

LEGISLATIVE BILL 451
Passed over the Governor's veto
May 30, 2001.

Introduced by Thompson, 14; Jensen, 20

AN ACT relating to juveniles; to amend sections 29-2246, 29-2252.01, 29-2257, and 29-2258, Reissue Revised Statutes of Nebraska, and sections 43-250, 43-253, and 43-260, Revised Statutes Supplement, 2000; to redefine terms; to provide for juvenile intake officers; to state intent; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 29-2246, Reissue Revised Statutes of Nebraska, is amended to read:

29-2246. As used in the Nebraska Probation Administration Act and sections 43-2,123.01 and 83-1,102 to 83-1,104 and section 8 of this act, unless the context otherwise requires:

(1) Association ~~shall mean~~ means the Nebraska District Court Judges Association;

(2) Court ~~shall mean~~ means a district court, county court, or juvenile court, except a separate juvenile court; ~~established pursuant to sections 43-2,111 to 43-2,113 and 43-2,118 to 43-2,127;~~

(3) Office ~~shall mean~~ means the Office of Probation Administration;

(4) Probation ~~shall mean~~ means a sentence under which a person found guilty of a crime upon verdict or plea or adjudicated delinquent or in need of special supervision is released by a court subject to conditions imposed by the court and subject to supervision;

(5) Probationer ~~shall mean~~ means a person sentenced to probation;

(6) Probation officer means an employee of the system shall mean any person who supervises probationers and conducts presentence, predisposition, or other investigations as may be required by law or directed by a court in which he or she is serving, except unpaid volunteers from the community;

(7) Juvenile probation officer ~~shall mean~~ means any probation officer who supervises probationers of a separate juvenile court;

(8) Juvenile intake probation officer means an employee of the system who is called upon by a law enforcement officer in accordance with section 43-250 to make a decision regarding the furtherance of a juvenile's detention;

(9) Chief probation officer ~~shall mean~~ means the probation officer in charge of a probation district;

~~(9)~~ (10) System ~~shall mean~~ means the Nebraska Probation System; and

~~(10)~~ (11) Administrator ~~shall mean~~ means the probation administrator.

Sec. 2. Section 29-2252.01, Reissue Revised Statutes of Nebraska, is amended to read:

29-2252.01. On December 31 and June 30 of each fiscal year, the administrator shall provide a report to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst which shall include, but not be limited to:

(1) The total number of felony cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(2) The total number of misdemeanor cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(3) The felony caseload per officer for both regular and intensive supervision probation on the last day of the reporting period; ~~and~~

(4) The misdemeanor caseload per officer for both regular and intensive supervision probation on the last day of the reporting period;

(5) The total number of juvenile cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(6) The total number of predisposition investigations completed by the office in the previous six months;

(7) The total number of presentence investigations completed by the office in the previous six months; and

(8) The total number of juvenile intake screening interviews conducted and detentions authorized by the office in the previous six months, using the detention screening instrument described in section 43-260.01.

Sec. 3. Section 29-2257, Reissue Revised Statutes of Nebraska, is amended to read:

29-2257. The Nebraska Probation System is established which shall consist of the probation administrator, chief probation officers, probation officers, and support staff. The system shall be responsible for juvenile intake services, for presentence and other probation investigations, and for the direct supervision of persons placed on probation. The system shall be sufficient in size to assure that no probation officer carries a caseload larger than is compatible with adequate probation investigation or supervision. Probation officers shall be compensated with salaries substantially equal to other state employees who have similar responsibilities.

This provision for salary equalization shall apply only to probation officers and support staff and shall not apply to chief probation officers, the probation administrator, the chief deputy administrator, the deputy probation administrator, or any other similarly established management positions. ~~The probation administrator shall report to the Judiciary Committee of the Legislature no later than December 17, 1995, detailing the actions taken under this section, including a breakdown on the distribution of salary equalization money appropriated by the Ninety-fourth Legislature, First Session.~~

Sec. 4. Section 29-2258, Reissue Revised Statutes of Nebraska, is amended to read:

29-2258. A district probation officer shall:

