

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 8

FINAL READING

Introduced by Krist, 10.

Read first time January 05, 2017

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend
- 2 sections 43-253, 43-286, and 43-286.01, Reissue Revised Statutes of
- 3 Nebraska; to change and eliminate provisions relating to juvenile
- 4 detention and probation; to provide for graduated response sanctions
- 5 and incentives as prescribed; to harmonize provisions; and to repeal
- 6 the original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-253, Reissue Revised Statutes of Nebraska, is
2 amended to read:

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

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

13 (3) No juvenile who has been taken into temporary custody under
14 subdivision (1)(c) of section 43-250 or subsection (6) of section
15 43-286.01 or pursuant to an alleged violation of an order for conditional
16 release shall be detained in any detention facility or be subject to an
17 alternative to detention infringing upon the juvenile's liberty interest
18 for longer than twenty-four hours, excluding nonjudicial days, after
19 having been taken into custody unless such juvenile has appeared
20 personally before a court of competent jurisdiction for a hearing to
21 determine if continued detention, services, or supervision is necessary.
22 The juvenile shall be represented by counsel at the hearing. Whether such
23 counsel shall be provided at the cost of the county shall be determined
24 as provided in subsection (1) of section 43-272. If continued secure
25 detention is ordered, such detention shall be in a juvenile detention
26 facility, except that a juvenile charged with a felony as an adult in
27 county or district court may be held in an adult jail as set forth in
28 subdivision (1)(c)(v) of section 43-250. A juvenile placed in an
29 alternative to detention, but not in detention, may waive this hearing
30 through counsel.

31 (4) When the probation officer deems it to be in the best interests

1 of the juvenile, the probation officer shall immediately release such
2 juvenile to the custody of his or her parent. If the juvenile has both a
3 custodial and a noncustodial parent and the probation officer deems that
4 release of the juvenile to the custodial parent is not in the best
5 interests of the juvenile, the probation officer shall, if it is deemed
6 to be in the best interests of the juvenile, attempt to contact the
7 noncustodial parent, if any, of the juvenile and to release the juvenile
8 to such noncustodial parent. If such release is not possible or not
9 deemed to be in the best interests of the juvenile, the probation officer
10 may release the juvenile to the custody of a legal guardian, a
11 responsible relative, or another responsible person.

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

20 Sec. 2. Section 43-286, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 43-286 (1) When any juvenile is adjudicated to be a juvenile
23 described in subdivision (1), (2), or (4) of section 43-247:

24 (a)(i) This subdivision applies until October 1, 2013. The court may
25 continue the dispositional portion of the hearing, from time to time upon
26 such terms and conditions as the court may prescribe, including an order
27 of restitution of any property stolen or damaged or an order requiring
28 the juvenile to participate in community service programs, if such order
29 is in the interest of the juvenile's reformation or rehabilitation, and,
30 subject to the further order of the court, may:

31 (A) Place the juvenile on probation subject to the supervision of a

1 probation officer;

2 (B) Permit the juvenile to remain in his or her own home or be
3 placed in a suitable family home, subject to the supervision of the
4 probation officer; or

5 (C) Cause the juvenile to be placed in a suitable family home or
6 institution, subject to the supervision of the probation officer. If the
7 court has committed the juvenile to the care and custody of the
8 Department of Health and Human Services, the department shall pay the
9 costs of the suitable family home or institution which are not otherwise
10 paid by the juvenile's parents.

11 Under subdivision (1)(a)(i) of this section, upon a determination by
12 the court that there are no parental, private, or other public funds
13 available for the care, custody, and maintenance of a juvenile, the court
14 may order a reasonable sum for the care, custody, and maintenance of the
15 juvenile to be paid out of a fund which shall be appropriated annually by
16 the county where the petition is filed until a suitable provision may be
17 made for the juvenile without such payment.

