

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 320

Introduced by McGill, 26.

Read first time January 17, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Nebraska Juvenile Code; to amend sections
2 43-248, 43-250, 43-254, 43-256, and 43-272.01, Revised
3 Statutes Cumulative Supplement, 2012; to change temporary
4 custody of juvenile without warrant provisions; to
5 harmonize provisions; and to repeal the original
6 sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-248, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 43-248 (1) A peace officer may take a juvenile into
4 temporary custody without a warrant or order of the court and proceed
5 as provided in section 43-250 when he or she has probable cause to
6 believe that:

7 (1)—(a) A juvenile has violated a state law or municipal
8 ordinance; and ~~the officer has reasonable grounds to believe such~~
9 ~~juvenile committed such violation;~~

10 (2)—(b) A juvenile is seriously endangered in his or her
11 surroundings and immediate removal appears to be necessary for the
12 juvenile's protection ~~or a juvenile is at imminent risk of serious~~
13 physical or emotional harm or danger;

14 (3)—(c) The officer believes the juvenile to be ~~is~~
15 mentally ill and dangerous as defined in section 71-908 and ~~that~~ the
16 harm described in that section is likely to occur before proceedings
17 may be instituted before the juvenile court;

18 (4)—(d) The officer has reasonable grounds to believe
19 ~~that~~ the juvenile has run away from his or her parent, guardian, or
20 custodian; or

21 (5) A probation officer has reasonable cause to believe
22 ~~that~~ a juvenile is in violation of probation and ~~that~~ the juvenile
23 will attempt to leave the jurisdiction or place lives or property in
24 danger; or

25 (6)—(e) The officer has reasonable grounds to believe the

1 juvenile is truant from school.

2 (2) A probation officer may take a juvenile into
3 temporary custody without a warrant or order of the court and proceed
4 as provided in section 43-250 when he or she has probable cause to
5 believe that a juvenile is in violation of probation and that the
6 juvenile will attempt to leave the jurisdiction or place lives or
7 property in danger.

8 Sec. 2. Section 43-250, Revised Statutes Cumulative
9 Supplement, 2012, is amended to read:

10 43-250 (1) A peace officer who takes a juvenile into
11 temporary custody under section 29-401 or subdivision (1), (4), or
12 ~~(5)~~—(1)(a) or (1)(d) of section 43-248 or a probation officer who
13 takes a juvenile into temporary custody under subsection (2) of
14 section 43-248 shall immediately take reasonable measures to notify
15 the juvenile's parent, guardian, custodian, or relative and shall
16 proceed as follows:

17 (a) ~~The peace officer may release~~ Release a juvenile
18 taken into temporary custody under section 29-401 or subdivision (1)
19 ~~or (4)—(1)(a) or (1)(d)~~ of section 43-248;

20 (b) ~~The peace officer may require~~ Require a juvenile
21 taken into temporary custody under section 29-401 or subdivision (1)
22 ~~or (4)—(1)(a) or (1)(d)~~ of section 43-248 to appear before the court
23 of the county in which such juvenile was taken into custody at a time
24 and place specified in the written notice prepared in triplicate by
25 the peace officer or probation officer or at the call of the court.

1 The notice shall also contain a concise statement of the reasons such
2 juvenile was taken into custody. The peace officer or probation
3 officer shall deliver one copy of the notice to such juvenile and
4 require such juvenile or his or her parent, guardian, other
5 custodian, or relative, or both, to sign a written promise that such
6 signer will appear at the time and place designated in the notice.
7 Upon the execution of the promise to appear, the peace officer or
8 probation officer shall immediately release such juvenile. The peace
9 officer or probation officer shall, as soon as practicable, file one
10 copy of the notice with the county attorney or city attorney and,
11 when required by the court, also file a copy of the notice with the
12 court or the officer appointed by the court for such purpose; or

13 (c) ~~The peace officer may retain~~ Retain temporary custody
14 of a juvenile taken into temporary custody under section 29-401 or
15 subdivision (1), (4), or (5) (1)(a) or (1)(d) or subsection (2) of
16 section 43-248 and deliver the juvenile, if necessary, to the
17 probation officer and communicate all relevant available information
18 regarding such juvenile to the probation officer. The probation
19 officer shall determine the need for detention of the juvenile as
20 provided in section 43-260.01. Upon determining that the juvenile
21 should be placed in a secure or nonsecure placement and securing
22 placement in such secure or nonsecure setting by the probation
23 officer, the peace officer shall implement the probation officer's
24 decision to release or to detain and place the juvenile. When secure
25 detention of a juvenile is necessary, such detention shall occur

1 within a juvenile detention facility except:

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

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

23 (iii) Whenever a juvenile is held in a secure area of any
24 jail or other facility intended or used for the detention of adults,
25 there shall be no verbal, visual, or physical contact between the

1 juvenile and any incarcerated adult and there shall be adequate staff
2 to supervise and monitor the juvenile's activities at all times. This
3 subdivision shall not apply to a juvenile charged with a felony as an
4 adult in county or district court if he or she is sixteen years of
5 age or older;

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

1 has submitted a written report to the court; and
2 (vii) A juvenile described in subdivision (1) or (2) of
3 section 43-247, except for a status offender, may be held in a secure
4 area of a jail or other facility intended or used for the detention
5 of adults for up to six hours before and six hours after any court
6 appearance.

