

2016 Juvenile Justice Legislation

The Nebraska Legislature passed two major pieces of legislation this session that will affect Nebraska's juvenile justice system: LB 954 and LB 894. More detailed information and legislative history can be found on www.nebraskalegislature.gov. All provisions, unless otherwise noted, will go into effect July 20th, 2016.

LB 954: Compromise between the legislature and the courts

► **INSPECTOR GENERAL OVERSIGHT "UPON A COURT ORDER"**: To preserve Juvenile Probation's place in the judicial branch while permitting legislative oversight of its agency functions, the Inspector General (IG) will get access to records through means of boilerplate language in individual court orders.

- ✓ The Chief Justice of the Supreme Court and the State Court Administrator will work with individual judges across the state to ensure this language is included in orders, so that in the case of death, serious injury, or complaint, the IG will be able to **confidentially investigate, make recommendations to Probation, and provide big picture reports to the Legislature.**
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LB 894: Reform omnibus package

► **EARLY ACCESS TO LEGAL COUNSEL AND RESTRICTIONS ON WAIVER**: Kids are constitutionally entitled to lawyers when interrogated in custody, and when coming before the juvenile court, but too often they unknowingly waive these rights. A competent lawyer can advise a child whether to go to trial or take a plea, whether or not to agree with recommendations made by Probation or the County Attorney, and why and how court orders must be followed. In its final version, this legislation:

- ✓ Requires that law enforcement or other governmental officials having custody of a minor must **inform the child using developmentally appropriate language** of the right to an attorney.
- ✓ Requires the court **appoint counsel when the petition is filed** for all juveniles charged under 43-247(1), (2), (3)(b) or (4) in counties with populations larger than 150,000.
- ✓ **Restricts juvenile waiver of counsel** in certain situations (regardless of county size), including: when the child is under 14 years old, in a detention hearing, in a motion to transfer to adult court, and when out of home placement is sought.

► **A DIFFERENT RESPONSE FOR VERY YOUNG OFFENDERS**: Very young children struggle to comprehend the nature of their charges and the complexity of legal proceedings, and many states have set a minimum age for charging children in the juvenile court. Beginning in July 2017, children age **10 and younger** who engage in behavior that would otherwise qualify as a felony, misdemeanor, status offense or traffic offense **will receive court jurisdiction solely through 43-247(3)(a) (prosecutorial discretion as to fault or no-fault of the parent).**

- ✓ **Rehabilitative services will be provided through the Department of Health and Human Services** and can wrap around the whole family, rather than placing the child on juvenile probation.

► **REQUIREMENTS PRIOR TO OUT-OF-HOME PLACEMENT AT DISPOSITION:** The legislation emphasizes efforts to respond to kid’s behaviors in their home and community if at all possible by expanding a provision (previously just for status offenders) to all juveniles adjudicated under 43-247(1), (2), (3)(b) and (4).

- ✓ Requires a court finding that **available community-based resources have been exhausted** and a **significant risk of harm** remains **prior to a dispositional order for out-of-home placement**

► **TERMS AND PROVISIONS REGARDING ALTERNATIVES TO DETENTION:** Decades of research has proved time and again that incarcerating children is more likely to perpetuate criminal behavior, damage mental health, and reduce the likelihood of future educational and vocational success. Secure confinement should only be used sparingly in cases where a child presents a real and immediate danger. This part of the legislation:

- ✓ Defines “**alternative to detention**” and removes the confusing, outdated term “nonsecure detention.”
- ✓ Brings the pre-existing statutory definition of “**staff secure juvenile facility**” into the juvenile code.
- ✓ Requires a **24-hour hearing whenever a child is placed on an alternative that infringes upon his liberty**, but permits the child to waive that hearing through counsel if desired.

► **DEFINITION AND REPORTING ON THE SOLITARY CONFINEMENT OF YOUTH:** Our state knows too well the dangerous repercussions of extended solitary confinement. This practice is especially traumatic on the developing brain of a child or adolescent. This part of the legislative package:

- ✓ Sets a uniform state definition for “room confinement”: **time spent restricted to a room or cell alone** during regular waking hours.
- ✓ Requires **residential facilities housing minors to document and report any incidents of extended room confinement** (beyond 2 hours) to the IG, who will compile data for the Legislature in an annual report.

► **GUIDELINES FOR ALL JUVENILE COURT ATTORNEYS:** Juvenile law is a specialized body of knowledge, and juvenile court practice has high stakes for the children and families involved. To ensure quality of representation across the board, by July 2017, the Supreme Court shall implement “**guidelines setting forth standards**” for all attorneys who practice in the juvenile court.

