

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 709**

Introduced by Howard, 9; Pansing Brooks, 28.

Read first time January 06, 2016

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend  
2 sections 43-253, 43-255, 43-256, 43-260, 43-260.01, and 43-3504,  
3 Revised Statutes Cumulative Supplement, 2014, and sections 43-245  
4 and 43-250, Revised Statutes Supplement, 2015; to provide for an  
5 alternative to detention; to define and eliminate a term; to  
6 harmonize provisions; and to repeal the original sections.

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

1 Section 1. Section 43-245, Revised Statutes Supplement, 2015, is  
2 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 nineteen years of age;

10 (3) Alternative to detention means a program or directive that  
11 increases supervision of a youth in the community in an effort to ensure  
12 the youth attends court and refrains from committing a new law violation.  
13 Alternative to detention includes, but is not limited to, electronic  
14 monitoring, day and evening reporting centers, house arrest, tracking,  
15 family crisis response, and temporary shelter placement. Placements that  
16 utilize physical construction or hardware to restrain a youth's freedom  
17 of movement and ingress and egress from placement are not considered  
18 alternatives to detention;

19 (4 3) Approved center means a center that has applied for and  
20 received approval from the Director of the Office of Dispute Resolution  
21 under section 25-2909;

22 (5 4) Civil citation means a noncriminal notice which cannot result  
23 in a criminal record and is described in section 43-248.02;

24 (6 5) Cost or costs means (a) the sum or equivalent expended, paid,  
25 or charged for goods or services, or expenses incurred, or (b) the  
26 contracted or negotiated price;

27 (7 6) Criminal street gang means a group of three or more people  
28 with a common identifying name, sign, or symbol whose group identity or  
29 purposes include engaging in illegal activities;

30 (8 7) Criminal street gang member means a person who willingly or  
31 voluntarily becomes and remains a member of a criminal street gang;

1           (9 8) Custodian means a nonparental caretaker having physical  
2 custody of the juvenile and includes an appointee described in section  
3 43-294;

4           (10 9) Guardian means a person, other than a parent, who has  
5 qualified by law as the guardian of a juvenile pursuant to testamentary  
6 or court appointment, but excludes a person who is merely a guardian ad  
7 litem;

8           (11 10) Juvenile means any person under the age of eighteen;

9           (12 11) Juvenile court means the separate juvenile court where it  
10 has been established pursuant to sections 43-2,111 to 43-2,127 and the  
11 county court sitting as a juvenile court in all other counties. Nothing  
12 in the Nebraska Juvenile Code shall be construed to deprive the district  
13 courts of their habeas corpus, common-law, or chancery jurisdiction or  
14 the county courts and district courts of jurisdiction of domestic  
15 relations matters as defined in section 25-2740;

16           (13 12) Juvenile detention facility has the same meaning as in  
17 section 83-4,125;

18           (14 13) Legal custody has the same meaning as in section 43-2922;

19           (15 14) Mediator for juvenile offender and victim mediation means a  
20 person who (a) has completed at least thirty hours of training in  
21 conflict resolution techniques, neutrality, agreement writing, and ethics  
22 set forth in section 25-2913, (b) has an additional eight hours of  
23 juvenile offender and victim mediation training, and (c) meets the  
24 apprenticeship requirements set forth in section 25-2913;

25           (16 15) Mental health facility means a treatment facility as defined  
26 in section 71-914 or a government, private, or state hospital which  
27 treats mental illness;

28           (17 16) Nonoffender means a juvenile who is subject to the  
29 jurisdiction of the juvenile court for reasons other than legally  
30 prohibited conduct, including, but not limited to, juveniles described in  
31 subdivision (3)(a) of section 43-247;

1           ~~(17) Nonsecure detention means detention characterized by the~~  
2 ~~absence of restrictive hardware, construction, and procedure. Nonsecure~~  
3 ~~detention services may include a range of placement and supervision~~  
4 ~~options, such as home detention, electronic monitoring, day reporting,~~  
5 ~~drug court, tracking and monitoring supervision, staff secure and~~  
6 ~~temporary holdover facilities, and group homes;~~

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

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

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

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

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

19          (23) Secure detention means detention in a highly structured,  
20 residential, hardware-secured facility designed to restrict a juvenile's  
21 movement;