18 (ii) This subdivision applies beginning October 1, 2013. The court
19 may continue the dispositional portion of the hearing, from time to time
20 upon such terms and conditions as the court may prescribe, including an
21 order of restitution of any property stolen or damaged or an order
22 requiring the juvenile to participate in community service programs, if
23 such order is in the interest of the juvenile's reformation or
24 rehabilitation, and, subject to the further order of the court, may:

25 (A) Place the juvenile on probation subject to the supervision of a
26 probation officer; or

27 (B) Permit the juvenile to remain in his or her own home or be
28 placed in a suitable family home or institution, subject to the
29 supervision of the probation officer;

30 (b)(i) This subdivision applies to all juveniles committed to the
31 Office of Juvenile Services prior to July 1, 2013. The court may commit

1 such juvenile to the Office of Juvenile Services, but a juvenile under
2 the age of fourteen years shall not be placed at the Youth Rehabilitation
3 and Treatment Center-Geneva or the Youth Rehabilitation and Treatment
4 Center-Kearney unless he or she has violated the terms of probation or
5 has committed an additional offense and the court finds that the
6 interests of the juvenile and the welfare of the community demand his or
7 her commitment. This minimum age provision shall not apply if the act in
8 question is murder or manslaughter.

9 (ii) This subdivision applies to all juveniles committed to the
10 Office of Juvenile Services for placement at a youth rehabilitation and
11 treatment center on or after July 1, 2013.

12 When it is alleged that the juvenile has exhausted all levels of
13 probation supervision and options for community-based services and
14 section 43-251.01 has been satisfied, a motion for commitment to a youth
15 rehabilitation and treatment center may be filed and proceedings held as
16 follows:

17 (A) The motion shall set forth specific factual allegations that
18 support the motion and a copy of such motion shall be served on all
19 persons required to be served by sections 43-262 to 43-267; and

20 (B) The juvenile shall be entitled to a hearing before the court to
21 determine the validity of the allegations. At such hearing the burden is
22 upon the state by a preponderance of the evidence to show that:

23 (I) All levels of probation supervision have been exhausted;

24 (II) All options for community-based services have been exhausted;

25 and

26 (III) Placement at a youth rehabilitation and treatment center is a
27 matter of immediate and urgent necessity for the protection of the
28 juvenile or the person or property of another or if it appears that such
29 juvenile is likely to flee the jurisdiction of the court.

30 After the hearing, the court may commit such juvenile to the Office
31 of Juvenile Services for placement at a youth rehabilitation and

1 treatment center as a condition of an order of intensive supervised
2 probation. Upon commitment by the court to the Office of Juvenile
3 Services, the court shall immediately notify the Office of Juvenile
4 Services of the commitment. Intensive supervised probation for purposes
5 of this subdivision means that the Office of Juvenile Services shall be
6 responsible for the care and custody of the juvenile until the Office of
7 Juvenile Services discharges the juvenile from commitment to the Office
8 of Juvenile Services. Upon discharge of the juvenile, the court shall
9 hold a review hearing on the conditions of probation and enter any order
10 allowed under subdivision (1)(a) of this section.

11 The Office of Juvenile Services shall notify those required to be
12 served by sections 43-262 to 43-267, all interested parties, and the
13 committing court of the pending discharge of a juvenile from the youth
14 rehabilitation and treatment center sixty days prior to discharge and
15 again in every case not less than thirty days prior to discharge. Upon
16 notice of pending discharge by the Office of Juvenile Services, the court
17 shall set a continued disposition hearing in anticipation of reentry. The
18 Office of Juvenile Services shall work in collaboration with the Office
19 of Probation Administration in developing an individualized reentry plan
20 for the juvenile as provided in section 43-425. The Office of Juvenile
21 Services shall provide a copy of the individualized reentry plan to the
22 juvenile, the juvenile's attorney, and the county attorney or city
23 attorney prior to the continued disposition hearing. At the continued
24 disposition hearing, the court shall review and approve or modify the
25 individualized reentry plan, place the juvenile under probation
26 supervision, and enter any other order allowed by law. No hearing is
27 required if all interested parties stipulate to the individualized
28 reentry plan by signed motion. In such a case, the court shall approve
29 the conditions of probation, approve the individualized reentry plan, and
30 place the juvenile under probation supervision.

