

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 184

FINAL READING

Introduced by Cavanaugh, J., 9; McKinney, 11; Fredrickson, 20.

Read first time January 09, 2023

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to juveniles; to amend sections 29-1816 and
- 2 43-274, Revised Statutes Cumulative Supplement, 2022; to provide for
- 3 inadmissibility of statements made by juveniles during proceedings
- 4 to transfer cases to or from juvenile court; to eliminate obsolete
- 5 provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-1816, Revised Statutes Cumulative Supplement,
2 2022, 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 IIA 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 make a decision on such
12 motion within thirty days after the hearing and shall set forth findings
13 for the reason for its decision. If the county court or district court
14 determines that the accused should be transferred to the juvenile court,
15 the complete file in the county court or district court shall be
16 transferred to the juvenile court and the complaint, indictment, or
17 information may be used in place of a petition therein. The county court
18 or district court making a transfer shall order the accused to be taken
19 forthwith to the juvenile court and designate where the juvenile shall be
20 kept pending determination by the juvenile court. The juvenile court
21 shall then proceed as provided in the Nebraska Juvenile Code.

22 (4) ~~(e)~~ An order granting or denying transfer of the case from
23 county or district court to juvenile court shall be considered a final
24 order for the purposes of appeal. Upon entry of an order, any party may
25 appeal to the Court of Appeals within ten days. Such review shall be
26 advanced on the court docket without an extension of time granted to any
27 party except upon a showing of exceptional cause. Appeals shall be
28 submitted, assigned, and scheduled for oral argument as soon as the
29 appellee's brief is due to be filed. The Court of Appeals shall conduct
30 its review in an expedited manner and shall render the judgment and
31 opinion, if any, as speedily as possible. During the pendency of an

1 appeal from an order transferring the case to juvenile court, the
2 juvenile court may enter temporary orders in the best interests of the
3 juvenile.

4 (5)(a) Except as provided in subdivision (5)(b) of this section, any
5 admission, confession, or statement made by the accused to a
6 psychiatrist, psychologist, therapist, or licensed mental health
7 practitioner for purposes of a motion to transfer a case from county
8 court or district court to juvenile court shall be inadmissible in any
9 criminal or civil proceeding.

10 (b) Subdivision (5)(a) of this section does not prevent any such
11 admission, confession, or statement from being:

12 (i) Admissible in proceedings relating to such motion to transfer;

13 (ii) Admissible in disposition proceedings of such accused under the
14 Nebraska Juvenile Code if the case is transferred to juvenile court;

15 (iii) Included in any presentence investigation report for such
16 accused if the case is not transferred to juvenile court; and

17 (iv) Admissible in such case to impeach such accused during cross-
18 examination if the accused testifies at trial or during juvenile court
19 proceedings and such testimony is materially inconsistent with a prior
20 statement made by the accused to a psychiatrist, psychologist, therapist,
21 or licensed mental health practitioner for purposes of the motion to
22 transfer such case.

23 (6) {4} When the accused was younger than eighteen years of age when
24 an alleged offense was committed, the county attorney or city attorney
25 shall proceed under section 43-274.

26 Sec. 2. Section 43-274, Revised Statutes Cumulative Supplement,
27 2022, is 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, the county
8 attorney or city attorney may utilize restorative justice practices or
9 services as a form of, or condition of, diversion or plea bargaining or
10 as a recommendation as a condition of disposition, through a referral to
11 a restorative justice facilitator.

12 (b) For victim-involved offenses, a restorative justice facilitator
13 shall conduct a separate individual intake and assessment session with
14 each juvenile and victim to determine which, if any, restorative justice
15 practice is appropriate. All participation by the victim shall be
16 voluntary. If the victim declines to participate in any or all parts of
17 the restorative justice practice, a victim surrogate may be invited to
18 participate with the juvenile. If, after assessment, participation by the
19 juvenile is deemed inappropriate, the restorative justice facilitator
20 shall return the referral to the referring county attorney or city
21 attorney.

22 (c) A victim or his or her parent or guardian shall not be charged a
23 fee. A juvenile or his or her parent or guardian may be charged a fee
24 according to the policies and procedures of the restorative justice
25 facilitator and the referring county attorney or city attorney.
26 Restorative justice facilitators shall use a sliding fee scale based on
27 income and shall not deny services based upon the inability of a juvenile
28 or his or her parent or guardian to pay, if funding is otherwise
29 available.

30 (d) Prior to participating in any restorative justice practice or
31 service under this section, the juvenile, the juvenile's parent or

1 guardian, and the victim, if he or she is participating, shall sign a
2 consent to participate form.

