

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1010

Introduced by Geist, 25.

Read first time January 12, 2022

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend
2 section 29-2263, Reissue Revised Statutes of Nebraska, and sections
3 43-250, 43-2,108, and 83-1,125.01, Revised Statutes Cumulative
4 Supplement, 2020; to provide for the release of certain probation
5 information and electronic monitoring data to law enforcement; 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 29-2263, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-2263 (1) Except as provided in subsection (2) of this section,
4 when a court has sentenced an offender to probation, the court shall
5 specify the term of such probation which shall be not more than five
6 years upon conviction of a felony or second offense misdemeanor and two
7 years upon conviction of a first offense misdemeanor. The court, on
8 application of a probation officer or of the probationer or on its own
9 motion, may discharge a probationer at any time.

10 (2) When a court has sentenced an offender to post-release
11 supervision, the court shall specify the term of such post-release
12 supervision as provided in section 28-105. The court, on application of a
13 probation officer or of the probationer or on its own motion, may
14 discharge a probationer at any time.

15 (3) During the term of probation, the court on application of a
16 probation officer or of the probationer, or its own motion, may modify or
17 eliminate any of the conditions imposed on the probationer or add further
18 conditions authorized by section 29-2262. This subsection does not
19 preclude a probation officer from imposing administrative sanctions with
20 the probationer's full knowledge and consent as authorized by sections
21 29-2266.01 and 29-2266.02.

22 (4) Upon completion of the term of probation, or the earlier
23 discharge of the probationer, the probationer shall be relieved of any
24 obligations imposed by the order of the court and shall have satisfied
25 the sentence for his or her crime.

26 (5) Whenever a probationer disappears or leaves the jurisdiction of
27 the court without permission, the time during which he or she keeps his
28 or her whereabouts hidden or remains away from the jurisdiction of the
29 court shall be added to the original term of probation.

30 (6) The following information shall be available to law enforcement
31 and entered into the Nebraska Criminal Justice Information System for

1 each adult on probation: (a) the name of the offender; (b) the name of
2 the probation officer; and (c) the conditions of probation.

3 Sec. 2. Section 43-250, Revised Statutes Cumulative Supplement,
4 2020, is amended to read:

5 43-250 (1) A peace officer who takes a juvenile into temporary
6 custody under section 29-401 or subdivision (1), (4), (5), or (8) of
7 section 43-248 shall immediately take reasonable measures to notify the
8 juvenile's parent, guardian, custodian, or relative and shall proceed as
9 follows:

10 (a) The peace officer may release a juvenile taken into temporary
11 custody under section 29-401 or subdivision (1), (4), or (8) of section
12 43-248;

13 (b) The peace officer may require a juvenile taken into temporary
14 custody under section 29-401 or subdivision (1) or (4) of section 43-248
15 to appear before the court of the county in which such juvenile was taken
16 into custody at a time and place specified in the written notice prepared
17 in triplicate by the peace officer or at the call of the court. The
18 notice shall also contain a concise statement of the reasons such
19 juvenile was taken into custody. The peace officer shall deliver one copy
20 of the notice to such juvenile and require such juvenile or his or her
21 parent, guardian, other custodian, or relative, or both, to sign a
22 written promise that such signer will appear at the time and place
23 designated in the notice. Upon the execution of the promise to appear,
24 the peace officer shall immediately release such juvenile. The peace
25 officer shall, as soon as practicable, file one copy of the notice with
26 the county attorney or city attorney and, when required by the court,
27 also file a copy of the notice with the court or the officer appointed by
28 the court for such purpose; or

29 (c) The peace officer may retain temporary custody of a juvenile
30 taken into temporary custody under section 29-401 or subdivision (1),
31 (4), or (5) of section 43-248 and deliver the juvenile, if necessary, to

1 the probation officer and communicate all relevant available information
2 regarding such juvenile to the probation officer. The probation officer
3 shall determine the need for detention of the juvenile as provided in
4 section 43-260.01. Upon determining that the juvenile should be placed in
5 detention or an alternative to detention and securing placement in such
6 setting by the probation officer, the peace officer shall implement the
7 probation officer's decision to release or to detain and place the
8 juvenile. When secure detention of a juvenile is necessary, such
9 detention shall occur within a juvenile detention facility except:

