

LEGISLATIVE BILL 184

Approved by the Governor March 5, 2024

Introduced by Cavanaugh, J., 9; McKinney, 11; Fredrickson, 20; Dungan, 26; Bosn, 25; Wayne, 13.

A BILL FOR AN ACT relating to juveniles; to amend sections 29-1816 and 43-274, Revised Statutes Cumulative Supplement, 2022; to provide for inadmissibility of statements made by juveniles during proceedings to transfer cases to or from juvenile court; to eliminate obsolete provisions; and to repeal the original sections.

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

Section 1. Section 29-1816, Revised Statutes Cumulative Supplement, 2022, is amended to read:

29-1816 (1)(a) The accused may be arraigned in county court or district court:

(i) If the accused was eighteen years of age or older when the alleged offense was committed;

(ii) If the accused was younger than eighteen years of age and was fourteen years of age or older when an alleged offense punishable as a Class I, IA, IB, IC, ID, II, or IIA felony was committed; or

(iii) If the alleged offense is a traffic offense as defined in section 43-245. ~~;~~ ~~or~~

~~(iv) Until January 1, 2017, if the accused was seventeen years of age when an alleged offense described in subdivision (1) of section 43-247 was committed.~~

(b) Arraignment in county court or district court shall be by reading to the accused the complaint or information, unless the reading is waived by the accused when the nature of the charge is made known to him or her. The accused shall then be asked whether he or she is guilty or not guilty of the offense charged. If the accused appears in person and by counsel and goes to trial before a jury regularly impaneled and sworn, he or she shall be deemed to have waived arraignment and a plea of not guilty shall be deemed to have been made.

(2) At the time of the arraignment, the county court or district court shall advise the accused, if the accused was younger than eighteen years of age at the time the alleged offense was committed, that the accused may move the county court or district court at any time not later than thirty days after arraignment, unless otherwise permitted by the court for good cause shown, to waive jurisdiction in such case to the juvenile court for further proceedings under the Nebraska Juvenile Code. This subsection does not apply if the case was transferred to county court or district court from juvenile court.

(3) For motions to transfer a case from the county court or district court to juvenile court:

(a) The county court or district court shall schedule a hearing on such motion within fifteen days. The customary rules of evidence shall not be followed at such hearing. The accused shall be represented by an attorney. The criteria set forth in section 43-276 shall be considered at such hearing. After considering all the evidence and reasons presented by both parties, the case shall be transferred to juvenile court unless a sound basis exists for retaining the case in county court or district court; and

(b) The county court or district court shall make a decision on such motion within thirty days after the hearing and shall set forth findings for the reason for its decision. If the county court or district court determines that the accused should be transferred to the juvenile court, the complete file in the county court or district court shall be transferred to the juvenile court and the complaint, indictment, or information may be used in place of a petition therein. The county court or district court making a transfer shall order the accused to be taken forthwith to the juvenile court and designate where the juvenile shall be kept pending determination by the juvenile court. The juvenile court shall then proceed as provided in the Nebraska Juvenile Code.

(4) ~~(e)~~ An order granting or denying transfer of the case from county or district court to juvenile court shall be considered a final order for the purposes of appeal. Upon entry of an order, any party may appeal to the Court of Appeals within ten days. Such review shall be advanced on the court docket without an extension of time granted to any party except upon a showing of exceptional cause. Appeals shall be submitted, assigned, and scheduled for oral argument as soon as the appellee's brief is due to be filed. The Court of Appeals shall conduct its review in an expedited manner and shall render the judgment and opinion, if any, as speedily as possible. During the pendency of an appeal from an order transferring the case to juvenile court, the juvenile court may enter temporary orders in the best interests of the juvenile.

(5)(a) Except as provided in subdivision (5)(b) of this section, any admission, confession, or statement made by the accused to a psychiatrist, psychologist, therapist, or licensed mental health practitioner for purposes of a motion to transfer a case from county court or district court to juvenile court shall be inadmissible in any criminal or civil proceeding.

(b) Subdivision (5)(a) of this section does not prevent any such admission, confession, or statement from being:

- (i) Admissible in proceedings relating to such motion to transfer;
- (ii) Admissible in disposition proceedings of such accused under the Nebraska Juvenile Code if the case is transferred to juvenile court;
- (iii) Included in any presentence investigation report for such accused if the case is not transferred to juvenile court; and
- (iv) Admissible in such case to impeach such accused during cross-examination if the accused testifies at trial or during juvenile court proceedings and such testimony is materially inconsistent with a prior statement made by the accused to a psychiatrist, psychologist, therapist, or licensed mental health practitioner for purposes of the motion to transfer such case.

~~(6)~~ (4) When the accused was younger than eighteen years of age when an alleged offense was committed, the county attorney or city attorney shall proceed under section 43-274.

Sec. 2. Section 43-274, Revised Statutes Cumulative Supplement, 2022, is amended to read:

43-274 (1) The county attorney or city attorney, having knowledge of a juvenile within his or her jurisdiction who appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and taking into consideration the criteria in section 43-276, may proceed as provided in this section.

(2) The county attorney or city attorney may offer pretrial diversion to the juvenile in accordance with a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07.

(3)(a) If a juvenile appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, the county attorney or city attorney may utilize restorative justice practices or services as a form of, or condition of, diversion or plea bargaining or as a recommendation as a condition of disposition, through a referral to a restorative justice facilitator.