31 The Office of Juvenile Services is responsible for transportation of

1 the juvenile to and from the youth rehabilitation and treatment center.
2 The Office of Juvenile Services may contract for such services. A plan
3 for a juvenile's transport to return to the community shall be a part of
4 the individualized reentry plan. The Office of Juvenile Services may
5 approve family to provide such transport when specified in the
6 individualized reentry plan; or

7 (c) Beginning July 1, 2013, and until October 1, 2013, the court may
8 commit such juvenile to the Office of Juvenile Services for community
9 supervision.

10 (2) When any juvenile is found by the court to be a juvenile
11 described in subdivision (3)(b) of section 43-247, the court may enter
12 such order as it is empowered to enter under subdivision (1)(a) of this
13 section or until October 1, 2013, enter an order committing or placing
14 the juvenile to the care and custody of the Department of Health and
15 Human Services.

16 (3) When any juvenile is adjudicated to be a juvenile described in
17 subdivision (1), (2), (3)(b), or (4) of section 43-247 because of a
18 nonviolent act or acts and the juvenile has not previously been
19 adjudicated to be such a juvenile because of a violent act or acts, the
20 court may, with the agreement of the victim, order the juvenile to attend
21 juvenile offender and victim mediation with a mediator or at an approved
22 center selected from the roster made available pursuant to section
23 25-2908.

24 (4) When a juvenile is placed on probation and a probation officer
25 has reasonable cause to believe that such juvenile has committed ~~or is~~
26 ~~about to commit a substance abuse violation, a noncriminal violation, or~~
27 a violation of a condition of his or her probation, the probation officer
28 shall take appropriate measures as provided in section 43-286.01.

29 (5)(a) When a juvenile is placed on probation or under the
30 supervision of the court and it is alleged that the juvenile is again a
31 juvenile described in subdivision (1), (2), (3)(b), or (4) of section

1 43-247, a petition may be filed and the same procedure followed and
2 rights given at a hearing on the original petition. If an adjudication is
3 made that the allegations of the petition are true, the court may make
4 any disposition authorized by this section for such adjudications and the
5 county attorney may file a motion to revoke the juvenile's probation.

6 (b) When a juvenile is placed on probation or under the supervision
7 of the court for conduct under subdivision (1), (2), (3)(b), or (4) of
8 section 43-247 and it is alleged that the juvenile has violated a term of
9 probation or supervision or that the juvenile has violated an order of
10 the court, a motion to revoke probation or supervision or to change the
11 disposition may be filed and proceedings held as follows:

12 (i) The motion shall set forth specific factual allegations of the
13 alleged violations and a copy of such motion shall be served on all
14 persons required to be served by sections 43-262 to 43-267;

15 (ii) The juvenile shall be entitled to a hearing before the court to
16 determine the validity of the allegations. At such hearing the juvenile
17 shall be entitled to those rights relating to counsel provided by section
18 43-272 and those rights relating to detention provided by sections 43-254
19 to 43-256. The juvenile shall also be entitled to speak and present
20 documents, witnesses, or other evidence on his or her own behalf. He or
21 she may confront persons who have given adverse information concerning
22 the alleged violations, may cross-examine such persons, and may show that
23 he or she did not violate the conditions of his or her probation or
24 supervision or an order of the court or, if he or she did, that
25 mitigating circumstances suggest that the violation does not warrant
26 revocation of probation or supervision or a change of disposition. The
27 hearing shall be held within a reasonable time after the juvenile is
28 taken into custody;

29 (iii) The hearing shall be conducted in an informal manner and shall
30 be flexible enough to consider evidence, including letters, affidavits,
31 and other material, that would not be admissible in an adversarial

1 criminal trial;

