

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 709

Introduced by Howard, 9; Pansing Brooks, 28.

Read first time January 06, 2016

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend
2 sections 43-253, 43-255, 43-256, 43-260, 43-260.01, and 43-3504,
3 Revised Statutes Cumulative Supplement, 2014, and sections 43-245
4 and 43-250, Revised Statutes Supplement, 2015; to provide for an
5 alternative to detention; to define and eliminate a term; to
6 harmonize provisions; and to repeal the original sections.

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

1 Section 1. Section 43-245, Revised Statutes Supplement, 2015, is
2 amended to read:

3 43-245 For purposes of the Nebraska Juvenile Code, unless the
4 context otherwise requires:

5 (1) Abandonment means a parent's intentionally withholding from a
6 child, without just cause or excuse, the parent's presence, care, love,
7 protection, and maintenance and the opportunity for the display of
8 parental affection for the child;

9 (2) Age of majority means nineteen years of age;

10 (3) Alternative to detention means a program or directive that
11 increases supervision of a youth in the community in an effort to ensure
12 the youth attends court and refrains from committing a new law violation.
13 Alternative to detention includes, but is not limited to, electronic
14 monitoring, day and evening reporting centers, house arrest, tracking,
15 family crisis response, and temporary shelter placement. Placements that
16 utilize physical construction or hardware to restrain a youth's freedom
17 of movement and ingress and egress from placement are not considered
18 alternatives to detention;

19 (4 3) Approved center means a center that has applied for and
20 received approval from the Director of the Office of Dispute Resolution
21 under section 25-2909;

22 (5 4) Civil citation means a noncriminal notice which cannot result
23 in a criminal record and is described in section 43-248.02;

24 (6 5) Cost or costs means (a) the sum or equivalent expended, paid,
25 or charged for goods or services, or expenses incurred, or (b) the
26 contracted or negotiated price;

27 (7 6) Criminal street gang means a group of three or more people
28 with a common identifying name, sign, or symbol whose group identity or
29 purposes include engaging in illegal activities;

30 (8 7) Criminal street gang member means a person who willingly or
31 voluntarily becomes and remains a member of a criminal street gang;

1 (9 8) Custodian means a nonparental caretaker having physical
2 custody of the juvenile and includes an appointee described in section
3 43-294;

4 (10 9) Guardian means a person, other than a parent, who has
5 qualified by law as the guardian of a juvenile pursuant to testamentary
6 or court appointment, but excludes a person who is merely a guardian ad
7 litem;

8 (11 10) Juvenile means any person under the age of eighteen;

9 (12 11) Juvenile court means the separate juvenile court where it
10 has been established pursuant to sections 43-2,111 to 43-2,127 and the
11 county court sitting as a juvenile court in all other counties. Nothing
12 in the Nebraska Juvenile Code shall be construed to deprive the district
13 courts of their habeas corpus, common-law, or chancery jurisdiction or
14 the county courts and district courts of jurisdiction of domestic
15 relations matters as defined in section 25-2740;

16 (13 12) Juvenile detention facility has the same meaning as in
17 section 83-4,125;

18 (14 13) Legal custody has the same meaning as in section 43-2922;

19 (15 14) Mediator for juvenile offender and victim mediation means a
20 person who (a) has completed at least thirty hours of training in
21 conflict resolution techniques, neutrality, agreement writing, and ethics
22 set forth in section 25-2913, (b) has an additional eight hours of
23 juvenile offender and victim mediation training, and (c) meets the
24 apprenticeship requirements set forth in section 25-2913;

25 (16 15) Mental health facility means a treatment facility as defined
26 in section 71-914 or a government, private, or state hospital which
27 treats mental illness;

28 (17 16) Nonoffender means a juvenile who is subject to the
29 jurisdiction of the juvenile court for reasons other than legally
30 prohibited conduct, including, but not limited to, juveniles described in
31 subdivision (3)(a) of section 43-247;

1 ~~(17) Nonsecure detention means detention characterized by the~~
2 ~~absence of restrictive hardware, construction, and procedure. Nonsecure~~
3 ~~detention services may include a range of placement and supervision~~
4 ~~options, such as home detention, electronic monitoring, day reporting,~~
5 ~~drug court, tracking and monitoring supervision, staff secure and~~
6 ~~temporary holdover facilities, and group homes;~~

7 (18) Parent means one or both parents or stepparents when the
8 stepparent is married to a parent who has physical custody of the
9 juvenile as of the filing of the petition;

10 (19) Parties means the juvenile as described in section 43-247 and
11 his or her parent, guardian, or custodian;