(b) For victim-involved offenses, a restorative justice facilitator shall conduct a separate individual intake and assessment session with each juvenile and victim to determine which, if any, restorative justice practice is appropriate. All participation by the victim shall be voluntary. If the victim declines to participate in any or all parts of the restorative justice practice, a victim surrogate may be invited to participate with the juvenile. If, after assessment, participation by the juvenile is deemed inappropriate, the restorative justice facilitator shall return the referral to the referring county attorney or city attorney.

(c) A victim or his or her parent or guardian shall not be charged a fee. A juvenile or his or her parent or guardian may be charged a fee according to the policies and procedures of the restorative justice facilitator and the referring county attorney or city attorney. Restorative justice facilitators shall use a sliding fee scale based on income and shall not deny services based upon the inability of a juvenile or his or her parent or guardian to pay, if funding is otherwise available.

(d) Prior to participating in any restorative justice practice or service under this section, the juvenile, the juvenile's parent or guardian, and the victim, if he or she is participating, shall sign a consent to participate form.

(e) If a reparation plan agreement is reached, the restorative justice facilitator shall forward a copy of the agreement to the referring county attorney or city attorney. The terms of the reparation plan agreement shall specify provisions for reparation, monitoring, completion, and reporting. An agreement may include, but is not limited to, one or more of the following:

- (i) Participation by the juvenile in certain community service programs;
- (ii) Payment of restitution by the juvenile to the victim;
- (iii) Reconciliation between the juvenile and the victim;
- (iv) Apology, when appropriate, between the juvenile and the victim; and
- (v) Any other areas of agreement.

(f) The restorative justice facilitator shall give notice to the county attorney or city attorney regarding the juvenile's compliance with the terms of the reparation plan agreement. If the juvenile does not satisfactorily complete the terms of the agreement, the county attorney or city attorney may:

(i) Refer the matter back to the restorative justice facilitator for further restorative justice practices or services; or

(ii) Proceed with filing a juvenile court petition or criminal charge.

(g) If a juvenile meets the terms of the reparation plan agreement, the county attorney or city attorney shall either:

(i) Not file a juvenile court petition or criminal charge against the juvenile for the acts for which the juvenile was referred for restorative justice practice or services when referred as a diversion or an alternative to diversion; or

(ii) File a reduced charge as previously agreed when referred as a part of a plea negotiation.

(4) The county attorney or city attorney shall file the petition in the court with jurisdiction as outlined in section 43-246.01.

~~(5)(a)~~ (5) When a transfer from juvenile court to county court or district court is authorized because there is concurrent jurisdiction, the county attorney or city attorney may move to transfer the proceedings. Such motion shall be filed with the juvenile court petition unless otherwise permitted for

good cause shown. The juvenile court shall schedule a hearing on such motion within fifteen days after the motion is filed. The county attorney or city attorney has the burden by a preponderance of the evidence to show why such proceeding should be transferred. The juvenile shall be represented by counsel at the hearing and may present the evidence as to why the proceeding should be retained. After considering all the evidence and reasons presented by both parties, the juvenile court shall retain the proceeding unless the court determines that a preponderance of the evidence shows that the proceeding should be transferred to the county court or district court. The court shall make a decision on the motion within thirty days after the hearing. The juvenile court shall set forth findings for the reason for its decision.

(b) An order granting or denying transfer of the case from juvenile court to county or district court shall be considered a final order for the purposes of appeal. Upon the entry of an order, any party may appeal to the Court of Appeals within ten days. Such review shall be advanced on the court docket without an extension of time granted to any party except upon a showing of exceptional cause. Appeals shall be submitted, assigned, and scheduled for oral argument as soon as the appellee's brief is due to be filed. The Court of Appeals shall conduct its review in an expedited manner and shall render the judgment and opinion, if any, as speedily as possible. During the pendency of any such appeal, the juvenile court may continue to enter temporary orders in the best interests of the juvenile pursuant to section 43-295.

(c) If the proceeding is transferred from juvenile court to the county court or district court, the county attorney or city attorney shall file a criminal information in the county court or district court, as appropriate, and the accused shall be arraigned as provided for a person eighteen years of age or older in subdivision (1)(b) of section 29-1816.

(d)(i) Except as provided in subdivision (5)(d)(ii) of this section, any admission, confession, or statement made by the juvenile to a psychiatrist, psychologist, therapist, or licensed mental health practitioner for purposes of a motion to transfer a case from juvenile court to county court or district court shall be inadmissible in any criminal or civil proceeding.

(ii) Subdivision (5)(d)(i) of this section does not prevent any such admission, confession, or statement from being:

(A) Admissible in proceedings relating to such motion to transfer;

(B) Admissible in disposition proceedings for such juvenile under the Nebraska Juvenile Code if the case is not transferred to county court or district court;

(C) Included in any presentence investigation report for such juvenile if the case is transferred to county court or district court; and

(D) Admissible in such case to impeach such juvenile during cross-examination if the juvenile testifies at trial or during juvenile court proceedings and such testimony is materially inconsistent with a prior statement made by the juvenile to a psychiatrist, psychologist, therapist, or licensed mental health practitioner for purposes of the motion to transfer such case.

Sec. 3. Original sections 29-1816 and 43-274, Revised Statutes Cumulative Supplement, 2022, are repealed.