(1) Conduct juvenile intake interviews and investigations in accordance with section 43-253 utilizing a standardized juvenile detention screening instrument described in section 43-260.01;

(2) Make presentence and other investigations, as may be required by law or directed by a court in which he or she is serving;

~~(3)~~ (3) Supervise probationers in accordance with the rules and regulations of the office and the directions of the sentencing court;

~~(4)~~ (4) Advise the sentencing court, in accordance with the Nebraska Probation Administration Act and such rules and regulations of the office, of violations of the conditions of probation by individual probationers;

~~(5)~~ (5) Advise the sentencing court, in accordance with the rules and regulations of the office and the direction of the court, when the situation of a probationer may require a modification of the conditions of probation or when a probationer's adjustment is such as to warrant termination of probation;

~~(6)~~ (6) Provide each probationer with a statement of the period and conditions of his or her probation;

~~(7)~~ (7) Whenever necessary, exercise the power of arrest as provided in section 29-2266;

~~(8)~~ (8) Establish procedures for the direction and guidance of deputy probation officers under his or her jurisdiction and advise such officers in regard to the most effective performance of their duties;

~~(9)~~ (9) Supervise and evaluate deputy probation officers under his or her jurisdiction;

~~(10)~~ (10) Delegate such duties and responsibilities to a deputy probation officer as he or she deems appropriate;

~~(11)~~ (11) Make such reports as required by the administrator, the judges of the probation district in which he or she serves, or the Supreme Court;

~~(12)~~ (12) Keep accurate and complete accounts of all money or property collected or received from probationers and give receipts therefor;

~~(13)~~ (13) Cooperate fully with and render all reasonable assistance to other probation officers;

~~(14)~~ (14) In counties with a population of less than twenty-five thousand people, participate in pretrial diversion programs established pursuant to section 29-3602 as requested by judges of the probation district in which he or she serves, except that participation in such programs shall not require appointment of additional personnel and shall be consistent with the probation officer's current caseload;

~~(15)~~ (15) Perform such other duties not inconsistent with the Nebraska Probation Administration Act or the rules and regulations of the office as a court may from time to time direct; and

~~(16)~~ (16) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Sec. 5. Section 43-250, Revised Statutes Supplement, 2000, is amended to read:

43-250. An officer who takes a juvenile into temporary custody under section 43-248 shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

(1) The officer shall release such juvenile;

(2) The officer shall prepare in triplicate a written notice requiring the juvenile to appear before the juvenile court ~~or probation officer~~ of the county in which such juvenile was taken into custody at a time and place specified in the notice or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the officer shall immediately release such juvenile. The officer shall, as soon as practicable, file one copy of the notice with the county attorney and, when required by the juvenile court, also file a copy of the notice with the juvenile court, ~~or the officer appointed by the court for such purpose; or the probation officer;~~

(3) The officer shall ~~take such juvenile without unnecessary delay before the juvenile court or probation officer of the county in which such juvenile was taken into custody and~~ deliver the custody of such juvenile to the juvenile court ~~or probation officer~~ to determine whether the juvenile should be released from custody or placed in secure or nonsecure detention as defined in section 43-245. When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility except:

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

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

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

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

(e) If, within the time limits specified in subdivision (3)(a) or (3)(b) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;

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

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

(4) When a juvenile is taken into temporary custody pursuant to

subdivision (3) or (4) of section 43-248, the officer may deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the officer delivers temporary custody of the juvenile pursuant to this subdivision, the officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative; or

(5) If the officer takes the juvenile into custody pursuant to subdivision (4) of section 43-248, the officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services pursuant to subdivision (4) of this section. At the time of the admission or turning the juvenile over to the department, the peace officer responsible for taking the juvenile into custody shall execute a written certificate as prescribed by the Department of Health and Human Services which will indicate that the officer believes the juvenile to be mentally ill and dangerous, a summary of the subject's behavior supporting such allegations, and that the harm described in section 83-1009 is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the juvenile. A copy of the certificate shall be forwarded to the county attorney. The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement.

In determining the appropriate temporary placement of a juvenile under this section, the officer shall select the placement which is least restrictive of the juvenile's freedom so long as such placement is compatible with the best interests of the juvenile and the safety of the community.