22          (24) Staff secure juvenile facility means a juvenile residential  
23 facility operated by a political subdivision (a) which does not include  
24 construction designed to physically restrict the movements and activities  
25 of juveniles who are in custody in the facility, (b) in which physical  
26 restriction of movement or activity of juveniles is provided solely  
27 through staff, (c) which may establish reasonable rules restricting  
28 ingress to and egress from the facility, and (d) in which the movements  
29 and activities of individual juvenile residents may, for treatment  
30 purposes, be restricted or subject to control through the use of  
31 intensive staff supervision. Staff secure juvenile facility does not

1 include any institution operated by the Department of Correctional  
2 Services has the same meaning as in section 83-4,125;

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

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

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

12 Sec. 2. Section 43-250, Revised Statutes Supplement, 2015, is  
13 amended to read:

14 43-250 (1) A peace officer who takes a juvenile into temporary  
15 custody under section 29-401 or subdivision (1), (4), or (5) of section  
16 43-248 shall immediately take reasonable measures to notify the  
17 juvenile's parent, guardian, custodian, or relative and shall proceed as  
18 follows:

19 (a) The peace officer may release a juvenile taken into temporary  
20 custody under section 29-401 or subdivision (1) or (4) of section 43-248;

21 (b) The peace officer may require a juvenile taken into temporary  
22 custody under section 29-401 or subdivision (1) or (4) of section 43-248  
23 to appear before the court of the county in which such juvenile was taken  
24 into custody at a time and place specified in the written notice prepared  
25 in triplicate by the peace officer or at the call of the court. The  
26 notice shall also contain a concise statement of the reasons such  
27 juvenile was taken into custody. The peace officer shall deliver one copy  
28 of the notice to such juvenile and require such juvenile or his or her  
29 parent, guardian, other custodian, or relative, or both, to sign a  
30 written promise that such signer will appear at the time and place  
31 designated in the notice. Upon the execution of the promise to appear,

1 the peace officer shall immediately release such juvenile. The peace  
2 officer shall, as soon as practicable, file one copy of the notice with  
3 the county attorney or city attorney and, when required by the court,  
4 also file a copy of the notice with the court or the officer appointed by  
5 the court for such purpose; or

6 (c) The peace officer may retain temporary custody of a juvenile  
7 taken into temporary custody under section 29-401 or subdivision (1),  
8 (4), or (5) of section 43-248 and deliver the juvenile, if necessary, to  
9 the probation officer and communicate all relevant available information  
10 regarding such juvenile to the probation officer. The probation officer  
11 shall determine the need for detention of the juvenile as provided in  
12 section 43-260.01. Upon determining that the juvenile should be placed in  
13 detention or an alternative to detention ~~a secure or nonsecure placement~~  
14 and securing placement in such ~~secure or nonsecure~~ setting by the  
15 probation officer, the peace officer shall implement the probation  
16 officer's decision to release or to detain and place the juvenile. When  
17 secure detention of a juvenile is necessary, such detention shall occur  
18 within a juvenile detention facility except:

19 (i) When a juvenile described in subdivision (1) or (2) of section  
20 43-247, except for a status offender, is taken into temporary custody  
21 within a metropolitan statistical area and where no juvenile detention  
22 facility is reasonably available, the juvenile may be delivered, for  
23 temporary custody not to exceed six hours, to a secure area of a jail or  
24 other facility intended or used for the detention of adults solely for  
25 the purposes of identifying the juvenile and ascertaining his or her  
26 health and well-being and for safekeeping while awaiting transport to an  
27 appropriate juvenile placement or release to a responsible party;

28 (ii) When a juvenile described in subdivision (1) or (2) of section  
29 43-247, except for a status offender, is taken into temporary custody  
30 outside of a metropolitan statistical area and where no juvenile  
31 detention facility is reasonably available, the juvenile may be

1 delivered, for temporary custody not to exceed twenty-four hours  
2 excluding nonjudicial days and while awaiting an initial court  
3 appearance, to a secure area of a jail or other facility intended or used  
4 for the detention of adults solely for the purposes of identifying the  
5 juvenile and ascertaining his or her health and well-being and for  
6 safekeeping while awaiting transport to an appropriate juvenile placement  
7 or release to a responsible party;

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

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

19 (v) If, within the time limits specified in subdivision (1)(c)(i) or  
20 (1)(c)(ii) of this section, a felony charge is filed against the juvenile  
21 as an adult in county or district court, he or she may be securely held  
22 in a jail or other facility intended or used for the detention of adults  
23 beyond the specified time limits;

