

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 358**

Introduced by Garrett, 3; Bloomfield, 17; Brasch, 16; Groene, 42;  
Johnson, 23; Kintner, 2.

Read first time January 15, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to sexual assault; to amend sections 43-292.02  
2 and 43-2933, Reissue Revised Statutes of Nebraska, and sections  
3 43-254, 43-283.01, and 43-1411.01, Revised Statutes Cumulative  
4 Supplement, 2014; to change provisions relating to paternity of a  
5 child conceived as a result of sexual assault; to harmonize  
6 provisions; and to repeal the original sections.

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

1 Section 1. Section 43-254, Revised Statutes Cumulative Supplement,  
2 2014, is amended to read:

3 43-254 Pending the adjudication of any case, and subject to  
4 subdivision (5) of section 43-251.01, if it appears that the need for  
5 placement or further detention exists, the juvenile may be (1) placed or  
6 detained a reasonable period of time on order of the court in the  
7 temporary custody of either the person having charge of the juvenile or  
8 some other suitable person, (2) kept in some suitable place provided by  
9 the city or county authorities, (3) placed in any proper and accredited  
10 charitable institution, (4) placed in a state institution, except any  
11 adult correctional facility, when proper facilities are available and the  
12 only local facility is a city or county jail, at the expense of the  
13 committing county on a per diem basis as determined from time to time by  
14 the head of the particular institution, (5) placed in the temporary care  
15 and custody of the Department of Health and Human Services when it does  
16 not appear that there is any need for secure detention, except that  
17 beginning October 1, 2013, no juvenile alleged to be a juvenile described  
18 in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed  
19 in the care and custody or under the supervision of the Department of  
20 Health and Human Services, or (6) beginning October 1, 2013, offered  
21 supervision options as determined pursuant to section 43-260.01, through  
22 the Office of Probation Administration as ordered by the court and agreed  
23 to in writing by the parties, if the juvenile is alleged to be a juvenile  
24 described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and  
25 it does not appear that there is any need for secure detention. The court  
26 may assess the cost of such placement or detention in whole or in part to  
27 the parent of the juvenile as provided in section 43-290.

28 If a juvenile has been removed from his or her parent, guardian, or  
29 custodian pursuant to subdivision (2) of section 43-248, the court may  
30 enter an order continuing detention or placement upon a written  
31 determination that continuation of the juvenile in his or her home would

1 be contrary to the health, safety, or welfare of such juvenile and that  
2 reasonable efforts were made to preserve and reunify the family if  
3 required under ~~subsections (1) through (4)~~ of section 43-283.01.

4 Sec. 2. Section 43-283.01, Revised Statutes Cumulative Supplement,  
5 2014, is amended to read:

6 43-283.01 (1) In determining whether reasonable efforts have been  
7 made to preserve and reunify the family and in making such reasonable  
8 efforts, the juvenile's health and safety are the paramount concern.

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

15 (3) If continuation of reasonable efforts to preserve and reunify  
16 the family is determined to be inconsistent with the permanency plan  
17 determined for the juvenile in accordance with a permanency hearing under  
18 section 43-1312, efforts shall be made to place the juvenile in a timely  
19 manner in accordance with the permanency plan and to complete whatever  
20 steps are necessary to finalize the permanent placement of the juvenile.

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

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

26 (b) The parent of the juvenile has (i) committed first or second  
27 degree murder to another child of the parent, (ii) committed voluntary  
28 manslaughter to another child of the parent, (iii) aided or abetted,  
29 attempted, conspired, or solicited to commit murder, or aided or abetted  
30 voluntary manslaughter of the juvenile or another child of the parent,  
31 (iv) committed a felony assault which results in serious bodily injury to

1 the juvenile or another minor child of the parent, or (v) been convicted  
2 of felony sexual assault of the other parent of the juvenile under  
3 section 28-319.01 or 28-320.01 or a comparable crime in another state; or

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

6 (5) If the family includes a child who was conceived by the victim  
7 of a sexual assault and the biological father is convicted of the crime  
8 under section 28-319 or 28-320, the biological father of such child shall  
9 not be considered a part of the child's family for purposes of requiring  
10 reasonable efforts to preserve and reunify the family.

