

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 201

Introduced by Pansing Brooks, 28; McKinney, 11; Vargas, 7; Wayne, 13;
Wishart, 27.

Read first time January 08, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to juveniles; to amend section 43-246.01,
- 2 Reissue Revised Statutes of Nebraska, and sections 29-1816 and
- 3 43-274, Revised Statutes Cumulative Supplement, 2020; to change
- 4 provisions relating to the jurisdiction of county, district, and
- 5 juvenile courts; to harmonize provisions; and to repeal the original
- 6 sections.
- 7 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, following a
10 transfer from juvenile court as provided in sections 43-246.01 and
11 43-274;

12 (iii) If the alleged offense is a traffic offense as defined in
13 section 43-245 and the accused was eleven years of age or older at the
14 time the alleged traffic offense was committed; or

15 (iv) ~~If Until January 1, 2017, if~~ the accused was sixteen years of
16 age or seventeen years of age when an alleged offense described in
17 subdivision (1) of section 43-247 was committed, following a transfer
18 from juvenile court as provided in sections 43-246.01 and 43-274.

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

27 (2) At the time of the arraignment, the county court or district
28 court shall advise the accused, if the accused was younger than eighteen
29 years of age at the time the alleged offense was committed, that the
30 accused may move the county court or district court at any time not later
31 than thirty days after arraignment, unless otherwise permitted by the

1 court for good cause shown, to waive jurisdiction in such case to the
2 juvenile court for further proceedings under the Nebraska Juvenile Code.
3 This subsection does not apply if the case was transferred to county
4 court or district court from juvenile court.

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

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

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

25 (c) An order granting or denying transfer of the case from county or
26 district court to juvenile court shall be considered a final order for
27 the purposes of appeal. Upon entry of an order, any party may appeal to
28 the Court of Appeals within ten days. Such review shall be advanced on
29 the court docket without an extension of time granted to any party except
30 upon a showing of exceptional cause. Appeals shall be submitted,
31 assigned, and scheduled for oral argument as soon as the appellee's brief

1 is due to be filed. The Court of Appeals shall conduct its review in an
2 expedited manner and shall render the judgment and opinion, if any, as
3 speedily as possible. During the pendency of an appeal from an order
4 transferring the case to juvenile court, the juvenile court may enter
5 temporary orders in the best interests of the juvenile.

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

9 Sec. 2. Section 43-246.01, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 43-246.01 ~~The juvenile court shall have:~~

12 (1) The juvenile court shall have exclusive ~~Exclusive~~ original
13 jurisdiction as to:

14 (a) Any juvenile described in subdivision (3) or (11) of section
15 43-247;

16 (b) Any juvenile who was under eighteen ~~sixteen~~ years of age at the
17 time the alleged offense was committed and the offense falls under
18 subdivision (1) of section 43-247, except that proceedings initiated
19 under this subdivision may be transferred to county court or district
20 court as provided in section 43-274 if the juvenile was sixteen or
21 seventeen years of age at the time the alleged offense was committed;

22 (c) A party or proceeding described in subdivision (5) or (7) of
23 section 43-247; and

24 (d) Any juvenile who was under eighteen ~~fourteen~~ years of age at the
25 time the alleged offense was committed and the offense falls under
26 subdivision (2) of section 43-247, except that proceedings initiated
27 under this subdivision may be transferred to county court or district
28 court as provided in section 43-274 if the juvenile was fourteen,
29 fifteen, sixteen, or seventeen years of age at the time the alleged
30 offense was committed. †

31 ~~(2) Exclusive original jurisdiction as to:~~

1 ~~(a) Beginning January 1, 2015, any juvenile who is alleged to have~~
2 ~~committed an offense under subdivision (1) of section 43-247 and who was~~
3 ~~sixteen years of age at the time the alleged offense was committed, and~~
4 ~~beginning January 1, 2017, any juvenile who is alleged to have committed~~
5 ~~an offense under subdivision (1) of section 43-247 and who was sixteen~~
6 ~~years of age or seventeen years of age at the time the alleged offense~~
7 ~~was committed; and~~

8 ~~(b) Any juvenile who was fourteen years of age or older at the time~~
9 ~~the alleged offense was committed and the offense falls under subdivision~~
10 ~~(2) of section 43-247 except offenses enumerated in subdivision (1)(a)~~
11 ~~(ii) of section 29-1816.~~