24 (vi) A status offender or nonoffender taken into temporary custody  
25 shall not be held in a secure area of a jail or other facility intended  
26 or used for the detention of adults. Until January 1, 2013, a status  
27 offender accused of violating a valid court order may be securely  
28 detained in a juvenile detention facility longer than twenty-four hours  
29 if he or she is afforded a detention hearing before a court within  
30 twenty-four hours, excluding nonjudicial days, and if, prior to a  
31 dispositional commitment to secure placement, a public agency, other than

1 a court or law enforcement agency, is afforded an opportunity to review  
2 the juvenile's behavior and possible alternatives to secure placement and  
3 has submitted a written report to the court; and

4 (vii) A juvenile described in subdivision (1) or (2) of section  
5 43-247, except for a status offender, may be held in a secure area of a  
6 jail or other facility intended or used for the detention of adults for  
7 up to six hours before and six hours after any court appearance.

8 (2) When a juvenile is taken into temporary custody pursuant to  
9 subdivision (2) or (7) of section 43-248, the peace officer shall deliver  
10 the custody of such juvenile to the Department of Health and Human  
11 Services which shall make a temporary placement of the juvenile in the  
12 least restrictive environment consistent with the best interests of the  
13 juvenile as determined by the department. The department shall supervise  
14 such placement and, if necessary, consent to any necessary emergency  
15 medical, psychological, or psychiatric treatment for such juvenile. The  
16 department shall have no other authority with regard to such temporary  
17 custody until or unless there is an order by the court placing the  
18 juvenile in the custody of the department. If the peace officer delivers  
19 temporary custody of the juvenile pursuant to this subsection, the peace  
20 officer shall make a full written report to the county attorney within  
21 twenty-four hours of taking such juvenile into temporary custody. If a  
22 court order of temporary custody is not issued within forty-eight hours  
23 of taking the juvenile into custody, the temporary custody by the  
24 department shall terminate and the juvenile shall be returned to the  
25 custody of his or her parent, guardian, custodian, or relative.

26 (3) If the peace officer takes the juvenile into temporary custody  
27 pursuant to subdivision (3) of section 43-248, the peace officer may  
28 place the juvenile at a mental health facility for evaluation and  
29 emergency treatment or may deliver the juvenile to the Department of  
30 Health and Human Services as provided in subsection (2) of this section.  
31 At the time of the admission or turning the juvenile over to the



1 department, the peace officer responsible for taking the juvenile into  
2 custody pursuant to subdivision (3) of section 43-248 shall execute a  
3 written certificate as prescribed by the Department of Health and Human  
4 Services which will indicate that the peace officer believes the juvenile  
5 to be mentally ill and dangerous, a summary of the subject's behavior  
6 supporting such allegations, and that the harm described in section  
7 71-908 is likely to occur before proceedings before a juvenile court may  
8 be invoked to obtain custody of the juvenile. A copy of the certificate  
9 shall be forwarded to the county attorney. The peace officer shall notify  
10 the juvenile's parents, guardian, custodian, or relative of the  
11 juvenile's placement.

12 (4) When a juvenile is taken into temporary custody pursuant to  
13 subdivision (6) of section 43-248, the peace officer shall deliver the  
14 juvenile to the enrolled school of such juvenile.

15 (5) A juvenile taken into custody pursuant to a legal warrant of  
16 arrest shall be delivered to a probation officer who shall determine the  
17 need for detention of the juvenile as provided in section 43-260.01. If  
18 detention is not required, the juvenile may be released without bond if  
19 such release is in the best interests of the juvenile, the safety of the  
20 community is not at risk, and the court that issued the warrant is  
21 notified that the juvenile had been taken into custody and was released.

22 (6) In determining the appropriate temporary placement or  
23 alternative to detention of a juvenile under this section, the peace  
24 officer shall select the placement or alternative which is least  
25 restrictive of the juvenile's freedom so long as such placement or  
26 alternative is compatible with the best interests of the juvenile and the  
27 safety of the community. Any alternative to detention shall least  
28 restrict the juvenile's freedom of movement consistent with the best  
29 interest of the juvenile and the safety of the community.