2 (iv) The juvenile shall not be confined, detained, or otherwise
3 significantly deprived of his or her liberty pursuant to the filing of a
4 motion described in this section unless the requirements of subdivision
5 (5) of section 43-251.01 and section 43-260.01 have been met. In all
6 cases when the requirements of subdivision (5) of section 43-251.01 and
7 section 43-260.01 have been met and the juvenile is confined, detained,
8 or otherwise significantly deprived of his or her liberty as a result of
9 his or her alleged violation of probation, supervision, or a court order,
10 the juvenile shall be given a preliminary hearing in all cases when the
11 juvenile is confined, detained, or otherwise significantly deprived of
12 his or her liberty as a result of his or her alleged violation of
13 probation, supervision, or court order. Such preliminary hearing shall be
14 held before an impartial person other than his or her probation officer
15 or any person directly involved with the case. If, as a result of such
16 preliminary hearing, probable cause is found to exist, the juvenile shall
17 be entitled to a hearing before the court in accordance with this
18 subsection;

19 (v) If the juvenile is found by the court to have violated the terms
20 of his or her probation or supervision or an order of the court, the
21 court may modify the terms and conditions of the probation, supervision,
22 or other court order, extend the period of probation, supervision, or
23 other court order, or enter any order of disposition that could have been
24 made at the time the original order was entered; and

25 (vi) In cases when the court revokes probation, supervision, or
26 other court order, it shall enter a written statement as to the evidence
27 relied on and the reasons for revocation.

28 (6) Costs incurred on behalf of a juvenile under this section shall
29 be paid as provided in section 43-290.01.

30 (7) When any juvenile is adjudicated to be a juvenile described in
31 subdivision (4) of section 43-247, the juvenile court shall within thirty

1 days of adjudication transmit to the Director of Motor Vehicles an
2 abstract of the court record of adjudication.

3 Sec. 3. Section 43-286.01, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 43-286.01 (1) For purposes of this section, graduated response means
6 an accountability-based series of sanctions, incentives, and services
7 designed to facilitate the juvenile's continued progress in changing
8 behavior, ongoing compliance, and successful completion of probation.
9 Graduated response does not include restrictions of liberty that would
10 otherwise require a hearing under subsection (3) of section 43-253.

11 (2) The Office of Probation Administration may establish a statewide
12 standardized graduated response matrix of incentives for compliance and
13 positive behaviors and sanctions for probationers who violate the terms
14 and conditions of a court order. The graduated response system shall use
15 recognized best practices and be developed with the input of
16 stakeholders, including judges, probation officers, county attorneys,
17 defense attorneys, juveniles, and parents. The office shall provide
18 implementation and ongoing training to all probation officers on the
19 graduated response options.

20 (3) Graduated response sanctions should be immediate, certain,
21 consistent, and fair to appropriately address the behavior. Failure to
22 complete a sanction may result in repeating the sanction, increasing the
23 duration, or selecting a different sanction similar in nature. Continued
24 failure to comply could result in a request for a motion to revoke
25 probation. Once a sanction is successfully completed the alleged
26 probation violation is deemed resolved and cannot be alleged as a
27 violation in future proceedings.

28 (4) Graduated response incentives should provide positive
29 reinforcement to encourage and support positive behavior change and
30 compliance with court-ordered conditions of probation.

31 ~~(1) For purposes of this section:~~

1 ~~(a) Administrative sanction means additional probation requirements~~
2 ~~imposed upon a juvenile subject to the supervision of a probation officer~~
3 ~~by his or her probation officer, with the full knowledge and consent of~~
4 ~~such juvenile and such juvenile's parents or guardian, designed to hold~~
5 ~~such juvenile accountable for substance abuse or noncriminal violations~~
6 ~~of conditions of probation, including, but not limited to:~~

7 ~~(i) Counseling or reprimand by his or her probation officer;~~

8 ~~(ii) Increased supervision contact requirements;~~

9 ~~(iii) Increased substance abuse testing;~~

10 ~~(iv) Referral for substance abuse or mental health evaluation or~~
11 ~~other specialized assessment, counseling, or treatment;~~

12 ~~(v) Modification of a designated curfew for a period not to exceed~~
13 ~~thirty days;~~

14 ~~(vi) Community service for a specified number of hours pursuant to~~
15 ~~sections 29-2277 to 29-2279;~~