7 (2) When a juvenile is taken into temporary custody
8 pursuant to subdivision ~~(2)~~(1)(b) of section 43-248, the peace
9 officer shall deliver the custody of such juvenile to the Department
10 of Health and Human Services which shall make a temporary placement
11 of the juvenile in the least restrictive environment consistent with
12 the best interests of the juvenile as determined by the department.
13 The department shall supervise such placement and, if necessary,
14 consent to any necessary emergency medical, psychological, or
15 psychiatric treatment for such juvenile. The department shall have no
16 other authority with regard to such temporary custody until or unless
17 there is an order by the court placing the juvenile in the custody of
18 the department. If the peace officer delivers temporary custody of
19 the juvenile pursuant to this subsection, the peace officer shall
20 make a full written report to the county attorney within twenty-four
21 hours of taking such juvenile into temporary custody. If a court
22 order of temporary custody is not issued within forty-eight hours of
23 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.

1 (3) If the peace officer takes the juvenile into
2 temporary custody pursuant to subdivision ~~(3)~~(1)(c) of section
3 43-248, the peace officer may place the juvenile at a mental health
4 facility for evaluation and emergency treatment or may deliver the
5 juvenile to the Department of Health and Human Services as provided
6 in subsection (2) of this section. At the time of the admission or
7 turning the juvenile over to the department, the peace officer
8 responsible for taking the juvenile into custody shall execute a
9 written certificate as prescribed by the Department of Health and
10 Human Services which will indicate that the peace officer believes
11 the juvenile to be mentally ill and dangerous, a summary of the
12 subject's behavior supporting such allegations, and that the harm
13 described in section 71-908 is likely to occur before proceedings
14 before a juvenile court may be invoked to obtain custody of the
15 juvenile. A copy of the certificate shall be forwarded to the county
16 attorney. The peace officer shall notify the juvenile's parents,
17 guardian, custodian, or relative of the juvenile's placement.

18 (4) When a juvenile is taken into temporary custody
19 pursuant to subdivision ~~(6)~~(1)(e) of section 43-248, the peace
20 officer shall deliver the juvenile to the enrolled school of such
21 juvenile.

22 (5) A juvenile taken into custody pursuant to a legal
23 warrant of arrest shall be delivered to a probation officer who shall
24 determine the need for detention of the juvenile as provided in
25 section 43-260.01. If detention is not required, the juvenile may be

1 released without bond if such release is in the best interests of the
2 juvenile, the safety of the community is not at risk, and the court
3 that issued the warrant is notified that the juvenile had been taken
4 into custody and was released.

5 (6) In determining the appropriate temporary placement of
6 a juvenile under this section, the peace officer or probation officer
7 shall select the placement which is least restrictive of the
8 juvenile's freedom so long as such placement is compatible with the
9 best interests of the juvenile and the safety of the community.

10 Sec. 3. Section 43-254, Revised Statutes Cumulative
11 Supplement, 2012, is amended to read:

12 43-254 Pending the adjudication of any case, if it
13 appears that the need for placement or further detention exists, the
14 juvenile may be (1) placed or detained a reasonable period of time on
15 order of the court in the temporary custody of either the person
16 having charge of the juvenile or some other suitable person, (2) kept
17 in some suitable place provided by the city or county authorities,
18 (3) placed in any proper and accredited charitable institution, (4)
19 placed in a state institution, except any adult correctional
20 facility, when proper facilities are available and the only local
21 facility is a city or county jail, at the expense of the committing
22 county on a per diem basis as determined from time to time by the
23 head of the particular institution, or (5) placed in the temporary
24 care and custody of the Department of Health and Human Services when
25 it does not appear that there is any need for secure detention. The

1 court may assess the cost of such placement or detention in whole or
2 in part to the parent of the juvenile as provided in section 43-290.

3 If a juvenile has been removed from his or her parent,
4 guardian, or custodian pursuant to subdivision ~~(2)~~(1)(b) of section
5 43-248, the court may enter an order continuing detention or
6 placement upon a written determination that continuation of the
7 juvenile in his or her home would be contrary to the health, safety,
8 or welfare of such juvenile and that reasonable efforts were made to
9 preserve and reunify the family if required under subsections (1)
10 through (4) of section 43-283.01.