30 Sec. 3. Section 43-253, Revised Statutes Cumulative Supplement,  
31 2014, is amended to read:

1           43-253 (1) Upon delivery to the probation officer of a juvenile who  
2 has been taken into temporary custody under section 29-401, 43-248, or  
3 43-250, the probation officer shall immediately investigate the situation  
4 of the juvenile and the nature and circumstances of the events  
5 surrounding his or her being taken into custody. Such investigation may  
6 be by informal means when appropriate.

7           (2) The probation officer's decision to release the juvenile from  
8 custody or place the juvenile in ~~secure or nonsecure~~ detention or an  
9 alternative to detention shall be based upon the results of the  
10 standardized juvenile detention screening instrument described in section  
11 43-260.01.

12           (3) No juvenile who has been taken into temporary custody under  
13 subdivision (1)(c) of section 43-250 shall be detained in any secure  
14 detention facility or be subject to an alternative to detention  
15 infringing upon the juvenile's liberty interest for longer than twenty-  
16 four hours, excluding nonjudicial days, after having been taken into  
17 custody unless such juvenile has appeared personally before a court of  
18 competent jurisdiction for a hearing to determine if continued detention,  
19 services, or supervision is necessary. If continued secure detention is  
20 ordered, such detention shall be in a juvenile detention facility, except  
21 that a juvenile charged with a felony as an adult in county or district  
22 court may be held in an adult jail as set forth in subdivision (1)(c)(v)  
23 of section 43-250. A juvenile placed in an alternative to detention, but  
24 not in detention, may waive this hearing through counsel.

25           (4) When the probation officer deems it to be in the best interests  
26 of the juvenile, the probation officer shall immediately release such  
27 juvenile to the custody of his or her parent. If the juvenile has both a  
28 custodial and a noncustodial parent and the probation officer deems that  
29 release of the juvenile to the custodial parent is not in the best  
30 interests of the juvenile, the probation officer shall, if it is deemed  
31 to be in the best interests of the juvenile, attempt to contact the

1 noncustodial parent, if any, of the juvenile and to release the juvenile  
2 to such noncustodial parent. If such release is not possible or not  
3 deemed to be in the best interests of the juvenile, the probation officer  
4 may release the juvenile to the custody of a legal guardian, a  
5 responsible relative, or another responsible person.

6 (5) The court may admit such juvenile to bail by bond in such amount  
7 and on such conditions and security as the court, in its sole discretion,  
8 shall determine, or the court may proceed as provided in section 43-254.  
9 In no case shall the court or probation officer release such juvenile if  
10 it appears that further detention or placement of such juvenile is a  
11 matter of immediate and urgent necessity for the protection of such  
12 juvenile or the person or property of another or if it appears that such  
13 juvenile is likely to flee the jurisdiction of the court.

14 Sec. 4. Section 43-255, Revised Statutes Cumulative Supplement,  
15 2014, is amended to read:

16 43-255 Whenever a juvenile is detained or placed in an alternative  
17 to detention infringing upon the child's liberty interest under section  
18 43-250 or 43-253, the juvenile shall be released unconditionally within  
19 forty-eight hours after the detention or placement order or the setting  
20 of bond, excluding nonjudicial days, unless within such period of time  
21 (1) a motion has been filed alleging that such juvenile has violated an  
22 order of the juvenile court, (2) a juvenile court petition has been filed  
23 pursuant to section 43-274, or (3) a criminal complaint has been filed in  
24 a court of competent jurisdiction.

25 Sec. 5. Section 43-256, Revised Statutes Cumulative Supplement,  
26 2014, is amended to read:

27 43-256 When the court enters an order continuing placement, ~~or~~  
28 detention, or an alternative to detention infringing upon the juvenile's  
29 liberty interest pursuant to section 43-253, upon request of the  
30 juvenile, or his or her parent, guardian, or attorney, the court shall  
31 hold a hearing within forty-eight hours, at which hearing the burden of

1 proof shall be upon the state to show probable cause that such juvenile  
2 is within the jurisdiction of the court. Strict rules of evidence shall  
3 not apply at the probable cause hearing. The juvenile shall be released  
4 if probable cause is not shown. At the option of the court, it may hold  
5 the adjudication hearing provided in section 43-279 as soon as possible  
6 instead of the probable cause hearing if held within a reasonable period  
7 of time. This section and section 43-255 shall not apply to a juvenile  
8 (1) who has escaped from a commitment or (2) who has been taken into  
9 custody for his or her own protection as provided in subdivision (2) of  
10 section 43-248 in which case the juvenile shall be held on order of the  
11 court with jurisdiction for a reasonable period of time.

