

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 883

Introduced by McKinney, 11; Cavanaugh, J., 9.

Read first time January 07, 2022

Committee: Judiciary

1 A BILL FOR AN ACT relating to juveniles; to amend sections 29-401,
2 43-248.01, and 43-249, Reissue Revised Statutes of Nebraska, and
3 sections 43-250 and 43-253, Revised Statutes Cumulative Supplement,
4 2020; to require confidentiality for criminal prosecutions of minors
5 tried as adults; to require notification of a juvenile's parent,
6 guardian, or custodian when a juvenile is taken into custody as
7 prescribed; to define terms; to require that a juvenile's parent,
8 guardian, or custodian be present when requested; to prohibit the
9 use of certain statements in court proceedings as prescribed; to
10 eliminate obsolete provisions; to harmonize provisions; and to
11 repeal the original sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) This section applies beginning January 1, 2023.

2 (2) Any criminal prosecution of a person who was under eighteen
3 years of age when the alleged offense was committed shall be conducted in
4 such a manner as to maintain the confidentiality of the identity of the
5 defendant. This applies to all stages of such proceedings, including
6 before, during, or after trial, sentencing, and post-conviction
7 proceedings.

8 (3) A court may release information required to be confidential by
9 this section:

10 (a) To any individual or public or private agency, institution,
11 facility, or clinic which is providing services directly to the
12 defendant;

13 (b) To any court which has jurisdiction of the defendant upon such
14 court's request;

15 (c) Upon written request by the office of Public Counsel, including
16 the office of Inspector General of Nebraska Child Welfare and office of
17 Inspector General of the Nebraska Correctional System;

18 (d) To any person, at the request of the defendant;

19 (e) To law enforcement officers, county attorneys, and city
20 attorneys;

21 (f) To the Nebraska Probation System, the Department of Correctional
22 Services, a jail, or other detention facility as necessary for the
23 custody and care of such defendant;

24 (g) To the Department of Health and Human Services or a contract
25 facility or provider when the defendant is undergoing competency
26 restoration as provided in section 29-1823;

27 (h) To persons engaged in bona fide research, with the permission of
28 the court or the State Court Administrator, only if the research results
29 in no disclosure of the defendant's identity and protects the
30 confidentiality of the defendant; or

31 (i) To a law enforcement agency if the defendant applies for

1 employment with the law enforcement agency.

2 (4) Any person receiving confidential information under subsection
3 (3) of this section shall maintain the confidentiality of such
4 information and of the defendant's identity.

5 (5) This section does not apply to presentence investigation
6 reports, the confidentiality of which are governed by section 29-2261.

7 (6) Nothing in this section shall be construed to restrict
8 dissemination of information about a defendant who is a fugitive from
9 justice or otherwise missing.

10 Sec. 2. Section 29-401, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 29-401 Every sheriff, deputy sheriff, marshal, deputy marshal,
13 security guard, police officer, or peace officer as defined in
14 ~~subdivision (15) of section 49-801~~ shall arrest and detain any person
15 found violating any law of this state or any legal ordinance of any city
16 or incorporated village until a legal warrant can be obtained, except
17 that (1) any such law enforcement officer taking a juvenile under the age
18 of eighteen years into his or her custody for any violation herein
19 defined shall proceed as set forth in sections 43-248, 43-248.01, 43-250,
20 43-251, 43-251.01, and 43-253 and (2) the court in which the juvenile is
21 to appear shall not accept a plea from the juvenile until finding that
22 the parent, guardian, or custodian ~~parents~~ of the juvenile has ~~have~~ been
23 notified or that reasonable efforts to notify such person ~~has~~ ~~parents~~
24 ~~have~~ been made as provided in section 43-250.

25 Sec. 3. Section 43-248.01, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 43-248.01 (1) All law enforcement personnel or other governmental
28 officials having custody of any juvenile person under eighteen years of
29 age shall inform the juvenile person in custody, using developmentally
30 appropriate language and without unnecessary delay, of such juvenile's
31 person's right to call or consult an attorney who is retained by or

1 appointed on behalf of such juvenile person or whom the juvenile person
2 may desire to consult and, except when exigent circumstances exist, shall
3 permit such juvenile person to call or consult such attorney without
4 unnecessary delay. An attorney shall be permitted to see and consult with
5 the juvenile person in custody alone and in private at the place of
6 custody.

7 (2) Before initiating a custodial interrogation of a juvenile, law
8 enforcement personnel shall provide an advisement to the juvenile in
9 substantially the following form:

10 "(1) You have the right to remain silent, which means you do not
11 have to say anything to me unless you want to. It is your choice.

12 (2) If you choose to talk to me, whatever you tell me I can tell a
13 judge in court.

14 (3) You have the right to have your parent or guardian with you
15 while you talk to me.

16 (4) You have the right to have a lawyer with you while you talk to
17 me. You may have the right to get a free lawyer. If you get a lawyer, he
18 or she can help you if you decide that you want to talk to me.