12 (20) Physical custody has the same meaning as in section 43-2922;

13 (21) Except in proceedings under the Nebraska Indian Child Welfare
14 Act, relative means father, mother, grandfather, grandmother, brother,
15 sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt,
16 first cousin, nephew, or niece;

17 (22) Seal a record means that a record shall not be available to the
18 public except upon the order of a court upon good cause shown;

19 (23) Secure detention means detention in a highly structured,
20 residential, hardware-secured facility designed to restrict a juvenile's
21 movement;

22 (24) Staff secure juvenile facility means a juvenile residential
23 facility operated by a political subdivision (a) which does not include
24 construction designed to physically restrict the movements and activities
25 of juveniles who are in custody in the facility, (b) in which physical
26 restriction of movement or activity of juveniles is provided solely
27 through staff, (c) which may establish reasonable rules restricting
28 ingress to and egress from the facility, and (d) in which the movements
29 and activities of individual juvenile residents may, for treatment
30 purposes, be restricted or subject to control through the use of
31 intensive staff supervision. Staff secure juvenile facility does not

1 include any institution operated by the Department of Correctional
2 Services has the same meaning as in section 83-4,125;

3 (25) Status offender means a juvenile who has been charged with or
4 adjudicated for conduct which would not be a crime if committed by an
5 adult, including, but not limited to, juveniles charged under subdivision
6 (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02;

7 (26) Traffic offense means any nonfelonious act in violation of a
8 law or ordinance regulating vehicular or pedestrian travel, whether
9 designated a misdemeanor or a traffic infraction; and

10 (27) Young adult means an individual older than eighteen years of
11 age but under twenty-one years of age.

12 Sec. 2. Section 43-250, Revised Statutes Supplement, 2015, is
13 amended to read:

14 43-250 (1) A peace officer who takes a juvenile into temporary
15 custody under section 29-401 or subdivision (1), (4), or (5) of section
16 43-248 shall immediately take reasonable measures to notify the
17 juvenile's parent, guardian, custodian, or relative and shall proceed as
18 follows:

19 (a) The peace officer may release a juvenile taken into temporary
20 custody under section 29-401 or subdivision (1) or (4) of section 43-248;

21 (b) The peace officer may require a juvenile taken into temporary
22 custody under section 29-401 or subdivision (1) or (4) of section 43-248
23 to appear before the court of the county in which such juvenile was taken
24 into custody at a time and place specified in the written notice prepared
25 in triplicate by the peace officer or at the call of the court. The
26 notice shall also contain a concise statement of the reasons such
27 juvenile was taken into custody. The peace officer shall deliver one copy
28 of the notice to such juvenile and require such juvenile or his or her
29 parent, guardian, other custodian, or relative, or both, to sign a
30 written promise that such signer will appear at the time and place
31 designated in the notice. Upon the execution of the promise to appear,

1 the peace officer shall immediately release such juvenile. The peace
2 officer shall, as soon as practicable, file one copy of the notice with
3 the county attorney or city attorney and, when required by the court,
4 also file a copy of the notice with the court or the officer appointed by
5 the court for such purpose; or

6 (c) The peace officer may retain temporary custody of a juvenile
7 taken into temporary custody under section 29-401 or subdivision (1),
8 (4), or (5) of section 43-248 and deliver the juvenile, if necessary, to
9 the probation officer and communicate all relevant available information
10 regarding such juvenile to the probation officer. The probation officer
11 shall determine the need for detention of the juvenile as provided in
12 section 43-260.01. Upon determining that the juvenile should be placed in
13 detention or an alternative to detention ~~a secure or nonsecure placement~~
14 and securing placement in such ~~secure or nonsecure~~ setting by the
15 probation officer, the peace officer shall implement the probation
16 officer's decision to release or to detain and place the juvenile. When
17 secure detention of a juvenile is necessary, such detention shall occur
18 within a juvenile detention facility except:

19 (i) When a juvenile described in subdivision (1) or (2) of section
20 43-247, except for a status offender, is taken into temporary custody
21 within a metropolitan statistical area and where no juvenile detention
22 facility is reasonably available, the juvenile may be delivered, for
23 temporary custody not to exceed six hours, to a secure area of a jail or
24 other facility intended or used for the detention of adults solely for
25 the purposes of identifying the juvenile and ascertaining his or her
26 health and well-being and for safekeeping while awaiting transport to an
27 appropriate juvenile placement or release to a responsible party;

28 (ii) When a juvenile described in subdivision (1) or (2) of section
29 43-247, except for a status offender, is taken into temporary custody
30 outside of a metropolitan statistical area and where no juvenile
31 detention facility is reasonably available, the juvenile may be

