

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 717

Introduced by Cavanaugh, J., 9.

Read first time January 18, 2023

Committee: Judiciary

1 A BILL FOR AN ACT relating to juvenile justice; to amend section
2 43-246.01, Reissue Revised Statutes of Nebraska, and section 43-245,
3 Revised Statutes Cumulative Supplement, 2022; to provide for
4 criminal prosecution of persons under fourteen years of age accused
5 of murder in the first or second degree; to change definitions and
6 jurisdiction under the Nebraska Juvenile Code; to provide for
7 transfers; to harmonize provisions; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-245, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 43-245 For purposes of the Nebraska Juvenile Code, unless the
4 context otherwise requires:

5 (1) Abandonment means a parent's intentionally withholding from a
6 child, without just cause or excuse, the parent's presence, care, love,
7 protection, and maintenance and the opportunity for the display of
8 parental affection for the child;

9 (2) Age of majority means:

10 (a) Nineteen ~~nineteen~~ years of age; or

11 (b) Twenty-five years of age for a person who was adjudicated for a
12 violation of section 28-303 or 28-304;

13 (3) Alternative to detention means a program or directive that
14 increases supervision of a youth in the community in an effort to ensure
15 the youth attends court and refrains from committing a new law violation.
16 Alternative to detention includes, but is not limited to, electronic
17 monitoring, day and evening reporting centers, house arrest, tracking,
18 family crisis response, and temporary shelter placement. Except for the
19 use of manually controlled delayed egress of not more than thirty
20 seconds, placements that utilize physical construction or hardware to
21 restrain a youth's freedom of movement and ingress and egress from
22 placement are not considered alternatives to detention;

23 (4) Approved center means a center that has applied for and received
24 approval from the Director of the Office of Dispute Resolution under
25 section 25-2909;

26 (5) Civil citation means a noncriminal notice which cannot result in
27 a criminal record and is described in section 43-248.02;

28 (6) Cost or costs means (a) the sum or equivalent expended, paid, or
29 charged for goods or services, or expenses incurred, or (b) the
30 contracted or negotiated price;

31 (7) Criminal street gang means a group of three or more people with

1 a common identifying name, sign, or symbol whose group identity or
2 purposes include engaging in illegal activities;

3 (8) Criminal street gang member means a person who willingly or
4 voluntarily becomes and remains a member of a criminal street gang;

5 (9) Custodian means a nonparental caretaker having physical custody
6 of the juvenile and includes an appointee described in section 43-294;

7 (10) Guardian means a person, other than a parent, who has qualified
8 by law as the guardian of a juvenile pursuant to testamentary or court
9 appointment, but excludes a person who is merely a guardian ad litem;

10 (11) Juvenile means:

11 (a) Any ~~any~~ person under the age of eighteen; or

12 (b) A person who is under twenty-five years of age if such person
13 was adjudicated for a violation of section 28-303 or 28-304;

14 (12) Juvenile court means the separate juvenile court where it has
15 been established pursuant to sections 43-2,111 to 43-2,127 and the county
16 court sitting as a juvenile court in all other counties. Nothing in the
17 Nebraska Juvenile Code shall be construed to deprive the district courts
18 of their habeas corpus, common-law, or chancery jurisdiction or the
19 county courts and district courts of jurisdiction of domestic relations
20 matters as defined in section 25-2740;

21 (13) Juvenile detention facility has the same meaning as in section
22 83-4,125;

23 (14) Legal custody has the same meaning as in section 43-2922;

24 (15) Mental health facility means a treatment facility as defined in
25 section 71-914 or a government, private, or state hospital which treats
26 mental illness;

27 (16) Nonoffender means a juvenile who is subject to the jurisdiction
28 of the juvenile court for reasons other than legally prohibited conduct,
29 including, but not limited to, juveniles described in subdivision (3)(a)
30 of section 43-247;

31 (17) Parent means one or both parents or stepparents when the

1 stepparent is married to a parent who has physical custody of the
2 juvenile as of the filing of the petition;

3 (18) Parties means the juvenile as described in section 43-247 and
4 his or her parent, guardian, or custodian;

5 (19) Physical custody has the same meaning as in section 43-2922;

6 (20) Except in proceedings under the Nebraska Indian Child Welfare
7 Act, relative means father, mother, grandfather, grandmother, brother,
8 sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt,
9 first cousin, nephew, or niece;

10 (21) Restorative justice means practices, programs, or services that
11 emphasize repairing the harm caused to victims and the community by
12 persons who have caused the harm or committed an offense. Restorative
13 justice practices may include, but are not limited to, victim youth
14 conferencing, victim-offender mediation, youth or community dialogue,
15 panels, circles, and truancy mediation;

16 (22) Restorative justice facilitator means a qualified individual
17 who has been trained to facilitate restorative justice practices. A
18 qualified individual shall be approved by the referring county attorney,
19 city attorney, or juvenile or county court judge. Factors for approval
20 may include, but are not limited to, an individual's education and
21 training in restorative justice principles and practices; experience in
22 facilitating restorative justice sessions; understanding of the necessity
23 to do no harm to either the victim or the person who harmed the victim;
24 and proven commitment to ethical practices;

25 (23) Seal a record means that a record shall not be available to the
26 public except upon the order of a court upon good cause shown;

27 (24) Secure detention means detention in a highly structured,
28 residential, hardware-secured facility designed to restrict a juvenile's
29 movement;

30 (25) Staff secure juvenile facility means a juvenile residential
31 facility operated by a political subdivision (a) which does not include

1 construction designed to physically restrict the movements and activities
2 of juveniles who are in custody in the facility, (b) in which physical
3 restriction of movement or activity of juveniles is provided solely
4 through staff, (c) which may establish reasonable rules restricting
5 ingress to and egress from the facility, and (d) in which the movements
6 and activities of individual juvenile residents may, for treatment
7 purposes, be restricted or subject to control through the use of
8 intensive staff supervision. Staff secure juvenile facility does not
9 include any institution operated by the Department of Correctional
10 Services;

11 (26) Status offender means a juvenile who has been charged with or
12 adjudicated for conduct which would not be a crime if committed by an
13 adult, including, but not limited to, juveniles charged under subdivision
14 (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02;

15 (27) Traffic offense means any nonfelonious act in violation of a
16 law or ordinance regulating vehicular or pedestrian travel, whether
17 designated a misdemeanor or a traffic infraction; and

18 (28) Young adult means an individual older than eighteen years of
19 age but under twenty-one years of age.

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

22 43-246.01 The juvenile court shall have:

23 (1) Exclusive original jurisdiction as to:

24 (a) Any juvenile described in subdivision (3) or (11) of section
25 43-247;

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

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

31 (d) Any juvenile who was under fourteen years of age at the time the

1 alleged offense was committed and the offense falls under subdivision (2)
2 of section 43-247, except that proceedings initiated under this
3 subdivision for an alleged violation of section 28-303 or 28-304 may be
4 transferred as provided in section 43-274;

5 (2) Exclusive original jurisdiction as to:

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

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

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

19 (3) Concurrent original jurisdiction with the county court or
20 district court as to:

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

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

24 (c) Any juvenile described in subdivision (1)(a)(ii) of section
25 29-1816; and

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

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

31 Sec. 3. Original section 43-246.01, Reissue Revised Statutes of

1 Nebraska, and section 43-245, Revised Statutes Cumulative Supplement,
2 2022, are repealed.