19 (5) These are your rights. Do you understand what I have told you?

20 (6) Do you want to talk to me?"

21 (3) A peace officer who takes a juvenile into custody under section
22 29-401 or subdivision (1), (4), (5), or (8) of section 43-248 shall
23 describe to the juvenile the efforts the peace officer has taken to
24 notify the juvenile's parent, guardian, or custodian as provided for in
25 section 43-250.

26 (4) If a juvenile requests to speak to a parent, guardian,
27 custodian, or attorney before or during a custodial interrogation, the
28 custodial interrogation of the juvenile must cease until such person
29 arrives.

30 (5)(a) Except as provided in subdivision (5)(b) of this section,
31 upon arrival of a parent, guardian, or custodian to whom the juvenile has

1 requested to speak, the peace officer shall without unnecessary delay
2 permit such person to see and consult with the juvenile alone and in
3 private at the place of custody. Prior to any custodial interrogation
4 with such person present, the peace officer shall provide the advisement
5 described in subsection (2) of this section to the juvenile and such
6 person.

7 (b) Subdivision (5)(a) of this section does not apply when there is
8 reasonable suspicion to believe that the parent, guardian, or custodian
9 is involved in a crime related to the juvenile's detention or is a danger
10 to the juvenile.

11 (6) Any statement of a juvenile taken in violation of this section
12 shall not be admissible against the juvenile in any criminal proceeding
13 or any proceeding under the Nebraska Juvenile Code.

14 (7) For purposes of this section, custodial interrogation has the
15 meaning prescribed to it under the Fourth and Fifth Amendments to the
16 Constitution of the United States and Article I, sections 3 and 7, of the
17 Constitution of Nebraska, as interpreted by the Supreme Court of the
18 United States and the Nebraska Supreme Court.

19 Sec. 4. Section 43-249, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 43-249 No juvenile taken into temporary custody under section 43-248
22 shall be considered to have been arrested, except for the purpose of
23 determining the validity of such custody under the Constitution of
24 Nebraska or the Constitution of the United States and determining whether
25 there has been compliance with section 43-248.01.

26 Sec. 5. Section 43-250, Revised Statutes Cumulative Supplement,
27 2020, is amended to read:

28 43-250 (1) A peace officer who takes a juvenile into temporary
29 custody under section 29-401 or subdivision (1), (4), (5), or (8) of
30 section 43-248 shall:

31 (a) Immediately ~~immediately~~ take reasonable measures to notify the

1 juvenile's parent, guardian, or custodian; ~~or relative~~

2 (i) That the juvenile is in custody;

3 (ii) Of the juvenile's current location and where the juvenile will
4 be transferred, if applicable; and

5 (iii) Of the reason the juvenile was taken into custody unless the
6 peace officer has a reasonable suspicion that the disclosure of such
7 reason will jeopardize public safety or the integrity of the
8 investigation; and

9 (b) Proceed ~~and shall proceed~~ as follows:

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

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

29 (iii) (c) The peace officer may retain temporary custody of a
30 juvenile taken into temporary custody under section 29-401 or subdivision
31 (1), (4), or (5) of section 43-248 and deliver the juvenile, if

1 necessary, to the probation officer and communicate all relevant
2 available information regarding such juvenile to the probation officer.
3 The probation officer shall determine the need for detention of the
4 juvenile as provided in section 43-260.01. Upon determining that the
5 juvenile should be placed in detention or an alternative to detention and
6 securing placement in such setting by the probation officer, the peace
7 officer shall implement the probation officer's decision to release or to
8 detain and place the juvenile. When secure detention of a juvenile is
9 necessary, such detention shall occur within a juvenile detention
10 facility except:

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

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

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

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

12 (E) ~~(v)~~ If, within the time limits specified in subdivision (1)(b)
13 (iii)(A) (1)(c)(i) or (B) (1)(c)(ii) of this section, a felony charge is
14 filed against the juvenile as an adult in county or district court, he or
15 she may be securely held in a jail or other facility intended or used for
16 the detention of adults beyond the specified time limits;

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

28 (G) ~~(vii)~~ A juvenile described in subdivision (1) or (2) of section
29 43-247, except for a status offender, may be held in a secure area of a
30 jail or other facility intended or used for the detention of adults for
31 up to six hours before and six hours after any court appearance.

1 (2) When a juvenile is taken into temporary custody pursuant to
2 subdivision (2), (7), or (8) of section 43-248, and not released under
3 subdivision (1)(b)(i) ~~(1)(a)~~ of this section, the peace officer shall
4 deliver the custody of such juvenile to the Department of Health and
5 Human Services which shall make a temporary placement of the juvenile in
6 the least restrictive environment consistent with the best interests of
7 the juvenile as determined by the department. The department shall
8 supervise such placement and, if necessary, consent to any necessary
9 emergency medical, psychological, or psychiatric treatment for such
10 juvenile. The department shall have no other authority with regard to
11 such temporary custody until or unless there is an order by the court
12 placing the juvenile in the custody of the department. If the peace
13 officer delivers temporary custody of the juvenile pursuant to this
14 subsection, the peace officer shall make a full written report to the
15 county attorney within twenty-four hours of taking such juvenile into
16 temporary custody. If a court order of temporary custody is not issued
17 within forty-eight hours of taking the juvenile into custody, the
18 temporary custody by the department shall terminate and the juvenile
19 shall be returned to the custody of his or her parent, guardian,
20 custodian, or adult relative.

