

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 307

FINAL READING

Introduced by Pansing Brooks, 28; Cavanaugh, J., 9; DeBoer, 10; Lathrop,
12; McKinney, 11; Vargas, 7; Williams, 36; Hansen, M., 26.

Read first time January 12, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to juveniles; to amend sections 43-272 and
- 2 43-3102, Reissue Revised Statutes of Nebraska, and section 29-1816,
- 3 Revised Statutes Cumulative Supplement, 2020; to change provisions
- 4 relating to transfer of a case to juvenile court; to change
- 5 provisions relating to waivers of counsel; to require appointment of
- 6 counsel; to provide a duty for the Supreme Court of Nebraska; to
- 7 harmonize provisions; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-1816, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 29-1816 (1)(a) The accused may be arraigned in county court or
4 district court:

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

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

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

12 (iv) Until January 1, 2017, if the accused was seventeen years of
13 age when an alleged offense described in subdivision (1) of section
14 43-247 was committed.

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

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

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

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

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

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

1 transferring the case to juvenile court, the juvenile court may enter
2 temporary orders in the best interests of the juvenile.

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

6 Sec. 2. Section 43-272, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 43-272 (1)(a) In counties having a population of less than one
9 hundred fifty thousand inhabitants: ~~when any~~

10 (i) When any juvenile court petition is filed alleging jurisdiction
11 of a juvenile pursuant to subdivision (2) of section 43-247, counsel
12 shall be appointed for such juvenile; and

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

1 ~~by the court without a request.~~

2 (b) In counties having a population of one hundred fifty thousand or
3 more inhabitants, when any juvenile court petition is filed alleging
4 jurisdiction of a juvenile pursuant to subdivision (1), (2), (3)(b), or
5 (4) of section 43-247, counsel shall be appointed for such juvenile.

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

22 (2) The court, on its own motion or upon application of a party to
23 the proceedings, shall appoint a guardian ad litem for the juvenile: (a)
24 If the juvenile has no parent or guardian of his or her person or if the
25 parent or guardian of the juvenile cannot be located or cannot be brought
26 before the court; (b) if the parent or guardian of the juvenile is
27 excused from participation in all or any part of the proceedings; (c) if
28 the parent is a juvenile or an incompetent; (d) if the parent is
29 indifferent to the interests of the juvenile; or (e) in any proceeding
30 pursuant to the provisions of subdivision (3)(a) of section 43-247.

31 A guardian ad litem shall have the duty to protect the interests of

1 the juvenile for whom he or she has been appointed guardian, and shall be
2 deemed a parent of the juvenile as to those proceedings with respect to
3 which his or her guardianship extends.

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

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

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

18 Sec. 3. Section 43-3102, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 43-3102 (1) In any court proceeding, any waiver of the right to
21 counsel by a juvenile shall be made in open court, shall be recorded, and
22 shall be confirmed in a writing signed by the juvenile.

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

31 (3) On or before July 1, 2022, the Supreme Court shall provide, by

1 court rule, a process to ensure that a juvenile has consulted with
2 counsel, and if not, is provided the opportunity to consult with counsel
3 prior to the juvenile exercising their right to waive their right to
4 counsel.

5 ~~(4)~~ (3) The court shall ensure that a juvenile represented by an
6 attorney consults with his or her attorney before any waiver of counsel.

7 ~~(5)~~ (4) No parent, guardian, custodian, or other person may waive
8 the juvenile's right to counsel.

9 ~~(6)~~ (5) A juvenile's right to be represented by counsel may not be
10 waived in the following circumstances:

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

12 (b) For a detention hearing;

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

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

17 Sec. 4. Original sections 43-272 and 43-3102, Reissue Revised
18 Statutes of Nebraska, and section 29-1816, Revised Statutes Cumulative
19 Supplement, 2020, are repealed.