

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 464

Introduced by Ashford, 20.

Read first time January 22, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to juveniles; to amend sections 43-247,
2 43-247.01, and 43-274, Reissue Revised Statutes of
3 Nebraska, and sections 24-517, 29-1816, 43-276, 43-2,129,
4 and 43-412, Revised Statutes Cumulative Supplement, 2012;
5 to change the jurisdiction of courts over juveniles and
6 the indictment procedure for juveniles; to transfer a
7 section; to harmonize provisions; to provide an operative
8 date; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 24-517, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 24-517 Each county court shall have the following
4 jurisdiction:

5 (1) Exclusive original jurisdiction of all matters
6 relating to decedents' estates, including the probate of wills and
7 the construction thereof, except as provided in subsection (c) of
8 section 30-2464 and section 30-2486;

9 (2) Exclusive original jurisdiction in all matters
10 relating to the guardianship of a person, except if a separate
11 juvenile court already has jurisdiction over a child in need of a
12 guardian, concurrent original jurisdiction with the separate juvenile
13 court in such guardianship;

14 (3) Exclusive original jurisdiction of all matters
15 relating to conservatorship of any person, including (a) original
16 jurisdiction to consent to and authorize a voluntary selection,
17 partition, and setoff of a ward's interest in real estate owned in
18 common with others and to exercise any right of the ward in
19 connection therewith which the ward could exercise if competent and
20 (b) original jurisdiction to license the sale of such real estate for
21 cash or on such terms of credit as shall seem best calculated to
22 produce the highest price subject only to the requirements set forth
23 in section 30-3201;

24 (4) Concurrent jurisdiction with the district court to
25 involuntarily partition a ward's interest in real estate owned in

1 common with others;

2 (5) Concurrent original jurisdiction with the district
3 court in all civil actions of any type when the amount in controversy
4 is forty-five thousand dollars or less through June 30, 2005, and as
5 set by the Supreme Court pursuant to subdivision (b) of this
6 subdivision on and after July 1, 2005.

7 (a) When the pleadings or discovery proceedings in a
8 civil action indicate that the amount in controversy is greater than
9 the jurisdictional amount of subdivision (5) of this section, the
10 county court shall, upon the request of any party, certify the
11 proceedings to the district court as provided in section 25-2706. An
12 award of the county court which is greater than the jurisdictional
13 amount of subdivision (5) of this section is not void or
14 unenforceable because it is greater than such amount, however, if an
15 award of the county court is greater than the jurisdictional amount,
16 the county court shall tax as additional costs the difference between
17 the filing fee in district court and the filing fee in county court.

18 (b) The Supreme Court shall adjust the jurisdictional
19 amount for the county court every fifth year commencing July 1, 2005.
20 The adjusted jurisdictional amount shall be equal to the then current
21 jurisdictional amount adjusted by the average percentage change in
22 the unadjusted Consumer Price Index for All Urban Consumers published
23 by the Federal Bureau of Labor Statistics for the five-year period
24 preceding the adjustment date. The jurisdictional amount shall be
25 rounded to the nearest one-thousand-dollar amount;

1 (6) Concurrent original jurisdiction with the district
2 court in any criminal matter classified as a misdemeanor or for any
3 infraction. The district court shall have concurrent original
4 jurisdiction in any criminal matter classified as a misdemeanor that
5 arises from the same incident as a charged felony;

6 (7) Concurrent original jurisdiction with the separate
7 juvenile court and the district court in matters involving a juvenile
8 described in subdivision (4) of section 43-247 and any proceeding
9 under subdivision (7) or (11) of section 43-247;

10 (8) Concurrent original jurisdiction with the separate
11 juvenile court in any proceeding under subdivision (9) or (10) of
12 section 43-247;

13 (9) Concurrent jurisdiction with the separate juvenile
14 court in any case transferred to the county court under subsection
15 (2) of section 43-274;

16 ~~(7)~~—~~(10)~~ Concurrent original jurisdiction with the
17 district court in domestic relations matters as defined in section
18 25-2740 and with the district court and separate juvenile court in
19 paternity or custody determinations as provided in section 25-2740;

20 ~~(8)~~—~~(11)~~ Concurrent original jurisdiction with the
21 district court in matters arising under the Nebraska Uniform Trust
22 Code;

23 ~~(9)~~—~~(12)~~ Exclusive original jurisdiction in any action
24 based on violation of a city or village ordinance;

25 ~~(10)~~—~~(13)~~ Exclusive original jurisdiction in juvenile

1 matters under the Nebraska Juvenile Code as the juvenile court in
2 counties which have not established separate juvenile courts;

3 ~~(11)~~-(14) Exclusive original jurisdiction in matters of
4 adoption, except if a separate juvenile court already has
5 jurisdiction over the child to be adopted, concurrent original
6 jurisdiction with the separate juvenile court; and

7 ~~(12)~~-(15) All other jurisdiction heretofore provided and
8 not specifically repealed by Laws 1972, Legislative Bill 1032, and
9 such other jurisdiction as hereafter provided by law.