21 (3) If the peace officer takes the juvenile into temporary custody
22 pursuant to subdivision (3) of section 43-248, the peace officer may
23 place the juvenile at a mental health facility for evaluation and
24 emergency treatment or may deliver the juvenile to the Department of
25 Health and Human Services as provided in subsection (2) of this section.
26 At the time of the admission or turning the juvenile over to the
27 department, the peace officer responsible for taking the juvenile into
28 custody pursuant to subdivision (3) of section 43-248 shall execute a
29 written certificate as prescribed by the Department of Health and Human
30 Services which will indicate that the peace officer believes the juvenile
31 to be mentally ill and dangerous, a summary of the subject's behavior

1 supporting such allegations, and that the harm described in section
2 71-908 is likely to occur before proceedings before a juvenile court may
3 be invoked to obtain custody of the juvenile. A copy of the certificate
4 shall be forwarded to the county attorney. The peace officer shall notify
5 the juvenile's parents, guardian, custodian, or adult relative of the
6 juvenile's placement.

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

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

17 (6) In determining the appropriate temporary placement or
18 alternative to detention of a juvenile under this section, the peace
19 officer shall select the placement or alternative which is least
20 restrictive of the juvenile's freedom so long as such placement or
21 alternative is compatible with the best interests of the juvenile and the
22 safety of the community. Any alternative to detention shall cause the
23 least restriction of the juvenile's freedom of movement consistent with
24 the best interest of the juvenile and the safety of the community.

25 Sec. 6. Section 43-253, Revised Statutes Cumulative Supplement,
26 2020, is amended to read:

27 43-253 (1) Upon delivery to the probation officer of a juvenile who
28 has been taken into temporary custody under section 29-401, 43-248, or
29 43-250, the probation officer shall immediately investigate the situation
30 of the juvenile and the nature and circumstances of the events
31 surrounding his or her being taken into custody. Such investigation may

1 be by informal means when appropriate.

2 (2) The probation officer's decision to release the juvenile from
3 custody or place the juvenile in detention or an alternative to detention
4 shall be based upon the results of the standardized juvenile detention
5 screening instrument described in section 43-260.01.

6 (3) No juvenile who has been taken into temporary custody under
7 subdivision (1)(b)(iii) ~~(1)(e)~~ of section 43-250 or subsection (6) of
8 section 43-286.01 or pursuant to an alleged violation of an order for
9 conditional release shall be detained in any detention facility or be
10 subject to an alternative to detention infringing upon the juvenile's
11 liberty interest for longer than twenty-four hours, excluding nonjudicial
12 days, after having been taken into custody unless such juvenile has
13 appeared personally before a court of competent jurisdiction for a
14 hearing to determine if continued detention, services, or supervision is
15 necessary. The juvenile shall be represented by counsel at the hearing.
16 Whether such counsel shall be provided at the cost of the county shall be
17 determined as provided in subsection (1) of section 43-272. If continued
18 secure detention is ordered, such detention shall be in a juvenile
19 detention facility, except that a juvenile charged with a felony as an
20 adult in county or district court may be held in an adult jail as set
21 forth in subdivision (1)(b)(iii)(E) ~~(1)(c)(v)~~ of section 43-250. A
22 juvenile placed in an alternative to detention, but not in detention, may
23 waive this hearing through counsel.

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

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

5 (5) The court may admit such juvenile to bail by bond in such amount
6 and on such conditions and security as the court, in its sole discretion,
7 shall determine, or the court may proceed as provided in section 43-254.
8 In no case shall the court or probation officer release such juvenile if
9 it appears that:~~(a) Before July 1, 2019, further detention or placement~~
10 ~~of such juvenile is a matter of immediate and urgent necessity for the~~
11 ~~protection of such juvenile or the person or property of another or if it~~
12 ~~appears that such juvenile is likely to flee the jurisdiction of the~~
13 ~~court; and (b) On or after July 1, 2019, the physical safety of persons~~
14 in the community would be seriously threatened or that detention is
15 necessary to secure the presence of the juvenile at the next hearing, as
16 evidenced by a demonstrable record of willful failure to appear at a
17 scheduled court hearing within the last twelve months.

18 Sec. 7. Original sections 29-401, 43-248.01, and 43-249, Reissue
19 Revised Statutes of Nebraska, and sections 43-250 and 43-253, Revised
20 Statutes Cumulative Supplement, 2020, are repealed.