10 (i) When a juvenile described in subdivision (1) or (2) of section
11 43-247, except for a status offender, is taken into temporary custody
12 within a metropolitan statistical area and where no juvenile detention
13 facility is reasonably available, the juvenile may be delivered, for
14 temporary custody not to exceed six hours, to a secure area of a jail or
15 other facility intended or used for the detention of adults solely for
16 the purposes of identifying the juvenile and ascertaining his or her
17 health and well-being and for safekeeping while awaiting transport to an
18 appropriate juvenile placement or release to a responsible party;

19 (ii) 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 outside of a metropolitan statistical area and where no juvenile
22 detention facility is reasonably available, the juvenile may be
23 delivered, for temporary custody not to exceed twenty-four hours
24 excluding nonjudicial days and while awaiting an initial court
25 appearance, to a secure area of a jail or other facility intended or used
26 for the detention of adults solely for the purposes of identifying the
27 juvenile and ascertaining his or her health and well-being and for
28 safekeeping while awaiting transport to an appropriate juvenile placement
29 or release to a responsible party;

30 (iii) Whenever a juvenile is held in a secure area of any jail or
31 other facility intended or used for the detention of adults, there shall

1 be no verbal, visual, or physical contact between the juvenile and any
2 incarcerated adult and there shall be adequate staff to supervise and
3 monitor the juvenile's activities at all times. This subdivision shall
4 not apply to a juvenile charged with a felony as an adult in county or
5 district court if he or she is sixteen years of age or older;

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

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

15 (vi) A status offender or nonoffender taken into temporary custody
16 shall not be held in a secure area of a jail or other facility intended
17 or used for the detention of adults. Until January 1, 2013, a status
18 offender accused of violating a valid court order may be securely
19 detained in a juvenile detention facility longer than twenty-four hours
20 if he or she is afforded a detention hearing before a court within
21 twenty-four hours, excluding nonjudicial days, and if, prior to a
22 dispositional commitment to secure placement, a public agency, other than
23 a court or law enforcement agency, is afforded an opportunity to review
24 the juvenile's behavior and possible alternatives to secure placement and
25 has submitted a written report to the court;~~and~~

26 (vii) A juvenile described in subdivision (1) or (2) of section
27 43-247, except for a status offender, may be held in a secure area of a
28 jail or other facility intended or used for the detention of adults for
29 up to six hours before and six hours after any court appearance; and -

30 (viii) If a juvenile court orders electronic monitoring as an
31 alternative to detention or a probation officer determines that

1 electronic monitoring is appropriate as an alternative to detention
2 pursuant to sections 43-260 and 43-260.01, the data from the electronic
3 monitoring device shall be made available to any law enforcement officer
4 immediately upon request. Such data shall include the time and location
5 of the electronic monitoring device, and the law enforcement officer
6 shall maintain the confidentiality of such data.

7 (2) When a juvenile is taken into temporary custody pursuant to
8 subdivision (2), (7), or (8) of section 43-248, and not released under
9 subdivision (1)(a) of this section, the peace officer shall deliver the
10 custody of such juvenile to the Department of Health and Human Services
11 which shall make a temporary placement of the juvenile in the least
12 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 cause the
28 least restriction of the juvenile's freedom of movement consistent with
29 the best interest of the juvenile and the safety of the community.

30 Sec. 3. Section 43-2,108, Revised Statutes Cumulative Supplement,
31 2020, is amended to read:

1 43-2,108 (1) The juvenile court judge shall keep a record of all
2 proceedings of the court in each case, including appearances, findings,
3 orders, decrees, and judgments, and any evidence which he or she feels it
4 is necessary and proper to record. The case file shall contain the
5 complaint or petition and subsequent pleadings. The case file may be
6 maintained as an electronic document through the court's electronic case
7 management system, on microfilm, or in a paper volume and disposed of
8 when determined by the State Records Administrator pursuant to the
9 Records Management Act.