1 delivered, for temporary custody not to exceed twenty-four hours
2 excluding nonjudicial days and while awaiting an initial court
3 appearance, to a secure area of a jail or other facility intended or used
4 for the detention of adults solely for the purposes of identifying the
5 juvenile and ascertaining his or her health and well-being and for
6 safekeeping while awaiting transport to an appropriate juvenile placement
7 or release to a responsible party;

8 (iii) Whenever a juvenile is held in a secure area of any jail or
9 other facility intended or used for the detention of adults, there shall
10 be no verbal, visual, or physical contact between the juvenile and any
11 incarcerated adult and there shall be adequate staff to supervise and
12 monitor the juvenile's activities at all times. This subdivision shall
13 not apply to a juvenile charged with a felony as an adult in county or
14 district court if he or she is sixteen years of age or older;

15 (iv) If a juvenile is under sixteen years of age or is a juvenile as
16 described in subdivision (3) of section 43-247, he or she shall not be
17 placed within a secure area of a jail or other facility intended or used
18 for the detention of adults;

19 (v) If, within the time limits specified in subdivision (1)(c)(i) or
20 (1)(c)(ii) of this section, a felony charge is filed against the juvenile
21 as an adult in county or district court, he or she may be securely held
22 in a jail or other facility intended or used for the detention of adults
23 beyond the specified time limits;

24 (vi) A status offender or nonoffender taken into temporary custody
25 shall not be held in a secure area of a jail or other facility intended
26 or used for the detention of adults. Until January 1, 2013, a status
27 offender accused of violating a valid court order may be securely
28 detained in a juvenile detention facility longer than twenty-four hours
29 if he or she is afforded a detention hearing before a court within
30 twenty-four hours, excluding nonjudicial days, and if, prior to a
31 dispositional commitment to secure placement, a public agency, other than

1 a court or law enforcement agency, is afforded an opportunity to review
2 the juvenile's behavior and possible alternatives to secure placement and
3 has submitted a written report to the court; and

4 (vii) A juvenile described in subdivision (1) or (2) of section
5 43-247, except for a status offender, may be held in a secure area of a
6 jail or other facility intended or used for the detention of adults for
7 up to six hours before and six hours after any court appearance.

8 (2) When a juvenile is taken into temporary custody pursuant to
9 subdivision (2) or (7) of section 43-248, the peace officer shall deliver
10 the custody of such juvenile to the Department of Health and Human
11 Services which shall make a temporary placement of the juvenile in the
12 least restrictive environment consistent with the best interests of the
13 juvenile as determined by the department. The department shall supervise
14 such placement and, if necessary, consent to any necessary emergency
15 medical, psychological, or psychiatric treatment for such juvenile. The
16 department shall have no other authority with regard to such temporary
17 custody until or unless there is an order by the court placing the
18 juvenile in the custody of the department. If the peace officer delivers
19 temporary custody of the juvenile pursuant to this subsection, the peace
20 officer shall make a full written report to the county attorney within
21 twenty-four hours of taking such juvenile into temporary custody. If a
22 court order of temporary custody is not issued within forty-eight hours
23 of taking the juvenile into custody, the temporary custody by the
24 department shall terminate and the juvenile shall be returned to the
25 custody of his or her parent, guardian, custodian, or relative.

26 (3) If the peace officer takes the juvenile into temporary custody
27 pursuant to subdivision (3) of section 43-248, the peace officer may
28 place the juvenile at a mental health facility for evaluation and
29 emergency treatment or may deliver the juvenile to the Department of
30 Health and Human Services as provided in subsection (2) of this section.
31 At the time of the admission or turning the juvenile over to the

1 department, the peace officer responsible for taking the juvenile into
2 custody pursuant to subdivision (3) of section 43-248 shall execute a
3 written certificate as prescribed by the Department of Health and Human
4 Services which will indicate that the peace officer believes the juvenile
5 to be mentally ill and dangerous, a summary of the subject's behavior
6 supporting such allegations, and that the harm described in section
7 71-908 is likely to occur before proceedings before a juvenile court may
8 be invoked to obtain custody of the juvenile. A copy of the certificate
9 shall be forwarded to the county attorney. The peace officer shall notify
10 the juvenile's parents, guardian, custodian, or relative of the
11 juvenile's placement.

12 (4) When a juvenile is taken into temporary custody pursuant to
13 subdivision (6) of section 43-248, the peace officer shall deliver the
14 juvenile to the enrolled school of such juvenile.

