

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 893**

Introduced by Pansing Brooks, 28; Chambers, 11; Ebke, 32; Krist, 10;  
McCollister, 20; Morfeld, 46; Williams, 36.

Read first time January 11, 2016

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend
- 2 section 43-248, Revised Statutes Cumulative Supplement, 2014, and
- 3 sections 43-247, 43-250, and 43-251.01, Revised Statutes Supplement,
- 4 2015; to redefine nonoffender; to change provisions relating to
- 5 court jurisdiction, temporary custody and disposition, and
- 6 placements and commitments; and to repeal the original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-247, Revised Statutes Supplement, 2015, is  
2 amended to read:

3 43-247 The juvenile court in each county shall have jurisdiction of:

4 (1) Any juvenile who has committed an act other than a traffic  
5 offense which would constitute a misdemeanor or an infraction under the  
6 laws of this state, or violation of a city or village ordinance and who  
7 was eleven years of age or older at the time the act was committed;

8 (2) Any juvenile who has committed an act which would constitute a  
9 felony under the laws of this state and who was eleven years of age or  
10 older at the time the act was committed;

11 (3) Any juvenile (a) who is homeless or destitute, or without proper  
12 support through no fault of his or her parent, guardian, or custodian;  
13 who is abandoned by his or her parent, guardian, or custodian; who lacks  
14 proper parental care by reason of the fault or habits of his or her  
15 parent, guardian, or custodian; whose parent, guardian, or custodian  
16 neglects or refuses to provide proper or necessary subsistence,  
17 education, or other care necessary for the health, morals, or well-being  
18 of such juvenile; whose parent, guardian, or custodian is unable to  
19 provide or neglects or refuses to provide special care made necessary by  
20 the mental condition of the juvenile; ~~or~~ who is in a situation or engages  
21 in an occupation, including prostitution, dangerous to life or limb or  
22 injurious to the health or morals of such juvenile; or who has committed  
23 an act or engaged in behavior which would, except for such juvenile's  
24 age, fall within subdivision (1), (2), (3)(b), or (4) of this section and  
25 who was under eleven years of age at the time of such act or behavior,  
26 (b) who is eleven years of age or older and who, by reason of being  
27 wayward or habitually disobedient, is uncontrolled by his or her parent,  
28 guardian, or custodian; who departs himself or herself so as to injure or  
29 endanger seriously the morals or health of himself, herself, or others;  
30 or who is habitually truant from home or school, or (c) who is mentally  
31 ill and dangerous as defined in section 71-908;

1 (4) Any juvenile who has committed an act which would constitute a  
2 traffic offense as defined in section 43-245 and who was eleven years of  
3 age or older at the time the act was committed;

4 (5) The parent, guardian, or custodian of any juvenile described in  
5 this section;

6 (6) The proceedings for termination of parental rights;

7 (7) Any juvenile who has been voluntarily relinquished, pursuant to  
8 section 43-106.01, to the Department of Health and Human Services or any  
9 child placement agency licensed by the Department of Health and Human  
10 Services;

11 (8) Any juvenile who was a ward of the juvenile court at the  
12 inception of his or her guardianship and whose guardianship has been  
13 disrupted or terminated;

14 (9) The adoption or guardianship proceedings for a child over which  
15 the juvenile court already has jurisdiction under another provision of  
16 the Nebraska Juvenile Code;

17 (10) The paternity or custody determination for a child over which  
18 the juvenile court already has jurisdiction;

19 (11) The proceedings under the Young Adult Bridge to Independence  
20 Act; and

21 (12) Except as provided in subdivision (11) of this section, any  
22 individual adjudged to be within the provisions of this section until the  
23 individual reaches the age of majority or the court otherwise discharges  
24 the individual from its jurisdiction.

25 Notwithstanding the provisions of the Nebraska Juvenile Code, the  
26 determination of jurisdiction over any Indian child as defined in section  
27 43-1503 shall be subject to the Nebraska Indian Child Welfare Act; and  
28 the district court shall have exclusive jurisdiction in proceedings  
29 brought pursuant to section 71-510.

30 Sec. 2. Section 43-248, Revised Statutes Cumulative Supplement,  
31 2014, is amended to read:

1           43-248 A peace officer may take a juvenile into temporary custody  
2 without a warrant or order of the court and proceed as provided in  
3 section 43-250 when:

4           (1) A juvenile has violated a state law or municipal ordinance and  
5 such juvenile was eleven years of age or older at the time of the  
6 violation and the officer has reasonable grounds to believe such juvenile  
7 committed such violation and was eleven years of age or older at the time  
8 of the violation;

9           (2) A juvenile is seriously endangered in his or her surroundings  
10 and immediate removal appears to be necessary for the juvenile's  
11 protection;

12           (3) The officer believes the juvenile to be mentally ill and  
13 dangerous as defined in section 71-908 and that the harm described in  
14 that section is likely to occur before proceedings may be instituted  
15 before the juvenile court;

16           (4) The officer has reasonable grounds to believe that the juvenile  
17 has run away from his or her parent, guardian, or custodian;

18           (5) A probation officer has reasonable cause to believe that a  
19 juvenile is in violation of probation and that the juvenile will attempt  
20 to leave the jurisdiction or place lives or property in danger;

21           (6) The officer has reasonable grounds to believe the juvenile is  
22 truant from school;~~or~~

23           (7) The officer has reasonable grounds to believe the juvenile is  
24 immune from prosecution for prostitution under subsection (5) of section  
25 28-801; or -

26           (8) The juvenile has committed an act or engaged in behavior which  
27 would, except for the juvenile's age, fall within subdivision (1), (2),  
28 (3)(b), or (4) of section 43-247 and such juvenile was under eleven years  
29 of age at the time of such act or behavior, and the officer has  
30 reasonable cause to believe such juvenile committed such act or engaged  
31 in such behavior and was under eleven years of age at such time.

