

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 25

Introduced by Krist, 10.

Read first time January 08, 2015

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to courts; to amend sections 29-1816, 43-245,
- 2 43-246.01, 43-247, and 43-2,129, Revised Statutes Cumulative
- 3 Supplement, 2014; to change court jurisdiction as prescribed; to
- 4 define a term; to harmonize provisions; and to repeal the original
- 5 sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-1816, Revised Statutes Cumulative Supplement,
2 2014, 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 fourteen years of age or older when an alleged offense punishable as a
9 Class I, IA, IB, IC, ID, II, or III felony was committed; ~~or~~

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 set forth findings for
12 the reason for its decision. If the county court or district court
13 determines that the accused should be transferred to the juvenile court,
14 the complete file in the county court or district court shall be
15 transferred to the juvenile court and the complaint, indictment, or
16 information may be used in place of a petition therein. The county court
17 or district court making a transfer shall order the accused to be taken
18 forthwith to the juvenile court and designate where the juvenile shall be
19 kept pending determination by the juvenile court. The juvenile court
20 shall then proceed as provided in the Nebraska Juvenile Code.

21 (4) When the accused was younger than eighteen years of age when an
22 alleged offense was committed, the county attorney or city attorney shall
23 proceed under section 43-274.

24 Sec. 2. Section 43-245, Revised Statutes Cumulative Supplement,
25 2014, is amended to read:

26 43-245 For purposes of the Nebraska Juvenile Code, unless the
27 context otherwise requires:

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

1 (2) Age of majority means nineteen years of age;

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

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

7 (5) Cost or costs means (a) the sum or equivalent expended, paid, or
8 charged for goods or services, or expenses incurred, or (b) the
9 contracted or negotiated price;

10 (6) Criminal street gang means a group of three or more people with
11 a common identifying name, sign, or symbol whose group identity or
12 purposes include engaging in illegal activities;

13 (7) Criminal street gang member means a person who willingly or
14 voluntarily becomes and remains a member of a criminal street gang;

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

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

20 (10) Juvenile means any person under the age of eighteen;

21 (11) Juvenile court means the separate juvenile court where it has
22 been established pursuant to sections 43-2,111 to 43-2,127 and the county
23 court sitting as a juvenile court in all other counties. Nothing in the
24 Nebraska Juvenile Code shall be construed to deprive the district courts
25 of their habeas corpus, common-law, or chancery jurisdiction or the
26 county courts and district courts of jurisdiction of domestic relations
27 matters as defined in section 25-2740;

28 (12) Juvenile detention facility has the same meaning as in section
29 83-4,125;

30 (13) Legal custody has the same meaning as in section 43-2922;

31 (14) Mediator for juvenile offender and victim mediation means a

1 person who (a) has completed at least thirty hours of training in
2 conflict resolution techniques, neutrality, agreement writing, and ethics
3 set forth in section 25-2913, (b) has an additional eight hours of
4 juvenile offender and victim mediation training, and (c) meets the
5 apprenticeship requirements set forth in section 25-2913;

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

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

13 (17) Nonsecure detention means detention characterized by the
14 absence of restrictive hardware, construction, and procedure. Nonsecure
15 detention services may include a range of placement and supervision
16 options, such as home detention, electronic monitoring, day reporting,
17 drug court, tracking and monitoring supervision, staff secure and
18 temporary holdover facilities, and group homes;

19 (18) Parent means one or both parents or stepparents when the
20 stepparent is married to a parent who has physical custody of the
21 juvenile as of the filing of the petition;

22 (19) Parties means the juvenile as described in section 43-247 and
23 his or her parent, guardian, or custodian;

24 (20) Physical custody has the same meaning as in section 43-2922;

25 (21) Except in proceedings under the Nebraska Indian Child Welfare
26 Act, relative means father, mother, grandfather, grandmother, brother,
27 sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt,
28 first cousin, nephew, or niece;

29 (22) Seal a record means that a record shall not be available to the
30 public except upon the order of a court upon good cause shown;

31 (23) Secure detention means detention in a highly structured,

1 residential, hardware-secured facility designed to restrict a juvenile's
2 movement;

3 (24) Staff secure juvenile facility has the same meaning as in
4 section 83-4,125;

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

9 (26) Traffic offense means any nonfelonious act in violation of a
10 law or ordinance regulating vehicular or pedestrian travel, whether
11 designated a misdemeanor or a traffic infraction; and -

12 (27) Young adult means an individual older than eighteen years of
13 age but under twenty-one years of age.