10 Sec. 2. Section 29-1816, Revised Statutes Cumulative
11 Supplement, 2012, is amended to read:

12 29-1816 (1) If the accused was a juvenile, less than
13 eighteen years of age, when such juvenile allegedly committed a
14 felony or misdemeanor, the county attorney or city attorney shall
15 file the indictment as a juvenile court petition with the juvenile
16 court and:

17 (a) If the alleged crime would be a misdemeanor and the
18 accused juvenile is less than sixteen years of age, such proceeding
19 shall be heard by the juvenile court; or

20 (b) If the alleged crime would be a misdemeanor and the
21 accused juvenile is sixteen or seventeen years of age, such
22 proceeding shall be heard by the juvenile court unless the juvenile
23 court transfers the proceeding to the county court upon motion of the
24 county attorney or city attorney under subsection (2) of section
25 43-274; or

1 (c) If the alleged crime would be a felony, such
2 proceeding shall be heard by the juvenile court unless the juvenile
3 court transfers the proceeding to the district court upon motion of
4 the county attorney or city attorney under subsection (2) of section
5 43-274.

6 (2) If the accused was eighteen years of age or older
7 when an alleged misdemeanor or felony was committed or the case has
8 been transferred by the juvenile court to the county court or
9 district court pursuant to subsection (2) of section 43-274, the ~~(1)~~
10 ~~The~~ accused shall be arraigned by reading to him or her the
11 indictment or information, unless the reading is waived by the
12 accused when the nature of the charge is made known to him or her.
13 The accused shall then be asked whether he or she is guilty or not
14 guilty of the offense charged. If the accused appears in person and
15 by counsel and goes to trial before a jury regularly impaneled and
16 sworn, he or she shall be deemed to have waived arraignment and a
17 plea of not guilty shall be deemed to have been made.

18 ~~(2)(a) At the time of the arraignment the court shall~~
19 ~~advise the accused, if he or she was less than eighteen years of age~~
20 ~~at the time of the commitment of the alleged crime, that he or she~~
21 ~~may move the county or district court at any time not later than~~
22 ~~thirty days after arraignment, unless otherwise permitted by the~~
23 ~~court for good cause shown, to waive jurisdiction in such case to the~~
24 ~~juvenile court for further proceedings under the Nebraska Juvenile~~
25 ~~Code. The court shall schedule a hearing on such motion within~~

1 ~~fifteen days. The customary rules of evidence shall not be followed~~
2 ~~at such hearing. The county attorney or city attorney shall present~~
3 ~~the evidence and reasons why such case should be retained, the~~
4 ~~accused shall present the evidence and reasons why the case should be~~
5 ~~transferred, and both sides shall consider the criteria set forth in~~
6 ~~section 43-276. After considering all the evidence and reasons~~
7 ~~presented by both parties, pursuant to section 43-276, the case shall~~
8 ~~be transferred unless a sound basis exists for retaining the case.~~

9 ~~(b) In deciding such motion the court shall consider,~~
10 ~~among other matters, the matters set forth in section 43-276 for~~
11 ~~consideration by the county attorney or city attorney when~~
12 ~~determining the type of case to file.~~

13 ~~(c) The court shall set forth findings for the reason for~~
14 ~~its decision, which shall not be a final order for the purpose of~~
15 ~~enabling an appeal. If the court determines that the accused should~~
16 ~~be transferred to the juvenile court, the complete file in the county~~
17 ~~or district court shall be transferred to the juvenile court and the~~
18 ~~complaint, indictment, or information may be used in place of a~~
19 ~~petition therein. The court making a transfer shall order the accused~~
20 ~~to be taken forthwith to the juvenile court and designate where he or~~
21 ~~she shall be kept pending determination by the juvenile court. The~~
22 ~~juvenile court shall then proceed as provided in the Nebraska~~
23 ~~Juvenile Code.~~