10 (2) Except as provided in subsections (3) and (4) of this section,
11 the medical, psychological, psychiatric, and social welfare reports and
12 the records of juvenile probation officers as they relate to individual
13 proceedings in the juvenile court shall not be open to inspection,
14 without order of the court. Such records shall be made available to a
15 district court of this state or the District Court of the United States
16 on the order of a judge thereof for the confidential use of such judge or
17 his or her probation officer as to matters pending before such court but
18 shall not be made available to parties or their counsel; and such
19 district court records shall be made available to a county court or
20 separate juvenile court upon request of the county judge or separate
21 juvenile judge for the confidential use of such judge and his or her
22 probation officer as to matters pending before such court, but shall not
23 be made available by such judge to the parties or their counsel.

24 (3) As used in this section, confidential record information means
25 all docket records, other than the pleadings, orders, decrees, and
26 judgments; case files and records; reports and records of probation
27 officers; and information supplied to the court of jurisdiction in such
28 cases by any individual or any public or private institution, agency,
29 facility, or clinic, which is compiled by, produced by, and in the
30 possession of any court. In all cases under subdivision (3)(a) of section
31 43-247, access to all confidential record information in such cases shall

1 be granted only as follows: (a) The court of jurisdiction may, subject to
2 applicable federal and state regulations, disseminate such confidential
3 record information to any individual, or public or private agency,
4 institution, facility, or clinic which is providing services directly to
5 the juvenile and such juvenile's parents or guardian and his or her
6 immediate family who are the subject of such record information; (b) the
7 court of jurisdiction may disseminate such confidential record
8 information, with the consent of persons who are subjects of such
9 information, or by order of such court after showing of good cause, to
10 any law enforcement agency upon such agency's specific request for such
11 agency's exclusive use in the investigation of any protective service
12 case or investigation of allegations under subdivision (3)(a) of section
13 43-247, regarding the juvenile or such juvenile's immediate family, who
14 are the subject of such investigation; and (c) the court of jurisdiction
15 may disseminate such confidential record information to any court, which
16 has jurisdiction of the juvenile who is the subject of such information
17 upon such court's request.

18 (4) The court shall provide copies of predispositional reports and
19 evaluations of the juvenile to the juvenile's attorney and the county
20 attorney or city attorney prior to any hearing in which the report or
21 evaluation will be relied upon.

22 (5) In all cases under sections 43-246.01 and 43-247, the office of
23 Inspector General of Nebraska Child Welfare may submit a written request
24 to the probation administrator for access to the records of juvenile
25 probation officers in a specific case. Upon a juvenile court order, the
26 records shall be provided to the Inspector General within five days for
27 the exclusive use in an investigation pursuant to the Office of Inspector
28 General of Nebraska Child Welfare Act. Nothing in this subsection shall
29 prevent the notification of death or serious injury of a juvenile to the
30 Inspector General of Nebraska Child Welfare pursuant to section 43-4318
31 as soon as reasonably possible after the Office of Probation

1 Administration learns of such death or serious injury.

2 (6) In all cases under sections 43-246.01 and 43-247, the juvenile
3 court shall disseminate confidential record information to the Foster
4 Care Review Office pursuant to the Foster Care Review Act.

5 (7) The following information shall be available to law enforcement
6 and entered into the Nebraska Criminal Justice Information System for
7 each juvenile on probation or parole: (a) the name of the juvenile; (b)
8 the name of the probation officer; and (c) the conditions of probation.

9 (8) ~~(7)~~ Nothing in subsections (3), (5), and (6) of this section
10 shall be construed to restrict the dissemination of confidential record
11 information between any individual or public or private agency,
12 institute, facility, or clinic, except any such confidential record
13 information disseminated by the court of jurisdiction pursuant to this
14 section shall be for the exclusive and private use of those to whom it
15 was released and shall not be disseminated further without order of such
16 court.

17 (9)(a) ~~(8)(a)~~ Any records concerning a juvenile court petition filed
18 pursuant to subdivision (3)(c) of section 43-247 shall remain
19 confidential except as may be provided otherwise by law. Such records
20 shall be accessible to (i) the juvenile except as provided in subdivision
21 (b) of this subsection, (ii) the juvenile's counsel, (iii) the juvenile's
22 parent or guardian, and (iv) persons authorized by an order of a judge or
23 court.

