

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 240**

Introduced by Wayne, 13.

Read first time January 10, 2023

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend
- 2 section 43-286, Revised Statutes Cumulative Supplement, 2022; to
- 3 provide for modification of disposition orders or conditions of
- 4 probation or supervision upon motion by the juvenile; and to repeal
- 5 the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-286, Revised Statutes Cumulative Supplement,  
2 2022, is amended to read:

3 43-286 (1) When any juvenile is adjudicated to be a juvenile  
4 described in subdivision (1), (2), or (4) of section 43-247:

5 (a) The court may continue the dispositional portion of the hearing,  
6 from time to time upon such terms and conditions as the court may  
7 prescribe, including an order of restitution of any property stolen or  
8 damaged or an order requiring the juvenile to participate in restorative  
9 justice programs or community service programs, if such order is in the  
10 interest of the juvenile's reformation or rehabilitation, and, subject to  
11 the further order of the court, may:

12 (i) Place the juvenile on probation subject to the supervision of a  
13 probation officer; or

14 (ii) Permit the juvenile to remain in his or her own home or be  
15 placed in a suitable family home or institution, subject to the  
16 supervision of the probation officer;

17 (b) When it is alleged that the juvenile has exhausted all levels of  
18 probation supervision and options for community-based services and  
19 section 43-251.01 has been satisfied, a motion for commitment to a youth  
20 rehabilitation and treatment center may be filed and proceedings held as  
21 follows:

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

25 (ii) The Office of Juvenile Services shall be served with a copy of  
26 such motion and shall be a party to the case for all matters related to  
27 the juvenile's commitment to, placement with, or discharge from the  
28 Office of Juvenile Services; and

29 (iii) The juvenile shall be entitled to a hearing before the court  
30 to determine the validity of the allegations. At such hearing the burden  
31 is upon the state by a preponderance of the evidence to show that:

1 (A) All levels of probation supervision have been exhausted;

2 (B) All options for community-based services have been exhausted;

3 and

4 (C) Placement at a youth rehabilitation and treatment center is a  
5 matter of immediate and urgent necessity for the protection of the  
6 juvenile or the person or property of another or if it appears that such  
7 juvenile is likely to flee the jurisdiction of the court;

8 (c) After the hearing, the court may, as a condition of an order of  
9 intensive supervised probation, commit such juvenile to the Office of  
10 Juvenile Services for placement at a youth rehabilitation and treatment  
11 center operated in compliance with state law. Upon commitment by the  
12 court to the Office of Juvenile Services, the court shall immediately  
13 notify the Office of Juvenile Services of the commitment. Intensive  
14 supervised probation for purposes of this subdivision means that the  
15 Office of Juvenile Services shall be responsible for the care and custody  
16 of the juvenile until the Office of Juvenile Services discharges the  
17 juvenile from commitment to the Office of Juvenile Services. Upon  
18 discharge of the juvenile, the court shall hold a review hearing on the  
19 conditions of probation and enter any order allowed under subdivision (1)  
20 (a) of this section;

21 (d) The Office of Juvenile Services shall notify those required to  
22 be served by sections 43-262 to 43-267, all interested parties, and the  
23 committing court of the pending discharge of a juvenile from the youth  
24 rehabilitation and treatment center sixty days prior to discharge and  
25 again in every case not less than thirty days prior to discharge. Upon  
26 notice of pending discharge by the Office of Juvenile Services, the court  
27 shall set a continued disposition hearing in anticipation of reentry. The  
28 Office of Juvenile Services shall work in collaboration with the Office  
29 of Probation Administration in developing an individualized reentry plan  
30 for the juvenile as provided in section 43-425. The Office of Juvenile  
31 Services shall provide a copy of the individualized reentry plan to the

1 juvenile, the juvenile's attorney, and the county attorney or city  
2 attorney prior to the continued disposition hearing. At the continued  
3 disposition hearing, the court shall review and approve or modify the  
4 individualized reentry plan, place the juvenile under probation  
5 supervision, and enter any other order allowed by law. No hearing is  
6 required if all interested parties stipulate to the individualized  
7 reentry plan by signed motion. In such a case, the court shall approve  
8 the conditions of probation, approve the individualized reentry plan, and  
9 place the juvenile under probation supervision; and

10 (e) The Office of Juvenile Services is responsible for  
11 transportation of the juvenile to and from the youth rehabilitation and  
12 treatment center. The Office of Juvenile Services may contract for such  
13 services. A plan for a juvenile's transport to return to the community  
14 shall be a part of the individualized reentry plan. The Office of  
15 Juvenile Services may approve family to provide such transport when  
16 specified in the individualized reentry plan.

17 (2) When any juvenile is found by the court to be a juvenile  
18 described in subdivision (3)(b) of section 43-247, the court may enter  
19 such order as it is empowered to enter under subdivision (1)(a) of this  
20 section.

21 (3) When any juvenile is adjudicated to be a juvenile described in  
22 subdivision (1), (2), (3)(b), or (4) of section 43-247, the court may  
23 order the juvenile to be assessed for referral to participate in a  
24 restorative justice program. Factors that the judge may consider for such  
25 referral include, but are not limited to: The juvenile's age,  
26 intellectual capacity, and living environment; the ages of others who  
27 were part of the offense; the age and capacity of the victim; and the  
28 nature of the case.

29 (4) When a juvenile is placed on probation and a probation officer  
30 has reasonable cause to believe that such juvenile has committed a  
31 violation of a condition of his or her probation, the probation officer

1 shall take appropriate measures as provided in section 43-286.01.

2 (5)(a) When a juvenile is placed on probation or under the  
3 supervision of the court and it is alleged that the juvenile is again a  
4 juvenile described in subdivision (1), (2), (3)(b), or (4) of section  
5 43-247, a petition may be filed and the same procedure followed and  
6 rights given at a hearing on the original petition. If an adjudication is  
7 made that the allegations of the petition are true, the court may make  
8 any disposition authorized by this section for such adjudications and the  
9 county attorney may file a motion to revoke the juvenile's probation.

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

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

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

1 taken into custody;

2 (iii) The hearing shall be conducted in an informal manner and shall  
3 be flexible enough to consider evidence, including letters, affidavits,  
4 and other material, that would not be admissible in an adversarial  
5 criminal trial;

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

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

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

27 (6)(a) Except as provided in subdivision (6)(b) of this section, the  
28 court shall not change a disposition unless the court finds that the  
29 juvenile has violated a term or condition of probation or supervision or  
30 an order of the court and the procedures in subdivision (5)(b) of this  
31 section have been satisfied.

1           (b) Upon motion of the juvenile, the court may modify the terms or  
2 conditions of probation or supervision or modify a dispositional order  
3 if:

4           (i) All parties stipulate to the particular modification; and

5           (ii) The juvenile has consulted with counsel or has waived counsel.  
6 Any waiver must be particular to the modification and shall comply with  
7 section 43-3102.

8           ~~(7) (6)~~ Costs incurred on behalf of a juvenile under this section  
9 shall be paid as provided in section 43-290.01.

10           ~~(8) (7)~~ When any juvenile is adjudicated to be a juvenile described  
11 in subdivision (4) of section 43-247, the juvenile court shall within  
12 thirty days of adjudication transmit to the Director of Motor Vehicles an  
13 abstract of the court record of adjudication.

14           Sec. 2.    Original section 43-286, Revised Statutes Cumulative  
15 Supplement, 2022, is repealed.