

# LB 464: CONTINUING NEBRASKA'S JUVENILE JUSTICE REFORM

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2014 Through the Eyes of the Child Initiative Webinar

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## LB 464: OVERVIEW

- Changes to Juvenile Court's Original Jurisdiction
- LB 561 Clean- Up Provisions
- Truancy Provisions
- Facilitated Group Conferencing and Reporting Requirements

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### ORIGINAL JURISDICTION: MISDEMEANORS

1. MISDEMEANORS
2. CITY ORDINANCES
3. Excludes Traffic Offenses

- ALL misdemeanors involving youth under the age of 16 must be filed and heard in juvenile court
- All cases involving misdemeanors for 16 year olds (1/1/15) or 17 year olds (1/1/17) must be filed in juvenile court.
- The prosecutor may request a transfer of the case to adult court when the misdemeanor involves a 16 or 17 year old
- A youth may still request a transfer to juvenile court if originally filed in adult court

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**ORIGINAL JURISDICTION: FELONIES**

- CLASS IIIA & IV FELONIES**
- CLASS I, IA, IB, IC, ID, II, & III FELONIES**

- ALL felonies involving youth under the age of 14 must be filed and heard in juvenile court.
- All Class IIIA & IV felonies involving youth under the age of 18 must be filed in juvenile court (1/1/15), but the prosecutor may request a transfer to adult court.
- The prosecutor retains discretion on where to file all other felonies. Following the criteria set forth in 43-276.
- A youth may still request a transfer to juvenile court if originally filed in adult court

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**JURISDICTION CHART**

Age of Defendant	Offense Types		
	<i>Class I, IA, IB, IC, ID, II, III Felonies</i>	<i>Class IIIA, IV Felonies</i>	<i>Misdemeanors (non-traffic)</i>
18+	District Court	District Court	County Court
16, 17	District Court/Juvenile Court (T*)	Juvenile Court (T*)	Juvenile Court (T*)
14, 15	District Court/Juvenile Court (T*)	Juvenile Court (T*)	Juvenile Court
13 and below	Juvenile Court	Juvenile Court	Juvenile Court

(T\*)=Transferable

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**TRANSFER FROM JUVENILE TO ADULT COURT**

1. Must be filed with the juvenile court petition unless prosecutor can show good cause for delay
2. Juvenile Court must schedule the transfer hearing within 15 days of the filing of the prosecutor's motion
3. State must show by a preponderance of the evidence why the case should be transferred

- The youth shall be represented by counsel at the hearing (applies to transfer hearings to and from adult court)
- The court must set forth its decision within 30 days of the hearing and shall set forth findings for the reasons for its decision
- The language, "which shall not be a final order for the purpose of enabling an appeal," was removed

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### CRITERIA FOR TRANSFER

1. The type of treatment such juvenile would most likely be amenable to;
2. Whether there is evidence that the alleged offense included violence; ~~or was committed in an aggressive and premeditated manner;~~
3. The motivation for the commission of the offense;
4. The age of the juvenile and the ages and circumstances of any others involved in the offense;
5. The previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court;
6. The best interests of the juvenile;
7. Consideration of public safety;
8. Consideration of the juvenile's ability to appreciate the nature and seriousness of his or her conduct;

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### CRITERIA FOR TRANSFER CONT.

9. Whether the best interests of the juvenile and the security of the public may require that the juvenile continue in secure detention or under supervision for a period extending beyond his or her minority and, if so, the available alternatives best suited to this purpose;
10. Whether the victim agrees to participate in mediation;
11. Whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43.260.07
12. Whether the juvenile has been convicted of or has acknowledged unauthorized use or possession of a firearm;
13. Whether a juvenile court order has been issued for the juvenile pursuant to section 43-2,106.03
14. Whether the juvenile is a criminal street gang member; and
15. ~~Such other matters as the county attorney deems relevant to his or her decisions. As the parties deem relevant to aid in the decision.~~

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### DELETED CRITERIA

- Whether such offenses were crimes against the person or relating to property, and other previous history of antisocial behavior, if any, including any patterns of physical violence;
- The sophistication and maturity of the juvenile as determined by consideration of his or her home, school activities, emotional attitude and desire to be treated as an adult, pattern of living, and whether he or she has previous contact with law enforcement agencies and courts and the nature thereof;
- Whether there are facilities particularly available to the juvenile court for treatment and rehabilitation of the juvenile; and
- Whether the juvenile has been previously committed to a youth rehabilitation and treatment center.

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LB 561 CLEAN-UP PROVISIONS	
<ul style="list-style-type: none"> <li>• Payment of Services</li> <li>• Pre-adjudication Services</li> <li>• Post-Adjudication Evaluations</li> </ul>	<ul style="list-style-type: none"> <li>• Title IV-E</li> <li>• Community-Based Aid</li> <li>• YRTC Commitments</li> <li>• YRTC Reentry</li> </ul>

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PAYMENT OF SERVICES <small>SEC.</small>	
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<u>PROBATION</u>	<u>COUNTY</u>
<ol style="list-style-type: none"> <li>1. Pre-adjudication costs for youth who are already on probation.</li> <li>2. Pre-adjudication evaluations (Sec. 13)</li> <li>3. Pre-adjudication placements that are not detention</li> <li>4. Post-adjudication costs of detention, services, alternatives, voluntary services and transportation</li> </ol>	<ol style="list-style-type: none"> <li>1. Pre-adjudication detention, detention alternatives, treatment, voluntary services and transportation for all youth unless the youth is already on probation under another docket.</li> </ol>
	<u>NDHHS/OJS</u>
	<ol style="list-style-type: none"> <li>1. All costs for a youth from time of commitment to OJS until OJS discharges the youth.</li> <li>2. This includes detention prior to placement and transportation to and from YRTCs</li> </ol>

