintain jurisdiction over any juvenile committed to the Office of Juvenile Services until such time that the juvenile is discharged from the Office of Juvenile Services. The court shall conduct review hearings every six months, or at the request of the juvenile, for any juvenile committed to the Office of Juvenile Services who is placed outside his or her home, except for a juvenile residing at a youth rehabilitation and treatment center. The court shall determine whether ~~the~~ an out-of-home placement made by the Office of Juvenile Services is in the best interests of the juvenile, with due consideration being given by the court to public safety. If the court determines that the out-of-home placement is not in the best interests of the juvenile, the court may order other treatment services for the juvenile.

(3) After the initial level of treatment is ordered by the committing court, the Office of Juvenile Services shall ~~designate suitable placement and treatment services to be provided~~ provide treatment services which conform to the court's level of treatment determination. Within thirty days after making an actual placement, the Office of Juvenile Services shall provide the committing court with written notification of where the juvenile has been placed. At least once every six months thereafter, until the juvenile is discharged from the care and custody of the Office of Juvenile Services, the office shall provide the committing court with written notification of the juvenile's actual placement and the level of treatment that the juvenile is receiving.

(4) For transfer hearings, the burden of proof to justify the transfer is on the Office of Juvenile Services, the standard of proof is clear and convincing evidence, and the strict rules of evidence do not apply. Transfers of juveniles from one place of treatment to another ~~is~~ are subject to section 43-251.01 and to the following:

(a) Except as provided in subdivision (b) of this subsection, if the Office of Juvenile Services proposes to transfer the juvenile from a less restrictive to a more restrictive place of treatment, a plan outlining the proposed change and the reasons for the proposed change shall be presented to the court which committed the juvenile. Such change shall occur only after a hearing and a finding by the committing court that the change is in the best interests of the juvenile, with due consideration being given by the court to public safety. At the hearing, the juvenile has the right to be represented by counsel;

(b) The Office of Juvenile Services may make an immediate temporary change without prior approval by the committing court only if the juvenile is in a harmful or dangerous situation, is suffering a medical emergency, is exhibiting behavior which warrants temporary removal, or has been placed in a

non-state-owned facility and such facility has requested that the juvenile be removed. Approval of the committing court shall be sought within fifteen days of making an immediate temporary change, at which time a hearing shall occur before the court. The court shall determine whether it is in the best interests of the juvenile to remain in the new place of treatment, with due consideration being given by the court to public safety. At the hearing, the juvenile has the right to be represented by counsel; and

(c) If the proposed change seeks to transfer the juvenile from a more restrictive to a less restrictive place of treatment or to transfer the juvenile from the juvenile's current place of treatment to another which has the same level of restriction as the current place of treatment, the Office of Juvenile Services shall notify the juvenile, the juvenile's parents, custodian, or legal guardian, the committing court, the county attorney, the counsel for the juvenile, and the guardian ad litem of the proposed change. The juvenile has fifteen days after the date of the notice to request an administrative hearing with the Office of Juvenile Services, at which time the Office of Juvenile Services shall determine whether it is in the best interests of the juvenile for the proposed change to occur, with due consideration being given by the office to public safety. The juvenile may be represented by counsel at the juvenile's own expense. If the juvenile is aggrieved by the administrative decision of the Office of Juvenile Services, the juvenile may appeal that decision to the committing court within fifteen days after the Office of Juvenile Services' decision. At the hearing before the committing court, the juvenile has the right to be represented by counsel.

(5) The committing court's review of a change of place of treatment pursuant to this section does not apply to parole revocation hearings.

Sec. 2. Section 43-3602, Revised Statutes Supplement, 2000, is amended to read:

43-3602. The Juvenile Diversion, Detention, and Probation Services Implementation Team shall:

(1) Examine juvenile detention practices, identify risk factors that should be considered in making a detention decision, and recommend a standardized juvenile detention screening instrument to the Office of Probation Administration no later than December 15, 2000;

(2) Develop a plan for regional secure juvenile detention facilities and detention services, including transportation services, and recommend a funding strategy;

(3) Develop standards for juvenile diversion services throughout the state;

(4) Review the structure, purpose, and function of juvenile probation; analyze juvenile probation offender characteristics; determine the level of staffing and types of program services needed in order for juvenile probation to fulfill its core responsibilities within the juvenile justice system; and recommend needed system changes;

(5) Provide an appropriation request for expenses of team members and the hiring of consultant services; ~~and~~

(6) In consultation with the Office of Juvenile Services, examine the effectiveness, accuracy, and trends of juvenile evaluation practices utilized currently by the Department of Health and Human Services;

(7) Submit a report to the Legislature and the Governor on subdivision (6) of this section no later than December 1, 2001; and

(8) Submit a final report to the Governor and the Legislature.

Sec. 3. Original section 43-408, Reissue Revised Statutes of Nebraska, and section 43-3602, Revised Statutes Supplement, 2000, are repealed.