16 ~~(vii) Travel restrictions to stay within his or her residence or~~
17 ~~county of residence or employment unless otherwise permitted by the~~
18 ~~supervising probation officer;~~

19 ~~(viii) Restructuring court-imposed financial obligations to mitigate~~
20 ~~their effect on the juvenile subject to the supervision of a probation~~
21 ~~officer; and~~

22 ~~(ix) Implementation of educational or cognitive behavioral~~
23 ~~programming;~~

24 ~~(b) Noncriminal violation means activities or behaviors of a~~
25 ~~juvenile subject to the supervision of a probation officer which create~~
26 ~~the opportunity for re-offending or which diminish the effectiveness of~~
27 ~~probation supervision resulting in a violation of an original condition~~
28 ~~of probation, including, but not limited to:~~

29 ~~(i) Moving traffic violations;~~

30 ~~(ii) Failure to report to his or her probation officer;~~

31 ~~(iii) Leaving the juvenile's residence, jurisdiction of the court,~~

1 ~~or the state without the permission of the court or his or her probation~~
2 ~~officer;~~

3 ~~(iv) Failure to regularly attend school, vocational training, other~~
4 ~~training, counseling, treatment, programming, or employment;~~

5 ~~(v) Noncompliance with school rules;~~

6 ~~(vi) Continued violations of home rules;~~

7 ~~(vii) Failure to notify his or her probation officer of change of~~
8 ~~address, school, or employment;~~

9 ~~(viii) Frequenting places where controlled substances are illegally~~
10 ~~sold, used, distributed, or administered and association with persons~~
11 ~~engaged in illegal activity;~~

12 ~~(ix) Failure to perform community service as directed; and~~

13 ~~(x) Curfew or electronic monitoring violations; and~~

14 ~~(c) Substance abuse violation means activities or behaviors of a~~
15 ~~juvenile subject to the supervision of a probation officer associated~~
16 ~~with the use of chemical substances or related treatment services~~
17 ~~resulting in a violation of an original condition of probation,~~
18 ~~including, but not limited to:~~

19 ~~(i) Positive breath test for the consumption of alcohol;~~

20 ~~(ii) Positive urinalysis for the illegal use of drugs;~~

21 ~~(iii) Failure to report for alcohol testing or drug testing;~~

22 ~~(iv) Failure to appear for or complete substance abuse or mental~~
23 ~~health treatment evaluations or inpatient or outpatient treatment; and~~

24 ~~(v) Tampering with alcohol or drug testing.~~

25 ~~(5) (2) Whenever a probation officer has reasonable cause to believe~~
26 ~~that a juvenile subject to the supervision of a probation officer has~~
27 ~~committed a or is about to commit a substance abuse violation or~~
28 ~~noncriminal violation of the terms of the juvenile's probation while on~~
29 ~~probation, but that such juvenile will not attempt to leave the~~
30 ~~jurisdiction and will not place lives or property in danger, the~~
31 ~~probation officer shall either:~~

1 (a) Impose one or more graduated response administrative sanctions
2 with the approval of his or her chief probation officer or such chief's
3 designee. The decision to impose graduated response administrative
4 sanctions in lieu of formal revocation proceedings rests with the
5 probation officer and his or her chief probation officer or such chief's
6 designee and shall be based upon such juvenile's risk level, the severity
7 of the violation, and the juvenile's response to the violation. If
8 graduated response administrative sanctions are to be imposed, such
9 juvenile shall acknowledge in writing the nature of the violation and
10 agree upon the graduated response administrative sanction with approval
11 of such juvenile's parents or guardian. Such juvenile has the right to
12 decline to acknowledge the violation, and if he or she declines to
13 acknowledge the violation, the probation officer shall submit a written
14 report pursuant to subdivision ~~(5)(b) (2)(b)~~ of this section. If the
15 juvenile fails to satisfy the graduated response sanctions and the office
16 determines that a motion to revoke probation should be pursued, the
17 probation officer shall submit a written report pursuant to subdivision
18 (5)(b) of this section. A copy of the report shall be submitted to the
19 county attorney of the county where probation was imposed; or

20 (b) Submit a written report to the ~~adjudicating court with a copy to~~
21 ~~the~~ county attorney of the county where probation was imposed and to the
22 juvenile's attorney of record, outlining the nature of the probation
23 violation and request that formal revocation proceedings be instituted
24 against the juvenile subject to the supervision of a probation officer.
25 The report shall also include a statement regarding why graduated
26 response sanctions were not utilized or were ineffective. If there is no
27 attorney of record for the juvenile, the office shall notify the court
28 and counsel for the juvenile shall be appointed.