1           Sec. 3. Section 43-250, Revised Statutes Supplement, 2015, is  
2 amended to read:

3           43-250 (1) A peace officer who takes a juvenile into temporary  
4 custody under section 29-401 or subdivision (1), (4), or (5) of section  
5 43-248 shall immediately take reasonable measures to notify the  
6 juvenile's parent, guardian, custodian, or relative and shall proceed as  
7 follows:

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

10           (b) The peace officer may require a juvenile taken into temporary  
11 custody under section 29-401 or subdivision (1) or (4) of section 43-248  
12 to appear before the court of the county in which such juvenile was taken  
13 into custody at a time and place specified in the written notice prepared  
14 in triplicate by the peace officer or at the call of the court. The  
15 notice shall also contain a concise statement of the reasons such  
16 juvenile was taken into custody. The peace officer shall deliver one copy  
17 of the notice to such juvenile and require such juvenile or his or her  
18 parent, guardian, other custodian, or relative, or both, to sign a  
19 written promise that such signer will appear at the time and place  
20 designated in the notice. Upon the execution of the promise to appear,  
21 the peace officer shall immediately release such juvenile. The peace  
22 officer shall, as soon as practicable, file one copy of the notice with  
23 the county attorney or city attorney and, when required by the court,  
24 also file a copy of the notice with the court or the officer appointed by  
25 the court for such purpose; or

26           (c) The peace officer may retain temporary custody of a juvenile  
27 taken into temporary custody under section 29-401 or subdivision (1),  
28 (4), or (5) of section 43-248 and deliver the juvenile, if necessary, to  
29 the probation officer and communicate all relevant available information  
30 regarding such juvenile to the probation officer. The probation officer  
31 shall determine the need for detention of the juvenile as provided in

1 section 43-260.01. Upon determining that the juvenile should be placed in  
2 a secure or nonsecure placement and securing placement in such secure or  
3 nonsecure setting by the probation officer, the peace officer shall  
4 implement the probation officer's decision to release or to detain and  
5 place the juvenile. When secure detention of a juvenile is necessary,  
6 such detention shall occur within a juvenile detention facility except:

7 (i) When a juvenile described in subdivision (1) or (2) of section  
8 43-247, except for a status offender, is taken into temporary custody  
9 within a metropolitan statistical area and where no juvenile detention  
10 facility is reasonably available, the juvenile may be delivered, for  
11 temporary custody not to exceed six hours, to a secure area of a jail or  
12 other facility intended or used for the detention of adults solely for  
13 the purposes of identifying the juvenile and ascertaining his or her  
14 health and well-being and for safekeeping while awaiting transport to an  
15 appropriate juvenile placement or release to a responsible party;

16 (ii) When a juvenile described in subdivision (1) or (2) of section  
17 43-247, except for a status offender, is taken into temporary custody  
18 outside of a metropolitan statistical area and where no juvenile  
19 detention facility is reasonably available, the juvenile may be  
20 delivered, for temporary custody not to exceed twenty-four hours  
21 excluding nonjudicial days and while awaiting an initial court  
22 appearance, to a secure area of a jail or other facility intended or used  
23 for the detention of adults solely for the purposes of identifying the  
24 juvenile and ascertaining his or her health and well-being and for  
25 safekeeping while awaiting transport to an appropriate juvenile placement  
26 or release to a responsible party;

27 (iii) Whenever a juvenile is held in a secure area of any jail or  
28 other facility intended or used for the detention of adults, there shall  
29 be no verbal, visual, or physical contact between the juvenile and any  
30 incarcerated adult and there shall be adequate staff to supervise and  
31 monitor the juvenile's activities at all times. This subdivision shall

1 not apply to a juvenile charged with a felony as an adult in county or  
2 district court if he or she is sixteen years of age or older;

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

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

12 (vi) A status offender or nonoffender taken into temporary custody  
13 shall not be held in a secure area of a jail or other facility intended  
14 or used for the detention of adults. Until January 1, 2013, a status  
15 offender accused of violating a valid court order may be securely  
16 detained in a juvenile detention facility longer than twenty-four hours  
17 if he or she is afforded a detention hearing before a court within  
18 twenty-four hours, excluding nonjudicial days, and if, prior to a  
19 dispositional commitment to secure placement, a public agency, other than  
20 a court or law enforcement agency, is afforded an opportunity to review  
21 the juvenile's behavior and possible alternatives to secure placement and  
22 has submitted a written report to the court; and

23 (vii) A juvenile described in subdivision (1) or (2) of section  
24 43-247, except for a status offender, may be held in a secure area of a  
25 jail or other facility intended or used for the detention of adults for  
26 up to six hours before and six hours after any court appearance.