14 Sec. 3. Section 43-246.01, Revised Statutes Cumulative Supplement,
15 2014, is amended to read:

16 43-246.01 The juvenile court shall have:

17 (1) Exclusive original jurisdiction as to:

18 (a) Any juvenile described in subdivision (3) of section 43-247;

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

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

24 (d) Any juvenile who was under fourteen years of age at the time the
25 alleged offense was committed and the offense falls under subdivision (2)
26 of section 43-247;

27 (2) Exclusive original jurisdiction as to:

28 (a) ~~Any Beginning January 1, 2015,~~ any juvenile who is alleged to
29 have committed an offense under subdivision (1) of section 43-247 and who
30 was sixteen years of age at the time the alleged offense was committed,
31 and beginning January 1, 2017, any juvenile who is alleged to have

1 committed an offense under subdivision (1) of section 43-247 and who was
2 sixteen years of age or seventeen years of age at the time the alleged
3 offense was committed; and

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

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

10 (3) Concurrent original jurisdiction with the county court or
11 district court as to:

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

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

15 (c) Any juvenile described in subdivision (1)(a)(ii) of section
16 29-1816; and

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

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

22 Sec. 4. (1) The juvenile court's jurisdiction over a young adult
23 may be extended beyond eighteen years of age, but in no case beyond
24 twenty-one years of age, when:

25 (a) The young adult is alleged to have committed an offense under
26 subdivision (1), (2), (3)(b), or (4) of section 43-247;

27 (b) The young adult was eighteen years of age or younger when the
28 offense was committed; and

29 (c) All parties consent to the juvenile court's extended
30 jurisdiction for the purposes of continuing treatment or services which
31 are related to the offense.

1 (2) If jurisdiction is extended beyond eighteen years of age under
2 subsection (1) of this section, the juvenile court shall:

3 (a) Specify the length of the extension, not to exceed a six-month
4 increment;

5 (b) Specify what treatment or services will be provided in the
6 juvenile court order during the extended jurisdiction; and

7 (c) At the request of a party, set a review hearing every six months
8 thereafter at which an additional six-month incremental extension may be
9 considered.

10 (3) If no review hearing is set initially, the parties may, by
11 stipulated motion signed by all parties, request further extensions in no
12 greater than six-month increments. If no party requests an additional
13 six-month extension through stipulated motion or by requesting a review
14 hearing, the extended jurisdiction shall terminate at the end of the
15 period specified in the original order or at the end of six months after
16 the order extending jurisdiction, whichever occurs first.

17 (4) Treatment ordered under this section shall not include
18 commitment to a youth rehabilitation and treatment center or a juvenile
19 detention facility.

20 Sec. 5. Section 43-247, Revised Statutes Cumulative Supplement,
21 2014, is amended to read:

22 43-247 The juvenile court in each county shall have jurisdiction of:

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

26 (2) Any juvenile who has committed an act which would constitute a
27 felony under the laws of this state;

28 (3) Any juvenile (a) who is homeless or destitute, or without proper
29 support through no fault of his or her parent, guardian, or custodian;
30 who is abandoned by his or her parent, guardian, or custodian; who lacks
31 proper parental care by reason of the fault or habits of his or her

1 parent, guardian, or custodian; whose parent, guardian, or custodian
2 neglects or refuses to provide proper or necessary subsistence,
3 education, or other care necessary for the health, morals, or well-being
4 of such juvenile; whose parent, guardian, or custodian is unable to
5 provide or neglects or refuses to provide special care made necessary by
6 the mental condition of the juvenile; or who is in a situation or engages
7 in an occupation, including prostitution, dangerous to life or limb or
8 injurious to the health or morals of such juvenile, (b) who, by reason of
9 being wayward or habitually disobedient, is uncontrolled by his or her
10 parent, guardian, or custodian; who departs himself or herself so as to
11 injure or endanger seriously the morals or health of himself, herself, or
12 others; or who is habitually truant from home or school, or (c) who is
13 mentally ill and dangerous as defined in section 71-908;

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

16 (5) The parent, guardian, or custodian of any juvenile described in
17 this section;

18 (6) The proceedings for termination of parental rights;

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

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

26 (9) The adoption or guardianship proceedings for a child over which
27 the juvenile court already has jurisdiction under another provision of
28 the Nebraska Juvenile Code;

29 (10) The paternity or custody determination for a child over which
30 the juvenile court already has jurisdiction; ~~and~~

31 (11) The proceedings under the Young Adult Bridge to Independence

1 Act; and -

2 (12) Any young adult over whom the juvenile court has extended
3 jurisdiction pursuant to section 4 of this act.

4 Notwithstanding the provisions of the Nebraska Juvenile Code, the
5 determination of jurisdiction over any Indian child as defined in section
6 43-1503 shall be subject to the Nebraska Indian Child Welfare Act; and
7 the district court shall have exclusive jurisdiction in proceedings
8 brought pursuant to section 71-510.

9 Sec. 6. Section 43-2,129, Revised Statutes Cumulative Supplement,
10 2014, is amended to read:

11 43-2,129 Sections 43-245 to 43-2,129 and section 4 of this act shall
12 be known and may be cited as the Nebraska Juvenile Code.

13 Sec. 7. Original sections 29-1816, 43-245, 43-246.01, 43-247, and
14 43-2,129, Revised Statutes Cumulative Supplement, 2014, are repealed.