29 ~~(3) Whenever a probation officer has reasonable cause to believe~~
30 ~~that a juvenile subject to the supervision of a probation officer has~~
31 ~~violated or is about to violate a condition of probation other than a~~

1 ~~substance abuse violation or noncriminal violation and that such juvenile~~
2 ~~will not attempt to leave the jurisdiction and will not place lives or~~
3 ~~property in danger, the probation officer shall submit a written report~~
4 ~~to the adjudicating court, with a copy to the county attorney of the~~
5 ~~county where probation was imposed, outlining the nature of the probation~~
6 ~~violation.~~

7 (6) (4) Whenever a probation officer has reasonable cause to believe
8 that a juvenile subject to the supervision of a probation officer has
9 violated ~~or is about to violate~~ a condition of his or her probation and
10 that such juvenile will attempt to leave the jurisdiction or will place
11 lives or property in danger, the probation officer shall take such
12 juvenile into temporary custody without a warrant and may call on any
13 peace officer for assistance as provided in section 43-248. Continued
14 detention or deprivation of liberty shall be subject to the criteria and
15 requirements of sections 43-251.01, 43-260, and 43-260.01 and subdivision
16 (5)(b)(iv) of section 43-286, and a hearing shall be held before the
17 court within twenty-four hours as provided in subsection (3) of section
18 43-253.

19 (7) (5) Immediately after detention or deprivation of liberty
20 pursuant to subsection (6) (4) of this section, the probation officer
21 shall notify the county attorney of the county where probation was
22 imposed and the juvenile's attorney of record and submit a written report
23 describing the risk of harm to lives or property or of fleeing the
24 jurisdiction which precipitated the need for such detention or
25 deprivation of liberty and of any violation of probation. If there is no
26 attorney of record for the juvenile, the office shall notify the court
27 and counsel for the juvenile shall be appointed of the reason for such
28 detention and of any violation of probation. After prompt consideration
29 of the written report, the county attorney shall:

30 (a) Order the release of the juvenile from confinement or
31 alternative to detention subject to the supervision of a probation

1 officer; or

2 (b) File with the adjudicating court a motion ~~or information~~ to
3 revoke the probation.

4 (8) (6) Whenever a county attorney receives a report from a
5 probation officer that a juvenile subject to the supervision of a
6 probation officer has violated a condition of probation and the probation
7 officer is seeking revocation of probation, the county attorney may file
8 a motion ~~or information~~ to revoke probation.

9 (9) Whenever a juvenile subject to supervision of a probation
10 officer is engaging in positive behavior, completion of goals, and
11 compliance with the terms of probation, the probation officer shall use
12 graduated incentives to provide positive reinforcement and encouragement
13 of such behavior. The office shall keep records of all incentives and
14 provide such records to the county attorney or the juvenile's attorney
15 upon request.

16 (10) During the term of probation, the court, on application of a
17 probation officer or of the juvenile or on its own motion, may reduce or
18 eliminate any of the conditions imposed on the juvenile. Upon completion
19 of the term of probation or the earlier discharge of the juvenile, the
20 juvenile shall be relieved of any obligations imposed by the order of the
21 court and his or her record shall be sealed pursuant to section
22 43-2,108.04.

23 (11) (7) The probation administrator shall adopt and promulgate
24 rules and regulations to carry out this section.

25 Sec. 4. Original sections 43-253, 43-286, and 43-286.01, Reissue
26 Revised Statutes of Nebraska, are repealed.