27 (2) When a juvenile is taken into temporary custody pursuant to  
28 subdivision (2), ~~or (7), or (8)~~ of section 43-248, the peace officer  
29 shall deliver the custody of such juvenile to the Department of Health  
30 and Human Services which shall make a temporary placement of the juvenile  
31 in the least restrictive environment consistent with the best interests

1 of the juvenile as determined by the department. The department shall  
2 supervise such placement and, if necessary, consent to any necessary  
3 emergency medical, psychological, or psychiatric treatment for such  
4 juvenile. The department shall have no other authority with regard to  
5 such temporary custody until or unless there is an order by the court  
6 placing the juvenile in the custody of the department. If the peace  
7 officer delivers temporary custody of the juvenile pursuant to this  
8 subsection, the peace officer shall make a full written report to the  
9 county attorney within twenty-four hours of taking such juvenile into  
10 temporary custody. If a court order of temporary custody is not issued  
11 within forty-eight hours of taking the juvenile into custody, the  
12 temporary custody by the department shall terminate and the juvenile  
13 shall be returned to the custody of his or her parent, guardian,  
14 custodian, or relative.

15 (3) If the peace officer takes the juvenile into temporary custody  
16 pursuant to subdivision (3) of section 43-248, the peace officer may  
17 place the juvenile at a mental health facility for evaluation and  
18 emergency treatment or may deliver the juvenile to the Department of  
19 Health and Human Services as provided in subsection (2) of this section.  
20 At the time of the admission or turning the juvenile over to the  
21 department, the peace officer responsible for taking the juvenile into  
22 custody pursuant to subdivision (3) of section 43-248 shall execute a  
23 written certificate as prescribed by the Department of Health and Human  
24 Services which will indicate that the peace officer believes the juvenile  
25 to be mentally ill and dangerous, a summary of the subject's behavior  
26 supporting such allegations, and that the harm described in section  
27 71-908 is likely to occur before proceedings before a juvenile court may  
28 be invoked to obtain custody of the juvenile. A copy of the certificate  
29 shall be forwarded to the county attorney. The peace officer shall notify  
30 the juvenile's parents, guardian, custodian, or relative of the  
31 juvenile's placement.

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

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

11 (6) In determining the appropriate temporary placement of a juvenile  
12 under this section, the peace officer shall select the placement which is  
13 least restrictive of the juvenile's freedom so long as such placement is  
14 compatible with the best interests of the juvenile and the safety of the  
15 community.

16 Sec. 4. Section 43-251.01, Revised Statutes Supplement, 2015, is  
17 amended to read:

18 43-251.01 All placements and commitments of juveniles for  
19 evaluations or as temporary or final dispositions are subject to the  
20 following:

21 (1) No juvenile shall be confined in an adult correctional facility  
22 as a disposition of the court;

23 (2) A juvenile who is found to be a juvenile as described in  
24 subdivision (3) of section 43-247 shall not be placed in an adult  
25 correctional facility, the secure youth confinement facility operated by  
26 the Department of Correctional Services, or a youth rehabilitation and  
27 treatment center or committed to the Office of Juvenile Services;

28 (3) A juvenile who is found to be a juvenile as described in  
29 subdivision (1), (2), or (4) of section 43-247 shall not be assigned or  
30 transferred to an adult correctional facility or the secure youth  
31 confinement facility operated by the Department of Correctional Services;

1 (4) A juvenile under the age of fourteen years shall not be placed  
2 with or committed to a youth rehabilitation and treatment center;

3 (5) A juvenile shall not be detained in secure detention or placed  
4 at a youth rehabilitation and treatment center unless detention or  
5 placement of such juvenile is a matter of immediate and urgent necessity  
6 for the protection of such juvenile or the person or property of another  
7 or if it appears that such juvenile is likely to flee the jurisdiction of  
8 the court;

9 (6) A juvenile alleged to be a juvenile as described in subdivision  
10 ~~(3) (3)(b)~~ of section 43-247 shall not be placed in a juvenile detention  
11 facility, including a wing labeled as staff secure at such facility,  
12 unless the designated staff secure portion of the facility fully complies  
13 with subdivision (3) of section 83-4,125 and the ingress and egress to  
14 the facility are restricted solely through staff supervision; and

15 (7) A juvenile alleged to be a juvenile as described in subdivision  
16 (3)(b) of section 43-247 shall not be placed out of his or her home as a  
17 dispositional order of the court unless:

18 (a) All available community-based resources have been exhausted to  
19 assist the juvenile and his or her family; and

20 (b) Maintaining the juvenile in the home presents a significant risk  
21 of harm to the juvenile or community.

22 Sec. 5. Original section 43-248, Revised Statutes Cumulative  
23 Supplement, 2014, and sections 43-247, 43-250, and 43-251.01, Revised  
24 Statutes Supplement, 2015, are repealed.