

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 894

Introduced by Pansing Brooks, 28; Chambers, 11; Coash, 27; 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 law; to amend sections 29-3915, 43-248.01,
2 and 43-279, Reissue Revised Statutes of Nebraska, and section
3 43-272, Revised Statutes Supplement, 2015; to change provisions
4 relating to the appointment of counsel; to change provisions
5 relating to the advisement of rights given to a juvenile in custody;
6 to require the appointment of counsel for juveniles; to prohibit the
7 waiver of counsel in certain circumstances; to require the Supreme
8 Court to provide guidelines for attorneys practicing in juvenile
9 court; to set forth requirements for a valid waiver of the right to
10 counsel by a juvenile; to harmonize provisions; and to repeal the
11 original sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-3915, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-3915 The following persons ~~who are financially unable to obtain~~
4 ~~counsel~~ shall be entitled to be represented by a judicial district public
5 defender:

6 (1) A minor brought before the juvenile court; and

7 (2) The following persons who are financially unable to obtain
8 counsel:

9 (a 1) A person charged with a felony, including appeals from
10 convictions for a felony;

11 (b 2) A person pursuing a postconviction proceeding under sections
12 29-3001 to 29-3004 after conviction of a felony, when the public defender
13 after investigation concludes that there may be merit to such a
14 proceeding or when the court in which such proceeding is pending directs
15 the public defender to represent the person; and

16 ~~(3) A minor brought before the juvenile court when neither the minor~~
17 ~~nor his or her parent or guardian is able to afford counsel; and~~

18 (c 4) A person against whom a petition has been filed with a mental
19 health board as provided in sections 71-945 to 71-947.

20 Sec. 2. Section 43-248.01, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 43-248.01 All law enforcement personnel or other governmental
23 officials having custody of any person under eighteen years of age ~~who~~
24 ~~has been arrested, restrained, detained, or deprived of his or her~~
25 ~~liberty for whatever reason~~ shall inform ~~permit~~ the person in custody,
26 using developmentally appropriate language and without unnecessary delay
27 ~~after arrival at a police station or detention facility, of such person's~~
28 right to call or consult an attorney who is retained by or appointed on
29 behalf of such person in custody or whom the person in custody may desire
30 to consult and, except when exigent circumstances exist, shall permit
31 such person to call or consult such attorney without delay. An attorney

1 shall be permitted to see and consult with the person in custody alone
2 and in private at the place of custody.

3 Sec. 3. Section 43-272, Revised Statutes Supplement, 2015, is
4 amended to read:

5 43-272 (1) When any juvenile court petition against a juvenile is
6 filed, counsel shall be appointed ~~shall be brought without counsel before~~
7 ~~a juvenile court, the court shall advise such juvenile and his or her~~
8 ~~parent or guardian of their right to retain counsel and shall inquire of~~
9 ~~such juvenile and his or her parent or guardian as to whether they desire~~
10 ~~to retain counsel. The court shall inform such juvenile and his or her~~
11 ~~parent or guardian of such juvenile's right to counsel at county expense~~
12 ~~if none of them is able to afford counsel. If the juvenile or his or her~~
13 ~~parent or guardian desires to have counsel appointed for such juvenile,~~
14 ~~or the parent or guardian of such juvenile cannot be located, and the~~
15 ~~court ascertains that none of such persons are able to afford an~~
16 ~~attorney, the court shall forthwith appoint an attorney to represent such~~
17 ~~juvenile for all proceedings before the juvenile court, except that if an~~
18 ~~attorney is appointed to represent such juvenile and the court later~~
19 ~~determines that a parent of such juvenile is able to afford an attorney,~~
20 ~~the court shall order such parent or juvenile to pay for services of the~~
21 ~~attorney to be collected in the same manner as provided by section~~
22 ~~43-290. If the parent willfully refuses to pay any such sum, the court~~
23 ~~may commit him or her for contempt, and execution may issue at the~~
24 ~~request of the appointed attorney or the county attorney or by the court~~
25 ~~without a request.~~

26 (2) The court, on its own motion or upon application of a party to
27 the proceedings, shall appoint a guardian ad litem for the juvenile: (a)
28 If the juvenile has no parent or guardian of his or her person or if the
29 parent or guardian of the juvenile cannot be located or cannot be brought
30 before the court; (b) if the parent or guardian of the juvenile is
31 excused from participation in all or any part of the proceedings; (c) if

1 the parent is a juvenile or an incompetent; (d) if the parent is
2 indifferent to the interests of the juvenile; or (e) in any proceeding
3 pursuant to the provisions of subdivision (3)(a) of section 43-247.

4 A guardian ad litem shall have the duty to protect the interests of
5 the juvenile for whom he or she has been appointed guardian, and shall be
6 deemed a parent of the juvenile as to those proceedings with respect to
7 which his or her guardianship extends.