12 Sec. 6. Section 43-260.01, Revised Statutes Cumulative Supplement,  
13 2014, is amended to read:

14 43-260.01 The need for preadjudication placement, services, or  
15 supervision and the need for detention of a juvenile and whether  
16 detention secure or an alternative to detention ~~nonsecure~~ ~~detention~~ is  
17 indicated shall be subject to subdivision (5) of section 43-251.01 and  
18 may be determined as follows:

19 (1) The standardized juvenile detention screening instrument shall  
20 be used to evaluate the juvenile;

21 (2) If the results indicate that ~~secure~~ detention is not required,  
22 the juvenile shall be released without restriction or released to an  
23 alternative to detention ~~nonsecure~~ ~~detention~~ ~~placement~~ ~~or~~ ~~supervision~~  
24 ~~options shall be pursued~~; and

25 (3) If the results indicate that ~~secure~~ detention is required,  
26 ~~detention at the secure level as indicated by the instrument~~ shall be  
27 pursued.

28 Sec. 7. Section 43-260, Reissue Revised Statutes of Nebraska, is  
29 amended to read:

30 43-260 The Office of Probation Administration shall prepare and  
31 distribute to probation officers a standardized juvenile detention

1 screening instrument. The types of risk factors to be included as well as  
2 the format of this standardized juvenile detention screening instrument  
3 shall be determined by the office. The standardized juvenile detention  
4 screening instrument shall be used as an assessment tool statewide by  
5 probation officers under section 43-260.01 in order to determine if  
6 detention of the juvenile is necessary and, if so, whether ~~secure or~~  
7 ~~nonsecure~~ detention or an alternative to detention is indicated.  
8 Probation officers trained to administer the juvenile detention screening  
9 instrument shall act as juvenile intake probation officers. Only duly  
10 trained probation officers shall be authorized to administer the juvenile  
11 detention screening instrument.

12 Sec. 8. Section 43-3504, Reissue Revised Statutes of Nebraska, is  
13 amended to read:

14 43-3504 (1) Each county shall develop a county juvenile services  
15 plan by January 1, 2003. Two or more counties may establish a multicounty  
16 juvenile services plan. Such plan should include input from individuals  
17 comprising a local juvenile justice advisory committee as provided for in  
18 subdivision (1) of section 43-3505 or a similar committee or group of  
19 individuals. The plan shall be submitted to the Nebraska Commission on  
20 Law Enforcement and Criminal Justice and shall include:

21 (a) Identification of the risk factors for delinquency that exist in  
22 the county or counties and service needs;

23 (b) Identification of juvenile services available within the county  
24 or counties, including, but not limited to, programs for assessment and  
25 evaluation, the prevention of delinquent behavior, diversion, detention,  
26 shelter care, intensive juvenile probation services, restitution, family  
27 support services, and community centers for the care and treatment of  
28 juveniles in need of services;

29 (c) Identification of juvenile services within close proximity of  
30 the county or counties that may be utilized if community-based programs  
31 are not available within the county or counties;

1 (d) Identification of the facilities the county primarily uses for  
2 juvenile ~~secure detention and for nonsecure detention~~ or alternatives to  
3 detention, including the costs associated with use of such facilities;  
4 and

5 (e) A coordination plan and an enhancement, development, and  
6 expansion plan of community services within the county, counties, or  
7 region to help prevent delinquency by providing intervention services  
8 when behavior that leads to delinquency is first exhibited. Examples of  
9 intervention services include, but are not limited to, alternative  
10 schools, school truancy programs, volunteer programs, family preservation  
11 and counseling, drug and alcohol counseling, diversion programs, and  
12 Parents Anonymous.

13 (2) Following or in conjunction with the development of a county  
14 juvenile services plan, each county may develop regional service plans  
15 and establish regional juvenile services boards when appropriate. The  
16 regional service plan shall be submitted to the Nebraska Commission on  
17 Law Enforcement and Criminal Justice.

18 (3) Plans developed under this section shall be updated no less than  
19 every five years after the date the plan is submitted to the commission.

20 Sec. 9. Original sections 43-253, 43-255, 43-256, 43-260,  
21 43-260.01, and 43-3504, Revised Statutes Cumulative Supplement, 2014, and  
22 sections 43-245 and 43-250, Revised Statutes Supplement, 2015, are  
23 repealed.