11 Sec. 4. Section 43-256, Revised Statutes Cumulative
12 Supplement, 2012, is amended to read:

13 43-256 When the court enters an order continuing
14 placement or detention pursuant to section 43-253, upon request of
15 the juvenile, or his or her parent, guardian, or attorney, the court
16 shall hold a hearing within forty-eight hours, at which hearing the
17 burden of proof shall be upon the state to show probable cause that
18 such juvenile is within the jurisdiction of the court. Strict rules
19 of evidence shall not apply at the probable cause hearing. The
20 juvenile shall be released if probable cause is not shown. At the
21 option of the court, it may hold the adjudication hearing provided in
22 section 43-279 as soon as possible instead of the probable cause
23 hearing if held within a reasonable period of time. This section and
24 section 43-255 shall not apply to a juvenile (1) who has escaped from
25 a commitment or (2) who has been taken into custody for his or her

1 own protection as provided in subdivision ~~(2)~~(1)(b) of section
2 43-248 in which case the juvenile shall be held on order of the court
3 with jurisdiction for a reasonable period of time.

4 Sec. 5. Section 43-272.01, Revised Statutes Cumulative
5 Supplement, 2012, is amended to read:

6 43-272.01 (1) A guardian ad litem as provided for in
7 subsections (2) and (3) of section 43-272 shall be appointed when a
8 child is removed from his or her surroundings pursuant to subdivision
9 ~~(2)~~or(3)(1)(b) or (1)(c) of section 43-248, subsection (2) of
10 section 43-250, or section 43-251. If removal has not occurred, a
11 guardian ad litem shall be appointed at the commencement of all cases
12 brought under subdivision (3)(a) or (8) of section 43-247 and section
13 28-707.

14 (2) In the course of discharging duties as guardian ad
15 litem, the person so appointed shall consider, but not be limited to,
16 the criteria provided in this subsection. The guardian ad litem:

17 (a) Is appointed to stand in lieu of a parent for a
18 protected juvenile who is the subject of a juvenile court petition,
19 shall be present at all hearings before the court in such matter
20 unless expressly excused by the court, and may enter into such
21 stipulations and agreements concerning adjudication and disposition
22 deemed by him or her to be in the juvenile's best interests;

23 (b) Is not appointed to defend the parents or other
24 custodian of the protected juvenile but shall defend the legal and
25 social interests of such juvenile. Social interests shall be defined

1 generally as the usual and reasonable expectations of society for the
2 appropriate parental custody and protection and quality of life for
3 juveniles without regard to the socioeconomic status of the parents
4 or other custodians of the juvenile;

5 (c) May at any time after the filing of the petition move
6 the court of jurisdiction to provide medical or psychological
7 treatment or evaluation as set out in section 43-258. The guardian ad
8 litem shall have access to all reports resulting from any examination
9 ordered under section 43-258, and such reports shall be used for
10 evaluating the status of the protected juvenile;

11 (d) Shall make every reasonable effort to become familiar
12 with the needs of the protected juvenile which (i) shall include
13 consultation with the juvenile within two weeks after the appointment
14 and once every six months thereafter and inquiry of the most current
15 caseworker, foster parent, or other custodian and (ii) may include
16 inquiry of others directly involved with the juvenile or who may have
17 information or knowledge about the circumstances which brought the
18 juvenile court action or related cases and the development of the
19 juvenile, including biological parents, physicians, psychologists,
20 teachers, and clergy members;

21 (e) May present evidence and witnesses and cross-examine
22 witnesses at all evidentiary hearings. In any proceeding under this
23 section relating to a child of school age, certified copies of school
24 records relating to attendance and academic progress of such child
25 are admissible in evidence;

1 (f) Shall be responsible for making recommendations to
2 the court regarding the temporary and permanent placement of the
3 protected juvenile and shall submit a written report to the court at
4 every dispositional or review hearing, or in the alternative, the
5 court may provide the guardian ad litem with a checklist that shall
6 be completed and presented to the court at every dispositional or
7 review hearing;

8 (g) Shall consider such other information as is warranted
9 by the nature and circumstances of a particular case; and

10 (h) May file a petition in the juvenile court on behalf
11 of the juvenile, including a supplemental petition as provided in
12 section 43-291.

13 (3) Nothing in this section shall operate to limit the
14 discretion of the juvenile court in protecting the best interests of
15 a juvenile who is the subject of a juvenile court petition.

16 (4) For purposes of subdivision (2)(d) of this section,
17 the court may order the expense of such consultation, if any, to be
18 paid by the county in which the juvenile court action is brought or
19 the court may, after notice and hearing, assess the cost of such
20 consultation, if any, in whole or in part to the parents of the
21 juvenile. The ability of the parents to pay and the amount of the
22 payment shall be determined by the court by appropriate examination.

23 Sec. 6. Original sections 43-248, 43-250, 43-254, 43-256,
24 and 43-272.01, Revised Statutes Cumulative Supplement, 2012, are
25 repealed.