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

19 (~~7~~ 6) Reasonable efforts to place a juvenile for adoption or with a  
20 guardian may be made concurrently with reasonable efforts to preserve and  
21 reunify the family, but priority shall be given to preserving and  
22 reunifying the family as provided in this section.

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

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

31 (a) A juvenile has been in foster care under the responsibility of

1 the state for fifteen or more months of the most recent twenty-two  
2 months; or

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

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

22 (3) The petition is not required to be filed on behalf of the state  
23 or if a petition is filed the state shall not be required to join in a  
24 petition to terminate parental rights or to concurrently find a qualified  
25 family to adopt the juvenile under this section if:

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

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

31 (c) The family of the juvenile has not had a reasonable opportunity

1 to avail themselves of the services deemed necessary in the case plan or  
2 permanency plan approved by the court if reasonable efforts to preserve  
3 and reunify the family are required under section 43-283.01.

4 (4) If a child is conceived by the victim of a sexual assault and  
5 the biological father is convicted of the crime under section 28-319 or  
6 28-320, the county attorney shall file a petition on behalf of the state  
7 to terminate the parental rights of the biological father and the  
8 conviction shall be conclusive evidence that the parental rights of the  
9 biological father should be terminated, unless the child's biological  
10 mother or guardian consents otherwise and the court finds that not  
11 terminating the parental rights of the biological father is in the best  
12 interests of the child.

13 Sec. 4. Section 43-1411.01, Revised Statutes Cumulative Supplement,  
14 2014, is amended to read:

15 43-1411.01 (1) An action for paternity or parental support under  
16 sections 43-1401 to 43-1418 may be initiated by filing a complaint with  
17 the clerk of the district court as provided in section 25-2740. Such  
18 proceeding may be heard by the county court or the district court as  
19 provided in section 25-2740. A paternity determination under sections  
20 43-1411 to 43-1418 may also be decided in a county court or separate  
21 juvenile court if the county court or separate juvenile court already has  
22 jurisdiction over the child whose paternity is to be determined.

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

26 (3) The court shall stay the paternity action if there is a pending  
27 criminal allegation of sexual assault under section 28-319 or 28-320  
28 against the alleged father with regard to the conception of the child. If  
29 the alleged father is not found guilty, the paternity action shall  
30 proceed. If the alleged father is found guilty, the paternity of the  
31 child is established by the conviction and the parental rights of the

1 biological father may be terminated.

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

4       43-2933 (1)(a) No person shall be granted custody of, or  
5 unsupervised parenting time, visitation, or other access with, a child if  
6 the person is required to be registered as a sex offender under the Sex  
7 Offender Registration Act for an offense that would make it contrary to  
8 the best interests of the child for such access or for an offense in  
9 which the victim was a minor or if the person has been convicted under  
10 section 28-311, 28-319.01, 28-320, 28-320.01, or 28-320.02, unless the  
11 court finds that there is no significant risk to the child and states its  
12 reasons in writing or on the record.

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

21       (c) The fact that a child is permitted unsupervised contact with a  
22 person who is required, as a result of a felony conviction in which the  
23 victim was a minor, to be registered as a sex offender under the Sex  
24 Offender Registration Act shall be prima facie evidence that the child is  
25 at significant risk. When making a determination regarding significant  
26 risk to the child, the prima facie evidence shall constitute a  
27 presumption affecting the burden of producing evidence. However, this  
28 presumption shall not apply if there are factors mitigating against its  
29 application, including whether the other party seeking custody, parenting  
30 time, visitation, or other access is also required, as the result of a  
31 felony conviction in which the victim was a minor, to register as a sex

1 offender under the Sex Offender Registration Act.

2 (2) No person shall be granted custody, parenting time, visitation,  
3 or other access with a child if the person has been convicted under  
4 section 28-319 or 28-320 and the child was conceived as a result of that  
5 violation unless the mother or guardian consents.

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

8 Sec. 6. Original sections 43-292.02 and 43-2933, Reissue Revised  
9 Statutes of Nebraska, and sections 43-254, 43-283.01, and 43-1411.01,  
10 Revised Statutes Cumulative Supplement, 2014, are repealed.