

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 11

Introduced by Krist, 10.

Read first time January 05, 2017

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to juveniles; to amend sections 29-1816 and
- 2 43-274, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to transfer of juvenile cases; to harmonize provisions; and
- 4 to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-1816, Reissue Revised Statutes of Nebraska, is
2 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 IIA felony was committed;

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 (c) An order retaining the case in the county or district court
22 shall be considered a final order for purposes of appeal.

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

26 Sec. 2. Section 43-274, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 43-274 (1) The county attorney or city attorney, having knowledge of
29 a juvenile within his or her jurisdiction who appears to be a juvenile
30 described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and
31 taking into consideration the criteria in section 43-276, may proceed as

1 provided in this section.

2 (2) The county attorney or city attorney may offer pretrial
3 diversion to the juvenile in accordance with a juvenile pretrial
4 diversion program established pursuant to sections 43-260.02 to
5 43-260.07.

6 (3)(a) If a juvenile appears to be a juvenile described in
7 subdivision (1), (2), (3)(b), or (4) of section 43-247 because of a
8 nonviolent act or acts, the county attorney or city attorney may offer
9 mediation to the juvenile and the victim of the juvenile's act. If both
10 the juvenile and the victim agree to mediation, the juvenile, his or her
11 parent, guardian, or custodian, and the victim shall sign a mediation
12 consent form and select a mediator or approved center from the roster
13 made available pursuant to section 25-2908. The county attorney or city
14 attorney shall refer the juvenile and the victim to such mediator or
15 approved center. The mediation sessions shall occur within thirty days
16 after the date the mediation referral is made unless an extension is
17 approved by the county attorney or city attorney. The juvenile or his or
18 her parent, guardian, or custodian shall pay the mediation fees. The fee
19 shall be determined by the mediator in private practice or by the
20 approved center. A juvenile shall not be denied services at an approved
21 center because of an inability to pay.

22 (b) Terms of the mediation agreement shall specify monitoring,
23 completion, and reporting requirements. The county attorney or city
24 attorney, the court, or the probation office shall be notified by the
25 designated monitor if the juvenile does not complete the agreement within
26 the agreement's specified time.

27 (c) Terms of the agreement may include one or more of the following:

28 (i) Participation by the juvenile in certain community service
29 programs;

30 (ii) Payment of restitution by the juvenile to the victim;

31 (iii) Reconciliation between the juvenile and the victim; and

1 (iv) Any other areas of agreement.

2 (d) If no mediation agreement is reached, the mediator or approved
3 center will report that fact to the county attorney or city attorney
4 within forty-eight hours of the final mediation session excluding
5 nonjudicial days.

6 (e) If a mediation agreement is reached and the agreement does not
7 violate public policy, the agreement shall be approved by the county
8 attorney or city attorney. If the agreement is not approved and the
9 victim agrees to return to mediation (i) the juvenile may be referred
10 back to mediation with suggestions for changes needed in the agreement to
11 meet approval or (ii) the county attorney or city attorney may proceed
12 with the filing of a criminal charge or juvenile court petition. If the
13 juvenile agrees to return to mediation but the victim does not agree to
14 return to mediation, the county attorney or city attorney may consider
15 the juvenile's willingness to return to mediation when determining
16 whether or not to file a criminal charge or a juvenile court petition.

17 (f) If the juvenile meets the terms of an approved mediation
18 agreement, the county attorney or city attorney shall not file a criminal
19 charge or juvenile court petition against the juvenile for the acts for
20 which the juvenile was referred to mediation.

21 (4) The county attorney or city attorney shall file the petition in
22 the court with jurisdiction as outlined in section 43-246.01.

23 (5) When a transfer from juvenile court to county court or district
24 court is authorized because there is concurrent jurisdiction, the county
25 attorney or city attorney may move to transfer the proceedings. Such
26 motion shall be filed with the juvenile court petition unless otherwise
27 permitted for good cause shown. The juvenile court shall schedule a
28 hearing on such motion within fifteen days after the motion is filed. The
29 county attorney or city attorney has the burden by a preponderance of the
30 evidence to show why such proceeding should be transferred. The juvenile
31 shall be represented by counsel at the hearing and may present the

1 evidence as to why the proceeding should be retained. After considering
2 all the evidence and reasons presented by both parties, the juvenile
3 court shall retain the proceeding unless the court determines that a
4 preponderance of the evidence shows that the proceeding should be
5 transferred to the county court or district court. The court shall make a
6 decision on the motion within thirty days after the hearing. The juvenile
7 court shall set forth findings for the reason for its decision.

8 An order transferring the case from juvenile court to county or
9 district court shall be considered a final order for purposes of appeal.
10 During the pendency of any such appeal, the juvenile court may continue
11 to enter temporary orders in the best interests of the juvenile pursuant
12 to section 43-295.

13 If the proceeding is transferred from juvenile court to the county
14 court or district court, the county attorney or city attorney shall file
15 a criminal information in the county court or district court, as
16 appropriate, and the accused shall be arraigned as provided for a person
17 eighteen years of age or older in subdivision (1)(b) of section 29-1816.

18 Sec. 3. Original sections 29-1816 and 43-274, Reissue Revised
19 Statutes of Nebraska, are repealed.