15 (5) A juvenile taken into custody pursuant to a legal warrant of
16 arrest shall be delivered to a probation officer who shall determine the
17 need for detention of the juvenile as provided in section 43-260.01. If
18 detention is not required, the juvenile may be released without bond if
19 such release is in the best interests of the juvenile, the safety of the
20 community is not at risk, and the court that issued the warrant is
21 notified that the juvenile had been taken into custody and was released.

22 (6) In determining the appropriate temporary placement or
23 alternative to detention of a juvenile under this section, the peace
24 officer shall select the placement or alternative which is least
25 restrictive of the juvenile's freedom so long as such placement or
26 alternative is compatible with the best interests of the juvenile and the
27 safety of the community. Any alternative to detention shall least
28 restrict the juvenile's freedom of movement consistent with the best
29 interest of the juvenile and the safety of the community.

30 Sec. 3. Section 43-253, Revised Statutes Cumulative Supplement,
31 2014, is amended to read:

1 43-253 (1) Upon delivery to the probation officer of a juvenile who
2 has been taken into temporary custody under section 29-401, 43-248, or
3 43-250, the probation officer shall immediately investigate the situation
4 of the juvenile and the nature and circumstances of the events
5 surrounding his or her being taken into custody. Such investigation may
6 be by informal means when appropriate.

7 (2) The probation officer's decision to release the juvenile from
8 custody or place the juvenile in ~~secure or nonsecure~~ detention or an
9 alternative to detention shall be based upon the results of the
10 standardized juvenile detention screening instrument described in section
11 43-260.01.

12 (3) No juvenile who has been taken into temporary custody under
13 subdivision (1)(c) of section 43-250 shall be detained in any secure
14 detention facility or be subject to an alternative to detention
15 infringing upon the juvenile's liberty interest for longer than twenty-
16 four hours, excluding nonjudicial days, after having been taken into
17 custody unless such juvenile has appeared personally before a court of
18 competent jurisdiction for a hearing to determine if continued detention,
19 services, or supervision is necessary. If continued secure detention is
20 ordered, such detention shall be in a juvenile detention facility, except
21 that a juvenile charged with a felony as an adult in county or district
22 court may be held in an adult jail as set forth in subdivision (1)(c)(v)
23 of section 43-250. A juvenile placed in an alternative to detention, but
24 not in detention, may waive this hearing through counsel.

25 (4) When the probation officer deems it to be in the best interests
26 of the juvenile, the probation officer shall immediately release such
27 juvenile to the custody of his or her parent. If the juvenile has both a
28 custodial and a noncustodial parent and the probation officer deems that
29 release of the juvenile to the custodial parent is not in the best
30 interests of the juvenile, the probation officer shall, if it is deemed
31 to be in the best interests of the juvenile, attempt to contact the

1 noncustodial parent, if any, of the juvenile and to release the juvenile
2 to such noncustodial parent. If such release is not possible or not
3 deemed to be in the best interests of the juvenile, the probation officer
4 may release the juvenile to the custody of a legal guardian, a
5 responsible relative, or another responsible person.

6 (5) The court may admit such juvenile to bail by bond in such amount
7 and on such conditions and security as the court, in its sole discretion,
8 shall determine, or the court may proceed as provided in section 43-254.
9 In no case shall the court or probation officer release such juvenile if
10 it appears that further detention or placement of such juvenile is a
11 matter of immediate and urgent necessity for the protection of such
12 juvenile or the person or property of another or if it appears that such
13 juvenile is likely to flee the jurisdiction of the court.

14 Sec. 4. Section 43-255, Revised Statutes Cumulative Supplement,
15 2014, is amended to read:

16 43-255 Whenever a juvenile is detained or placed in an alternative
17 to detention infringing upon the child's liberty interest under section
18 43-250 or 43-253, the juvenile shall be released unconditionally within
19 forty-eight hours after the detention or placement order or the setting
20 of bond, excluding nonjudicial days, unless within such period of time
21 (1) a motion has been filed alleging that such juvenile has violated an
22 order of the juvenile court, (2) a juvenile court petition has been filed
23 pursuant to section 43-274, or (3) a criminal complaint has been filed in
24 a court of competent jurisdiction.