12 ~~Proceedings initiated under this subdivision (2) may be transferred~~
13 ~~as provided in section 43-274; and~~

14 ~~(2) The juvenile court shall have concurrent (3) Concurrent original~~
15 ~~jurisdiction with the county court or district court as to:~~

16 ~~(a) Any juvenile described in subdivision (4) of section 43-247; and~~

17 ~~(b) Any proceeding under subdivision (6), (8), (9), or (10) of~~
18 ~~section 43-247. ÷~~

19 ~~(c) Any juvenile described in subdivision (1)(a)(ii) of section~~
20 ~~29-1816; and~~

21 ~~(d) Until January 1, 2017, any juvenile who is alleged to have~~
22 ~~committed an offense under subdivision (1) of section 43-247 and who was~~
23 ~~seventeen years of age at the time the alleged offense was committed.~~

24 ~~(3) In cases in which there is concurrent jurisdiction, proceedings~~
25 ~~Proceedings initiated under this section subdivision (3) may be~~
26 ~~transferred as provided in section 43-274.~~

27 ~~(4) The changes made to this section by this legislative bill shall~~
28 ~~not divest any court of jurisdiction for a proceeding initiated in~~
29 ~~juvenile, county, or district court prior to the effective date of this~~
30 ~~act.~~

31 Sec. 3. Section 43-274, Revised Statutes Cumulative Supplement,

1 2020, is amended to read:

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

7 (2) The county attorney or city attorney may offer pretrial
8 diversion to the juvenile in accordance with a juvenile pretrial
9 diversion program established pursuant to sections 43-260.02 to
10 43-260.07.

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

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

27 (c) A victim or his or her parent or guardian shall not be charged a
28 fee. A juvenile or his or her parent or guardian may be charged a fee
29 according to the policies and procedures of the restorative justice
30 facilitator and the referring county attorney or city attorney.
31 Restorative justice facilitators shall use a sliding fee scale based on

1 income and shall not deny services based upon the inability of a juvenile
2 or his or her parent or guardian to pay, if funding is otherwise
3 available.

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

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

14 (i) Participation by the juvenile in certain community service
15 programs;

16 (ii) Payment of restitution by the juvenile to the victim;

17 (iii) Reconciliation between the juvenile and the victim;

18 (iv) Apology, when appropriate, between the juvenile and the victim;

19 and

20 (v) Any other areas of agreement.

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

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

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

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

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

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

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

9 (5) When a transfer from juvenile court to county court or district
10 court is authorized because there is concurrent jurisdiction or as
11 described in subdivision (1)(b) or (d) of section 43-246.01, the county
12 attorney or city attorney may move to transfer the proceedings. Such
13 motion shall be filed with the juvenile court petition unless otherwise
14 permitted for good cause shown. The juvenile court shall schedule a
15 hearing on such motion within fifteen days after the motion is filed. The
16 county attorney or city attorney has the burden by a preponderance of the
17 evidence to show why such proceeding should be transferred. The juvenile
18 shall be represented by counsel at the hearing and may present the
19 evidence as to why the proceeding should be retained. After considering
20 all the evidence and reasons presented by both parties, the juvenile
21 court shall retain the proceeding unless the court determines that a
22 preponderance of the evidence shows that the proceeding should be
23 transferred to the county court or district court. The court shall make a
24 decision on the motion within thirty days after the hearing. The juvenile
25 court shall set forth findings for the reason for its decision.

26 An order granting or denying transfer of the case from juvenile
27 court to county or district court shall be considered a final order for
28 the purposes of appeal. Upon the entry of an order, any party may appeal
29 to the Court of Appeals within ten days. Such review shall be advanced on
30 the court docket without an extension of time granted to any party except
31 upon a showing of exceptional cause. Appeals shall be submitted,

1 assigned, and scheduled for oral argument as soon as the appellee's brief
2 is due to be filed. The Court of Appeals shall conduct its review in an
3 expedited manner and shall render the judgment and opinion, if any, as
4 speedily as possible. During the pendency of any such appeal, the
5 juvenile court may continue to enter temporary orders in the best
6 interests of the juvenile pursuant to section 43-295.

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

12 Sec. 4. Original section 43-246.01, Reissue Revised Statutes of
13 Nebraska, and sections 29-1816 and 43-274, Revised Statutes Cumulative
14 Supplement, 2020, are repealed.