

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 620

Introduced by McDonnell, 5.

Read first time January 17, 2023

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 43-253, Revised Statutes Cumulative Supplement, 2022; to change
4 provisions relating to arraignment of certain juveniles; to
5 eliminate an option to waive a hearing as prescribed; and to repeal
6 the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-1816, Revised Statutes Cumulative Supplement,
2 2022, 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 ~~twelve~~ fourteen years of age or older when an alleged offense punishable
9 as a 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 43-246.01, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 43-246.01 The juvenile court shall have:

9 (1) Exclusive original jurisdiction as to:

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

12 (b) Any juvenile who was under sixteen years of age at the time the
13 alleged offense was committed and the offense falls under subdivision (1)
14 of section 43-247;

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

17 (d) Any juvenile who was under fourteen years of age at the time the
18 alleged offense was committed and the offense falls under subdivision (2)
19 of section 43-247 except offenses enumerated in subdivision (1)(a)(ii) of
20 section 29-1816;

21 (2) Exclusive original jurisdiction as to:

22 (a) Beginning January 1, 2015, any juvenile who is alleged to have
23 committed an offense under subdivision (1) of section 43-247 and who was
24 sixteen years of age at the time the alleged offense was committed, and
25 beginning January 1, 2017, any juvenile who is alleged to have committed
26 an offense under subdivision (1) of section 43-247 and who was sixteen
27 years of age or seventeen years of age at the time the alleged offense
28 was committed; and

29 (b) Any juvenile who was fourteen years of age or older at the time
30 the alleged offense was committed and the offense falls under subdivision
31 (2) of section 43-247 except offenses enumerated in subdivision (1)(a)

1 (ii) of section 29-1816.

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

4 (3) Concurrent original jurisdiction with the county court or
5 district court as to:

6 (a) Any juvenile described in subdivision (4) of section 43-247;

7 (b) Any proceeding under subdivision (6), (8), (9), or (10) of
8 section 43-247;

9 (c) Any juvenile described in subdivision (1)(a)(ii) of section
10 29-1816; and

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

14 Proceedings initiated under this subdivision (3) may be transferred
15 as provided in section 43-274.

16 Sec. 3. Section 43-253, Revised Statutes Cumulative Supplement,
17 2022, is amended to read:

18 43-253 (1) Upon delivery to the probation officer of a juvenile who
19 has been taken into temporary custody under section 29-401, 43-248, or
20 43-250, the probation officer shall immediately investigate the situation
21 of the juvenile and the nature and circumstances of the events
22 surrounding his or her being taken into custody. Such investigation may
23 be by informal means when appropriate.

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

28 (3) No juvenile who has been taken into temporary custody under
29 subdivision (1)(c) of section 43-250 or subsection (6) of section
30 43-286.01 or pursuant to an alleged violation of an order for conditional
31 release shall be detained in any detention facility or be subject to an

1 alternative to detention infringing upon the juvenile's liberty interest
2 for longer than twenty-four hours, excluding nonjudicial days, after
3 having been taken into custody unless such juvenile has appeared
4 personally before a court of competent jurisdiction for a hearing to
5 determine if continued detention, services, or supervision is necessary.
6 The juvenile shall be represented by counsel at the hearing. Whether such
7 counsel shall be provided at the cost of the county shall be determined
8 as provided in subsection (1) of section 43-272. If continued secure
9 detention is ordered, such detention shall be in a juvenile detention
10 facility, except that a juvenile charged with a felony as an adult in
11 county or district court may be held in an adult jail as set forth in
12 subdivision (1)(c)(v) of section 43-250. ~~A juvenile placed in an~~
13 ~~alternative to detention, but not in detention, may waive this hearing~~
14 ~~through counsel.~~

15 (4) When the probation officer deems it to be in the best interests
16 of the juvenile, the probation officer shall immediately release such
17 juvenile to the custody of his or her parent. If the juvenile has both a
18 custodial and a noncustodial parent and the probation officer deems that
19 release of the juvenile to the custodial parent is not in the best
20 interests of the juvenile, the probation officer shall, if it is deemed
21 to be in the best interests of the juvenile, attempt to contact the
22 noncustodial parent, if any, of the juvenile and to release the juvenile
23 to such noncustodial parent. If such release is not possible or not
24 deemed to be in the best interests of the juvenile, the probation officer
25 may release the juvenile to the custody of a legal guardian, a
26 responsible relative, or another responsible person.

27 (5) The court may admit such juvenile to bail by bond in such amount
28 and on such conditions and security as the court, in its sole discretion,
29 shall determine, or the court may proceed as provided in section 43-254.
30 In no case shall the court or probation officer release such juvenile if
31 it appears that:

1 (a) Before July 1, 2019, further detention or placement of such
2 juvenile is a matter of immediate and urgent necessity for the protection
3 of such juvenile or the person or property of another or if it appears
4 that such juvenile is likely to flee the jurisdiction of the court; and

5 (b) On or after July 1, 2019, the physical safety of persons in the
6 community would be seriously threatened or that detention is necessary to
7 secure the presence of the juvenile at the next hearing, as evidenced by
8 a demonstrable record of willful failure to appear at a scheduled court
9 hearing within the last twelve months.

10 Sec. 4. Original section 43-246.01, Reissue Revised Statutes of
11 Nebraska, and sections 29-1816 and 43-253, Revised Statutes Cumulative
12 Supplement, 2022, are repealed.