3 (e) If a reparation plan agreement is reached, the restorative
4 justice facilitator shall forward a copy of the agreement to the
5 referring county attorney or city attorney. The terms of the reparation
6 plan agreement shall specify provisions for reparation, monitoring,
7 completion, and reporting. An agreement may include, but is not limited
8 to, one or more of the following:

9 (i) Participation by the juvenile in certain community service
10 programs;

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

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

13 (iv) Apology, when appropriate, between the juvenile and the victim;

14 and

15 (v) Any other areas of agreement.

16 (f) The restorative justice facilitator shall give notice to the
17 county attorney or city attorney regarding the juvenile's compliance with
18 the terms of the reparation plan agreement. If the juvenile does not
19 satisfactorily complete the terms of the agreement, the county attorney
20 or city attorney may:

21 (i) Refer the matter back to the restorative justice facilitator for
22 further restorative justice practices or services; or

23 (ii) Proceed with filing a juvenile court petition or criminal
24 charge.

25 (g) If a juvenile meets the terms of the reparation plan agreement,
26 the county attorney or city attorney shall either:

27 (i) Not file a juvenile court petition or criminal charge against
28 the juvenile for the acts for which the juvenile was referred for
29 restorative justice practice or services when referred as a diversion or
30 an alternative to diversion; or

31 (ii) File a reduced charge as previously agreed when referred as a

1 part of a plea negotiation.

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

4 (5)(a) ~~(5)~~ When a transfer from juvenile court to county court or
5 district court is authorized because there is concurrent jurisdiction,
6 the county attorney or city attorney may move to transfer the
7 proceedings. Such motion shall be filed with the juvenile court petition
8 unless otherwise permitted for good cause shown. The juvenile court shall
9 schedule a hearing on such motion within fifteen days after the motion is
10 filed. The county attorney or city attorney has the burden by a
11 preponderance of the evidence to show why such proceeding should be
12 transferred. The juvenile shall be represented by counsel at the hearing
13 and may present the evidence as to why the proceeding should be retained.
14 After considering all the evidence and reasons presented by both parties,
15 the juvenile court shall retain the proceeding unless the court
16 determines that a preponderance of the evidence shows that the proceeding
17 should be transferred to the county court or district court. The court
18 shall make a decision on the motion within thirty days after the hearing.
19 The juvenile court shall set forth findings for the reason for its
20 decision.

21 (b) An order granting or denying transfer of the case from juvenile
22 court to county or district court shall be considered a final order for
23 the purposes of appeal. Upon the entry of an order, any party may appeal
24 to the Court of Appeals within ten days. Such review shall be advanced on
25 the court docket without an extension of time granted to any party except
26 upon a showing of exceptional cause. Appeals shall be submitted,
27 assigned, and scheduled for oral argument as soon as the appellee's brief
28 is due to be filed. The Court of Appeals shall conduct its review in an
29 expedited manner and shall render the judgment and opinion, if any, as
30 speedily as possible. During the pendency of any such appeal, the
31 juvenile court may continue to enter temporary orders in the best

1 interests of the juvenile pursuant to section 43-295.

2 (c) If the proceeding is transferred from juvenile court to the
3 county court or district court, the county attorney or city attorney
4 shall file a criminal information in the county court or district court,
5 as appropriate, and the accused shall be arraigned as provided for a
6 person eighteen years of age or older in subdivision (1)(b) of section
7 29-1816.

8 (d)(i) Except as provided in subdivision (5)(d)(ii) of this section,
9 any admission, confession, or statement made by the juvenile to a
10 psychiatrist, psychologist, therapist, or licensed mental health
11 practitioner for purposes of a motion to transfer a case from juvenile
12 court to county court or district court shall be inadmissible in any
13 criminal or civil proceeding.

14 (ii) Subdivision (5)(d)(i) of this section does not prevent any such
15 admission, confession, or statement from being:

16 (A) Admissible in proceedings relating to such motion to transfer;

17 (B) Admissible in disposition proceedings for such juvenile under
18 the Nebraska Juvenile Code if the case is not transferred to county court
19 or district court;

20 (C) Included in any presentence investigation report for such
21 juvenile if the case is transferred to county court or district court;
22 and

23 (D) Admissible in such case to impeach such juvenile during cross-
24 examination if the juvenile testifies at trial or during juvenile court
25 proceedings and such testimony is materially inconsistent with a prior
26 statement made by the juvenile to a psychiatrist, psychologist,
27 therapist, or licensed mental health practitioner for purposes of the
28 motion to transfer such case.

29 Sec. 3. Original sections 29-1816 and 43-274, Revised Statutes
30 Cumulative Supplement, 2022, are repealed.