

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1160

Introduced by Ashford, 20.

Read first time January 23, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to courts; to amend sections 29-1816 and
2 43-276, Reissue Revised Statutes of Nebraska, and
3 sections 43-247 and 43-2,129, Revised Statutes Cumulative
4 Supplement, 2006; to change and provide provisions
5 relating to juvenile court jurisdiction, facilitated
6 conferencing, and determination of criminal charge versus
7 juvenile code adjudication; to eliminate duplicative
8 and conflicting provisions; to harmonize provisions; to
9 repeal the original sections; and to outright repeal
10 section 43-261, Reissue Revised Statutes of Nebraska.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-1816, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 29-1816 The accused shall be arraigned by reading to him
4 or her the indictment or information, unless the reading is waived
5 by the accused when the nature of the charge is made known to him
6 or her. The accused shall then be asked whether he or she is guilty
7 or not guilty of the offense charged. If the accused appears in
8 person and by counsel and goes to trial before a jury regularly
9 impaneled and sworn, he or she shall be deemed to have waived
10 arraignment and a plea of not guilty shall be deemed to have been
11 made.

12 At the time of the arraignment the court shall advise
13 the defendant, if he or she was less than eighteen years of age
14 at the time of the commitment of the alleged crime, that he or
15 she may move the county or district court at any time not later
16 than ~~fifteen days before trial~~ thirty days after arraignment,
17 unless otherwise permitted by the court for good cause shown,
18 to waive jurisdiction in such case to the juvenile court for
19 further proceedings under the Nebraska Juvenile Code. The court
20 shall schedule a hearing on such motion within fifteen days. The
21 customary rules of evidence shall not be followed at such hearing.
22 The county attorney shall present the evidence and reasons why such
23 case should be retained, the defendant shall present the evidence
24 and reasons why the case should be transferred, and both sides
25 shall consider the criteria set forth in section 43-276. After

1 considering all the evidence and reasons presented by both parties,
2 pursuant to section 43-276, the case shall be transferred unless a
3 sound basis exists for retaining the case.

4 In deciding such motion the court shall consider, among
5 other matters, the matters set forth in section 43-276 for
6 consideration by the county attorney when determining the type
7 of case to file.

8 The court shall set forth findings for the reason for
9 its decision, which shall not be a final order for the purpose
10 of enabling an appeal. If the court determines that the child
11 should be transferred to the juvenile court, the complete file in
12 the district court shall be transferred to the juvenile court and
13 the indictment or information may be used in place of a petition
14 therein. The court making a transfer shall order the minor to
15 be taken forthwith to the juvenile court and designate where the
16 minor shall be kept pending determination by the juvenile court.
17 The juvenile court shall then proceed as provided in the Nebraska
18 Juvenile Code.

19 Sec. 2. Section 43-247, Revised Statutes Cumulative
20 Supplement, 2006, is amended to read:

21 43-247 The juvenile court shall have exclusive original
22 jurisdiction as to any juvenile defined in subdivision (1) of this
23 section who is under the age of sixteen, as to any juvenile defined
24 in subdivision (3) of this section, and as to the parties and
25 proceedings provided in subdivisions (5), (6), and (8) of this

1 section. As used in this section, all references to the juvenile's
2 age shall be the age at the time the act which occasioned the
3 juvenile court action occurred. The juvenile court shall have
4 concurrent original jurisdiction with the district court as to any
5 juvenile defined in subdivision (2) of this section. The juvenile
6 court shall have concurrent original jurisdiction with the district
7 court and county court as to any juvenile defined in subdivision
8 (1) of this section who is age sixteen or seventeen, any juvenile
9 defined in subdivision (4) of this section, and any proceeding
10 under subdivision (7) or (11) of this section. The juvenile court
11 shall have concurrent original jurisdiction with the county court
12 as to any proceeding under subdivision (9) or (10) of this section.
13 Notwithstanding any disposition entered by the juvenile court
14 under the Nebraska Juvenile Code, the juvenile court's jurisdiction
15 over any individual adjudged to be within the provisions of this
16 section shall continue until the individual reaches the age of
17 majority or the court otherwise discharges the individual from its
18 jurisdiction.

19 The juvenile court in each county as herein provided
20 shall have jurisdiction of:

21 (1) Any juvenile who has committed an act other than
22 a traffic offense which would constitute a misdemeanor or an
23 infraction under the laws of this state, or violation of a city or
24 village ordinance;

25 (2) Any juvenile who has committed an act which would

1 constitute a felony under the laws of this state;

2 (3) Any juvenile (a) who is homeless or destitute, or
3 without proper support through no fault of his or her parent,
4 guardian, or custodian; who is abandoned by his or her parent,
5 guardian, or custodian; who lacks proper parental care by reason of
6 the fault or habits of his or her parent, guardian, or custodian;
7 whose parent, guardian, or custodian neglects or refuses to provide
8 proper or necessary subsistence, education, or other care necessary
9 for the health, morals, or well-being of such juvenile; whose
10 parent, guardian, or custodian is unable to provide or neglects
11 or refuses to provide special care made necessary by the mental
12 condition of the juvenile; or who is in a situation or engages
13 in an occupation dangerous to life or limb or injurious to the
14 health or morals of such juvenile, (b) who, by reason of being
15 wayward or habitually disobedient, is uncontrolled by his or her
16 parent, guardian, or custodian; who departs himself or herself
17 so as to injure or endanger seriously the morals or health of
18 himself, herself, or others; or who is habitually truant from home
19 or school, or (c) who is mentally ill and dangerous as defined in
20 section 71-908;

21 (4) Any juvenile who has committed an act which would
22 constitute a traffic offense as defined in section 43-245;