25 Sec. 5. Section 43-256, Revised Statutes Cumulative Supplement,
26 2014, is amended to read:

27 43-256 When the court enters an order continuing placement, ~~or~~
28 detention, or an alternative to detention infringing upon the juvenile's
29 liberty interest pursuant to section 43-253, upon request of the
30 juvenile, or his or her parent, guardian, or attorney, the court shall
31 hold a hearing within forty-eight hours, at which hearing the burden of

1 proof shall be upon the state to show probable cause that such juvenile
2 is within the jurisdiction of the court. Strict rules of evidence shall
3 not apply at the probable cause hearing. The juvenile shall be released
4 if probable cause is not shown. At the option of the court, it may hold
5 the adjudication hearing provided in section 43-279 as soon as possible
6 instead of the probable cause hearing if held within a reasonable period
7 of time. This section and section 43-255 shall not apply to a juvenile
8 (1) who has escaped from a commitment or (2) who has been taken into
9 custody for his or her own protection as provided in subdivision (2) of
10 section 43-248 in which case the juvenile shall be held on order of the
11 court with jurisdiction for a reasonable period of time.

12 Sec. 6. Section 43-260.01, Revised Statutes Cumulative Supplement,
13 2014, is amended to read:

14 43-260.01 The need for preadjudication placement, services, or
15 supervision and the need for detention of a juvenile and whether
16 detention secure or an alternative to detention nonsecure ~~detention is~~
17 indicated shall be subject to subdivision (5) of section 43-251.01 and
18 may be determined as follows:

19 (1) The standardized juvenile detention screening instrument shall
20 be used to evaluate the juvenile;

21 (2) If the results indicate that ~~secure~~ detention is not required,
22 the juvenile shall be released without restriction or released to an
23 alternative to detention nonsecure ~~detention placement or supervision~~
24 ~~options shall be pursued~~; and

25 (3) If the results indicate that ~~secure~~ detention is required,
26 ~~detention at the secure level as indicated by the instrument~~ shall be
27 pursued.

28 Sec. 7. Section 43-260, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 43-260 The Office of Probation Administration shall prepare and
31 distribute to probation officers a standardized juvenile detention

1 screening instrument. The types of risk factors to be included as well as
2 the format of this standardized juvenile detention screening instrument
3 shall be determined by the office. The standardized juvenile detention
4 screening instrument shall be used as an assessment tool statewide by
5 probation officers under section 43-260.01 in order to determine if
6 detention of the juvenile is necessary and, if so, whether ~~secure or~~
7 ~~nonsecure~~ detention or an alternative to detention is indicated.
8 Probation officers trained to administer the juvenile detention screening
9 instrument shall act as juvenile intake probation officers. Only duly
10 trained probation officers shall be authorized to administer the juvenile
11 detention screening instrument.

12 Sec. 8. Section 43-3504, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 43-3504 (1) Each county shall develop a county juvenile services
15 plan by January 1, 2003. Two or more counties may establish a multicounty
16 juvenile services plan. Such plan should include input from individuals
17 comprising a local juvenile justice advisory committee as provided for in
18 subdivision (1) of section 43-3505 or a similar committee or group of
19 individuals. The plan shall be submitted to the Nebraska Commission on
20 Law Enforcement and Criminal Justice and shall include:

21 (a) Identification of the risk factors for delinquency that exist in
22 the county or counties and service needs;

23 (b) Identification of juvenile services available within the county
24 or counties, including, but not limited to, programs for assessment and
25 evaluation, the prevention of delinquent behavior, diversion, detention,
26 shelter care, intensive juvenile probation services, restitution, family
27 support services, and community centers for the care and treatment of
28 juveniles in need of services;

29 (c) Identification of juvenile services within close proximity of
30 the county or counties that may be utilized if community-based programs
31 are not available within the county or counties;

1 (d) Identification of the facilities the county primarily uses for
2 juvenile ~~secure detention and for nonsecure detention~~ or alternatives to
3 detention, including the costs associated with use of such facilities;
4 and

5 (e) A coordination plan and an enhancement, development, and
6 expansion plan of community services within the county, counties, or
7 region to help prevent delinquency by providing intervention services
8 when behavior that leads to delinquency is first exhibited. Examples of
9 intervention services include, but are not limited to, alternative
10 schools, school truancy programs, volunteer programs, family preservation
11 and counseling, drug and alcohol counseling, diversion programs, and
12 Parents Anonymous.

13 (2) Following or in conjunction with the development of a county
14 juvenile services plan, each county may develop regional service plans
15 and establish regional juvenile services boards when appropriate. The
16 regional service plan shall be submitted to the Nebraska Commission on
17 Law Enforcement and Criminal Justice.

18 (3) Plans developed under this section shall be updated no less than
19 every five years after the date the plan is submitted to the commission.

20 Sec. 9. Original sections 43-253, 43-255, 43-256, 43-260,
21 43-260.01, and 43-3504, Revised Statutes Cumulative Supplement, 2014, and
22 sections 43-245 and 43-250, Revised Statutes Supplement, 2015, are
23 repealed.