24 (b) Upon application by the county attorney or by the director of
25 the facility where the juvenile is placed and upon a showing of good
26 cause therefor, a judge of the juvenile court having jurisdiction over
27 the juvenile or of the county where the facility is located may order
28 that the records shall not be made available to the juvenile if, in the
29 judgment of the court, the availability of such records to the juvenile
30 will adversely affect the juvenile's mental state and the treatment
31 thereof.

1 ~~(10)~~ ~~(9)~~ Nothing in subsection (3), (5), or (6) of this section
2 shall be construed to restrict the immediate dissemination of a current
3 picture and information about a child who is missing from a foster care
4 or out-of-home placement. Such dissemination by the Office of Probation
5 Administration shall be authorized by an order of a judge or court. Such
6 information shall be subject to state and federal confidentiality laws
7 and shall not include that the child is in the care, custody, or control
8 of the Department of Health and Human Services or under the supervision
9 of the Office of Probation Administration.

10 Sec. 4. Section 83-1,125.01, Revised Statutes Cumulative Supplement,
11 2020, is amended to read:

12 83-1,125.01 (1) The Board of Parole and the Division of Parole
13 Supervision may maintain an individual file for each person who is under
14 the jurisdiction of the Board of Parole. Such file may be maintained
15 electronically and shall include, when available and appropriate, the
16 following information on such person:

- 17 (a) Admission summary;
- 18 (b) Presentence investigation report;
- 19 (c) Classification reports and recommendations;
- 20 (d) Official records of conviction and commitment along with any
21 earlier criminal records;
- 22 (e) Progress reports and admission-orientation reports;
- 23 (f) Reports of any disciplinary infractions and their disposition;
- 24 (g) Risk and needs assessments;
- 25 (h) Parole plan and parole placement and investigation worksheets;
- 26 (i) Decision guideline scores;
- 27 (j) Parole case plan;
- 28 (k) Parole progress reports and contact notes;
- 29 (l) Arrest and violation reports, including disposition;
- 30 (m) Parole proceedings orders and notices;
- 31 (n) Other documents related to parole supervision;

1 (o) Correspondence; and

2 (p) Other pertinent data concerning his or her background, conduct,
3 associations, and family relationships.

4 (2) The following information shall be available to law enforcement
5 and entered into the Nebraska Criminal Justice Information System for
6 each person on parole: (a) the name of the person; (b) the name of the
7 probation officer; and (c) the conditions of probation.

8 (3) (2) Any decision concerning release on or revocation of parole
9 or imposition of sanctions shall be made only after the individual file
10 has been reviewed. The contents of the individual file shall be
11 confidential unless disclosed in connection with a public hearing and
12 shall not be subject to public inspection except by court order for good
13 cause shown. The contents of the file shall not be accessible to any
14 person under the jurisdiction of the Board of Parole. A person under the
15 jurisdiction of the board may obtain access to his or her medical records
16 by request to the provider pursuant to sections 71-8401 to 71-8407
17 notwithstanding the fact that such medical records may be a part of his
18 or her parole file. The board and the Division of Parole Supervision have
19 the authority to withhold decision guideline scores, risk and needs
20 assessment scores, and mental health and psychological records of a
21 person under the jurisdiction of the board when appropriate.

22 (4) (3) Nothing in this section limits in any manner the authority
23 of the Public Counsel to inspect and examine the records and documents of
24 the board and the Division of Parole Supervision pursuant to sections
25 81-8,240 to 81-8,254, except that the Public Counsel's access to the
26 medical or mental health records of a person under the jurisdiction of
27 the board shall be subject to his or her consent. The office of Public
28 Counsel shall not disclose the medical or mental health records of a
29 person under the jurisdiction of the board to anyone else, including any
30 other person under the jurisdiction of the board, except as authorized by
31 law.

1 Sec. 5. Original section 29-2263, Reissue Revised Statutes of
2 Nebraska, and sections 43-250, 43-2,108, and 83-1,125.01, Revised
3 Statutes Cumulative Supplement, 2020, are repealed.