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PRE-ADJUDICATION EVALUATIONS	POST-ADJUDICATION EVALUATIONS & PDIs
<ol style="list-style-type: none"> <li>1. Probation arranges and pays for all pre-adjudication evaluations under 43-258.</li> <li>2. The court is to provide copies of the evaluation to the legal parties.</li> <li>3. The youth shall appear before the court for a hearing 10 days after the court receives the evaluation.</li> </ol>	<ol style="list-style-type: none"> <li>1. For youth who are detained the evaluation must be completed and the youth returned to court within 21 days</li> <li>2. For youth who are not detained the evaluation must be completed and the youth returned to court within 30 days.</li> <li>3. The court shall provide copies of predisposition reports and evaluations to the legal parties prior to the hearing.</li> </ol>

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### TITLE IV-E

- Sec. 5- Adds language necessary for purposes of allowing NDHHS to contract with probation to draw down federal Title IV-E funds in juvenile justice cases
- Gives probation “placement and care” responsibilities for youth in out-of-home placement. “Placement and care” is not custody
- Includes development of a case plan for the youth and periodic reviews
- Sec. 23- Gives probation authority make change of placements for lateral or less restrictive placements. Notice and an opportunity to object must be given to the court and legal parties.

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### COMMUNITY-BASED AID

- **Sec. 31- Appropriates \$5 million dollars to the Community-based Juvenile Services Aid Program**

#### Section 28

- Amendments to this program clarify which programs can be funded and gives the counties more flexibility to use the grant funds
- Programs must be aligned with evidence-based practices and can include payment of transportation costs to and from evidence-based programs

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### YRTC COMMITMENTS

- The county attorney must file a motion and show by a preponderance of the evidence that:
  - I. All levels of supervision have been exhausted;
  - II. All options for community-based services have been exhausted;
  - III. Placement at YRTC is a matter of immediate and urgent necessity for the protection of the juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.
- The court must immediately notify OJS if a youth is committed to OJS custody.

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### YRTC RE-ENTRY

- Makes clear that OJS is required to notify all parties of pending discharge of a youth, 60 days prior to discharge and again in every case, not less than 30 days prior to discharge;
- Upon notice of discharge, the court shall set a continued disposition hearing in anticipation of re-entry;
- OJS shall provide a copy of the re-entry plan to the court and all parties prior to the hearing;
- The parties may stipulate to the re-entry plan, which would remove the need for a separate re-entry hearing.
- Sec. 29 amends 43-425 to require that the youth's GAL be a part of the Community and Family Reentry Process.

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### TRUANCY PROVISIONS

- Removes the mandatory referral to the County Attorney after 20 absences.
- Schools MAY refer after 20 absences, BUT only after the school follows a process to address barriers to attendance
- Failure by the schools to document collaborative efforts to address absenteeism is a DEFENSE to both educational neglect and truancy cases
- Creates the Council on Student Attendance which is tasked with reviewing school district absenteeism policies & develop recommendations

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### ATTENDANCE POLICIES

- All school boards shall have a written policy on attendance which is annually reviewed.
- The policy shall include a provision indicating how the school district will handle cases in which excessive absences are due to illness. The policy shall also state the circumstances and number of absences or the hourly equivalent upon which the school shall render all services to address barriers to attendance.
- Services include:
  - Verbal or written communication by the school to the family
  - One or more family meetings to develop a collaborative plan.

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### COLLABORATIVE PLAN

- *Meetings must include:* a school attendance officer; a school social worker, or a school administrator (or designee); the person who has legal or actual charge or control of the child; and the child if appropriate.
- *Purpose:* Development of a collaborative plan to reduce the barriers to attendance identified by the group and improve regular attendance.
- *The plan shall consider, but not be limited to:* i) illness related to physical or behavioral health of the child; ii) educational counseling; iii) educational evaluation; iv) referral to community agencies for economic services; v) family or individual counseling; and vi) assisting the family in working with other community services.

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### REFERRAL TO COUNTY ATTORNEY

- If the school's efforts and the collaborative plan are unsuccessful AND the youth obtains more than 20 days of absences, the school MAY refer the matter to the county attorney
- The school must notify the family prior to referral to the county attorney.
- Failure by the school to document the efforts required by 79-202 is a defense to prosecution/adjudication under 79-201 and 43-247(3)(a&b)
- Illness that makes attendance impossible or impracticable shall not be the basis for referral to the county attorney

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### FACILITATED GROUP CONFERENCING

- Amendments to 43-247.01 provide that in any juvenile case, the court may provide the parties with the opportunity for facilitated group conferencing (FGC) or mediation.
- Funding and management of such services is part of the Administrative Office of the Courts
- Specific examples of FGCs: prehearing conferences; family group conferences; child welfare mediation; termination of parental rights prehearing conferences; and juvenile victim-offender dialogue

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## ANNUAL DATA REPORT

- The State Court Administrator must provide an annual report to the Legislature and Governor regarding juvenile justice. The report shall include, but not be limited to, geographic and demographic information on:
  - a. Youth prosecuted in juvenile court including the number of filings and adjudications
  - b. Youth prosecuted in adult court, including their sentences
  - c. Number of motions to transfer to and from adult court and the number actually transferred
  - d. Youth placed on juvenile probation, # in out of home care, # completing probation, # of motions to revoke and revocations, and average length of time on probation
  - e. Youth with and without access to counsel in juvenile and adult court
  - f. Rates of recidivism

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## QUESTIONS

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2014 Legislative Summary  
[http://www.throughtheeyes.org/legislative\\_updates.php](http://www.throughtheeyes.org/legislative_updates.php)

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