23 (5) The parent, guardian, or custodian ~~who has eustody~~ of
24 any juvenile described in this section;

25 (6) The proceedings for termination of parental rights as

1 provided in the Nebraska Juvenile Code;

2 (7) The proceedings for termination of parental rights as
3 provided in section 42-364;

4 (8) Any juvenile who has been voluntarily relinquished,
5 pursuant to section 43-106.01, to the Department of Health and
6 Human Services or any child placement agency licensed by the
7 Department of Health and Human Services;

8 (9) Any juvenile who was a ward of the juvenile court at
9 the inception of his or her guardianship and whose guardianship has
10 been disrupted or terminated;

11 (10) The adoption or guardianship proceedings for a
12 child over which the juvenile court already has jurisdiction under
13 another provision of the Nebraska Juvenile Code; and

14 (11) The paternity determination for a child over which
15 the juvenile court already has jurisdiction.

16 Notwithstanding the provisions of the Nebraska Juvenile
17 Code, the determination of jurisdiction over any Indian child as
18 defined in section 43-1503 shall be subject to the Nebraska Indian
19 Child Welfare Act; and the district court shall have exclusive
20 jurisdiction in proceedings brought pursuant to section 71-510.

21 Sec. 3. (1) Pending the adjudication of any case, the
22 court may provide the parties the opportunity to address issues
23 involving the child's care and placement, services to the family,
24 and other concerns through facilitated conferencing. Facilitated
25 conferencing may include prehearing conferences and family group

1 conferences. All discussions taking place during such facilitated
2 conferences, including plea negotiations, shall be considered
3 confidential and privileged communications as provided in sections
4 25-2914 and 25-2933.

5 (2) For purposes of this section:

6 (a) Prehearing conference means a facilitated meeting
7 prior to appearing in court and held to gain the cooperation
8 of the parties, to offer services and treatment, and to develop
9 a problem-solving atmosphere in the best interests of children
10 involved in the juvenile court system; and

11 (b) Family group conference means a facilitated
12 collaborative process in which families work with extended family
13 members and others to make decisions and develop plans for the best
14 interests of children who are under the jurisdiction of the court.

15 Sec. 4. Section 43-276, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 43-276 In cases coming within subdivision (1) of section
18 43-247, when there is concurrent jurisdiction, or subdivision
19 (2) or (4) of section 43-247, when the juvenile is under the
20 age of sixteen years, the county attorney shall, in making
21 the determination whether to file a criminal charge, file a
22 juvenile court petition, offer juvenile pretrial diversion, or
23 offer mediation, consider: (1) The type of treatment such juvenile
24 would most likely be amenable to; (2) whether there is evidence
25 that the alleged offense included violence or was committed in

1 an aggressive and premeditated manner; (3) the motivation for the
2 commission of the offense; (4) the age of the juvenile and the ages
3 and circumstances of any others involved in the offense; (5) the
4 previous history of the juvenile, including whether he or she had
5 been convicted of any previous offenses or adjudicated in juvenile
6 court, and, if so, whether such offenses were crimes against the
7 person or relating to property, and other previous history of
8 antisocial behavior, if any, including any patterns of physical
9 violence; (6) the sophistication and maturity of the juvenile as
10 determined by consideration of his or her home, school activities,
11 emotional attitude and desire to be treated as an adult, pattern
12 of living, and whether he or she has had previous contact with law
13 enforcement agencies and courts and the nature thereof; (7) whether
14 there are facilities particularly available to the juvenile court
15 for treatment and rehabilitation of the juvenile; (8) whether the
16 best interests of the juvenile and the security of the public may
17 require that the juvenile continue in secure detention or under
18 supervision for a period extending beyond his or her minority and,
19 if so, the available alternatives best suited to this purpose;
20 (9) whether the victim agrees to participate in mediation; (10)
21 whether there is a juvenile pretrial diversion program established
22 pursuant to sections 43-260.02 to 43-260.07; ~~and~~ (11) whether the
23 juvenile has been convicted of or has acknowledged unauthorized use
24 or possession of a firearm; (12) whether a juvenile court order has
25 been issued for the juvenile pursuant to section 5 of this act; and

1 (13) such other matters as the county attorney deems relevant to
2 his or her decision.

3 Sec. 5. Anytime after the disposition of a juvenile
4 described in subdivision (1), (2), (3)(b), or (4) of section
5 43-247, the county attorney may motion the court for a hearing
6 regarding the amenability of the juvenile to the rehabilitative
7 services that can be provided under the Nebraska Juvenile Code.
8 The court may enter an order, based upon evidence presented at
9 a hearing on the matter, finding that a juvenile is not amenable
10 to rehabilitative services that can be provided under the Nebraska
11 Juvenile Code. The reasons for such a finding shall be stated in
12 the order. Such an order shall be considered under section 43-276
13 by the county attorney in determining where to file a subsequent
14 charge against the juvenile and by the court when considering a
15 transfer motion under section 29-1816 or 43-261.

16 Sec. 6. Section 43-2,129, Revised Statutes Cumulative
17 Supplement, 2006, is amended to read:

18 43-2,129 Sections 43-245 to 43-2,129 and sections 3 and
19 5 of this act shall be known and may be cited as the Nebraska
20 Juvenile Code.

21 Sec. 7. Original sections 29-1816 and 43-276, Reissue
22 Revised Statutes of Nebraska, and sections 43-247 and 43-2,129,
23 Revised Statutes Cumulative Supplement, 2006, are repealed.

24 Sec. 8. The following section is outright repealed:
25 Section 43-261, Reissue Revised Statutes of Nebraska.