8 (3) The court shall appoint an attorney as guardian ad litem. A
9 guardian ad litem shall act as his or her own counsel and as counsel for
10 the juvenile, unless there are special reasons in a particular case why
11 the guardian ad litem or the juvenile or both should have separate
12 counsel. In such cases the guardian ad litem shall have the right to
13 counsel, except that the guardian ad litem shall be entitled to appointed
14 counsel without regard to his or her financial ability to retain counsel.
15 ~~Such whether such~~ appointed counsel shall be provided at the cost of the
16 county ~~shall be determined as provided in subsection (1) of this section.~~

17 (4) By July 1, 2015, the Supreme Court shall provide by court rule
18 standards for guardians ad litem for juveniles in juvenile court
19 proceedings.

20 (5) By July 1, 2017, the Supreme Court shall provide guidelines
21 setting forth standards for all attorneys who practice in juvenile court.

22 Sec. 4. (1) In any court proceeding, any waiver of the right to
23 counsel by a juvenile shall be made in open court, shall be recorded, and
24 shall be confirmed in a writing signed by the juvenile.

25 (2) A court shall not accept a juvenile's waiver of the right to
26 counsel unless the waiver satisfies subsection (1) of this section and is
27 an affirmative waiver that is made intelligently, voluntarily, and
28 understandingly. In determining whether such waiver was made
29 intelligently, voluntarily, and understandingly, the court shall
30 consider, among other things: (a) The age, intelligence, and education of
31 the juvenile, (b) the juvenile's emotional stability, and (c) the

1 complexity of the proceedings.

2 (3) The court shall ensure that a juvenile consults with his or her
3 attorney before any waiver of counsel.

4 (4) No parent, guardian, custodian, or other person may waive the
5 juvenile's right to counsel.

6 (5) A juvenile's right to be represented by counsel may not be
7 waived in the following circumstances:

8 (a) If the juvenile is under the age of fourteen;

9 (b) For a detention hearing;

10 (c) For any dispositional hearing where out-of-home placement is
11 sought; or

12 (d) If there is a motion to transfer the juvenile from juvenile
13 court to county court or district court.

14 Sec. 5. Section 43-279, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 43-279 (1) The adjudication portion of hearings shall be conducted
17 before the court without a jury, applying the customary rules of evidence
18 in use in trials without a jury. When the petition alleges the juvenile
19 to be within the provisions of subdivision (1), (2), (3)(b), or (4) of
20 section 43-247 and the juvenile or his or her parent, guardian, or
21 custodian appears with or without counsel, the court shall inform the
22 parties:

23 (a) Of the nature of the proceedings and the possible consequences
24 or dispositions pursuant to sections 43-284 to 43-286, 43-289, and 43-290
25 that may apply to the juvenile's case following an adjudication of
26 jurisdiction;

27 (b) Of such juvenile's right to counsel as provided in sections
28 43-272 and 43-273;

29 (c) Of the privilege against self-incrimination by advising the
30 juvenile, parent, guardian, or custodian that the juvenile may remain
31 silent concerning the charges against the juvenile and that anything said

1 may be used against the juvenile;

2 (d) Of the right to confront anyone who testifies against the
3 juvenile and to cross-examine any persons who appear against the
4 juvenile;

5 (e) Of the right of the juvenile to testify and to compel other
6 witnesses to attend and testify in his or her own behalf;

7 (f) Of the right of the juvenile to a speedy adjudication hearing;
8 and

9 (g) Of the right to appeal and have a transcript for such purpose.

10 After giving such warnings and admonitions, the court may accept an
11 in-court admission by the juvenile of all or any part of the allegations
12 in the petition if the court has determined from examination of the
13 juvenile and those present that such admission is intelligently,
14 voluntarily, and understandingly made and with an affirmative waiver of
15 rights and that a factual basis for such admission exists. The waiver of
16 the right to counsel shall satisfy section 4 of this act. The court may
17 base its adjudication provided in subsection (2) of this section on such
18 admission.

19 (2) If the juvenile denies the petition or stands mute the court
20 shall first allow a reasonable time for preparation if needed and then
21 consider only the question of whether the juvenile is a person described
22 by section 43-247. After hearing the evidence on such question, the court
23 shall make a finding and adjudication, to be entered on the records of
24 the court, whether or not the juvenile is a person described by
25 subdivision (1), (2), (3)(b), or (4) of section 43-247 based upon proof
26 beyond a reasonable doubt. If an Indian child is involved, the standard
27 of proof shall be in compliance with the Nebraska Indian Child Welfare
28 Act, if applicable.

29 (3) If the court shall find that the juvenile named in the petition
30 is not within the provisions of section 43-247, it shall dismiss the
31 case. If the court finds that the juvenile named in the petition is such

1 a juvenile, it shall make and enter its findings and adjudication
2 accordingly, designating which subdivision or subdivisions of section
3 43-247 such juvenile is within; the court shall allow a reasonable time
4 for preparation if needed and then proceed to an inquiry into the proper
5 disposition to be made of such juvenile.

6 Sec. 6. Original sections 29-3915, 43-248.01, and 43-279, Reissue
7 Revised Statutes of Nebraska, and section 43-272, Revised Statutes
8 Supplement, 2015, are repealed.