Sec. 6. Section 43-253, Revised Statutes Supplement, 2000, is amended to read:

43-253. (1) Upon delivery to the juvenile court or probation officer of a juvenile who has been taken into temporary custody under sections 43-248 and 43-250, the court or probation officer shall immediately investigate the situation of the juvenile and the nature and circumstances of the events surrounding his or her being taken into custody. Such investigation may be by hearing on the record before the court or by informal means when appropriate.

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

(3) No juvenile who has been taken into temporary custody under subdivision (3) of section 43-250 shall be detained in any secure detention facility for longer than twenty-four hours, excluding nonjudicial days, after having been taken into custody unless such juvenile has appeared personally before a court of competent jurisdiction for a hearing to determine if continued detention is necessary. If continued secure detention is ordered, such detention shall be in a juvenile detention facility, except that a juvenile charged with a felony as an adult in county or district court may be held in an adult jail as set forth in subdivision (3)(e) of section 43-250.

~~(3)~~ (4) When the court or probation officer deems it to be in the best interests of the juvenile, the court or probation officer shall immediately release such juvenile to the custody of his or her parent. If the juvenile has both a custodial and a noncustodial parent and the court or probation officer deems that release of the juvenile to the custodial parent is not in the best interests of the juvenile, the court or probation officer shall, if it is deemed to be in the best interests of the juvenile, attempt to contact the noncustodial parent, if any, of the juvenile and to release the juvenile to such noncustodial parent. If such release is not possible or not deemed to be in the best interests of the juvenile, the court or probation officer may release the juvenile to the custody of a legal guardian, a responsible relative, or another responsible person.

(5) The court may admit such juvenile to bail by bond in such amount and on such conditions and security as the court, in its sole discretion, shall determine, or the court may proceed as provided in section 43-254. In

no case shall the court or probation officer release such juvenile if it appears that further detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.

Sec. 7. Section 43-260, Revised Statutes Supplement, 2000, is amended to read:

43-260. The Office of Probation Administration shall prepare and distribute to probation officers ~~and judges~~ a standardized juvenile detention screening instrument. ~~before October 17, 2001.~~ The types of risk factors to be included as well as the format of this standardized juvenile detention screening instrument shall be determined by the office after reviewing recommendations derived from the Juvenile Diversion, Detention, and Probation Services Implementation Team as outlined in subdivision (1) of section 43-3602. The standardized juvenile detention screening instrument shall be used as an ~~evaluative~~ assessment tool statewide by probation officers ~~and judges~~ under section 43-260.01 in order to determine if detention of the juvenile is necessary and, if so, whether secure or nonsecure detention is indicated. Probation officers trained to administer the juvenile detention screening instrument shall act as juvenile intake probation officers. Only duly trained probation officers shall be authorized to administer the juvenile detention screening instrument.

Sec. 8. It is the intent of the Legislature to ensure that a consistent and objective method of juvenile intake occur throughout the state for juveniles held in temporary custody by a law enforcement officer, in accordance with section 43-250, to avoid either inappropriate or unnecessary detention of juveniles which may result in inordinately high detention rates, overcrowding of local detention facilities, excessive detention costs for counties, and adverse consequences for the juvenile, the juvenile's family, or the community. Juvenile intake services shall be administered by probation officers acting as juvenile probation intake officers and shall be available to all juvenile courts in the state, both county courts sitting as juvenile courts and separate juvenile courts. Such probation officers shall be appointed by the probation administrator and designated within respective probation districts based upon the need for such services as the probation administrator determines. In order to adequately provide juvenile intake services statewide and in accordance with the Juvenile Detention and Probation Services Implementation Team Interim Report and Recommendations filed with the Legislature December 15, 2000, it is the intent of the Legislature to appropriate funds to the system to provide seven additional probation officers to act in the capacity of juvenile probation intake officers.

Sec. 9. Original sections 29-2246, 29-2252.01, 29-2257, and 29-2258, Reissue Revised Statutes of Nebraska, and sections 43-250, 43-253, and 43-260, Revised Statutes Supplement, 2000, are repealed.