24 ~~Sec. 3. Section 43-247, Reissue Revised Statutes of~~
25 ~~Nebraska, is amended to read:~~

1 43-247 ~~The juvenile court shall have exclusive original~~
2 ~~jurisdiction as to any juvenile defined in subdivision (1) of this~~
3 ~~section who is under the age of sixteen, as to any juvenile defined~~
4 ~~in subdivision (3) of this section, and as to the parties and~~
5 ~~proceedings provided in subdivisions (5), (6), and (8) of this~~
6 ~~section. As used in this section, all references to the juvenile's~~
7 ~~age shall be the age at the time the act which occasioned the~~
8 ~~juvenile court action occurred. The juvenile court shall have~~
9 ~~concurrent original jurisdiction with the district court as to any~~
10 ~~juvenile defined in subdivision (2) of this section. The juvenile~~
11 ~~court shall have concurrent original jurisdiction with the district~~
12 ~~court and county court as to any juvenile defined in subdivision (1)~~
13 ~~of this section who is age sixteen or seventeen, any juvenile defined~~
14 ~~in subdivision (4) of this section, and any proceeding under~~
15 ~~subdivision (7) or (11) of this section. The juvenile court shall~~
16 ~~have concurrent original jurisdiction with the county court as to any~~
17 ~~proceeding under subdivision (9) or (10) of this section.~~
18 ~~Notwithstanding any disposition entered by the juvenile court under~~
19 ~~the Nebraska Juvenile Code, the juvenile court's jurisdiction over~~
20 ~~any individual adjudged to be within the provisions of this section~~
21 ~~shall continue until the individual reaches the age of majority or~~
22 ~~the court otherwise discharges the individual from its jurisdiction.~~

23 The juvenile court in each county as herein provided
24 shall have jurisdiction of:

25 (1) Any juvenile who has committed an act other than a

1 traffic offense which would constitute a misdemeanor or an infraction
2 under the laws of this state, or violation of a city or village
3 ordinance;

4 (2) Any juvenile who has committed an act which would
5 constitute a felony under the laws of this state;

6 (3) Any juvenile (a) who is homeless or destitute, or
7 without proper support through no fault of his or her parent,
8 guardian, or custodian; who is abandoned by his or her parent,
9 guardian, or custodian; who lacks proper parental care by reason of
10 the fault or habits of his or her parent, guardian, or custodian;
11 whose parent, guardian, or custodian neglects or refuses to provide
12 proper or necessary subsistence, education, or other care necessary
13 for the health, morals, or well-being of such juvenile; whose parent,
14 guardian, or custodian is unable to provide or neglects or refuses to
15 provide special care made necessary by the mental condition of the
16 juvenile; or who is in a situation or engages in an occupation
17 dangerous to life or limb or injurious to the health or morals of
18 such juvenile, (b) who, by reason of being wayward or habitually
19 disobedient, is uncontrolled by his or her parent, guardian, or
20 custodian; who deports himself or herself so as to injure or endanger
21 seriously the morals or health of himself, herself, or others; or who
22 is habitually truant from home or school, or (c) who is mentally ill
23 and dangerous as defined in section 71-908;

24 (4) Any juvenile who has committed an act which would
25 constitute a traffic offense as defined in section 43-245;

1 (5) The parent, guardian, or custodian of any juvenile
2 described in this section;

3 (6) The proceedings for termination of parental rights as
4 provided in the Nebraska Juvenile Code;

5 (7) The proceedings for termination of parental rights as
6 provided in section 42-364;

7 (8) Any juvenile who has been voluntarily relinquished,
8 pursuant to section 43-106.01, to the Department of Health and Human
9 Services or any child placement agency licensed by the Department of
10 Health and Human Services;

11 (9) Any juvenile who was a ward of the juvenile court at
12 the inception of his or her guardianship and whose guardianship has
13 been disrupted or terminated;

14 (10) The adoption or guardianship proceedings for a child
15 over which the juvenile court already has jurisdiction under another
16 provision of the Nebraska Juvenile Code; and

17 (11) The paternity or custody determination for a child
18 over which the juvenile court already has jurisdiction.

19 Notwithstanding the provisions of the Nebraska Juvenile
20 Code, the determination of jurisdiction over any Indian child as
21 defined in section 43-1503 shall be subject to the Nebraska Indian
22 Child Welfare Act; and the district court shall have exclusive
23 jurisdiction in proceedings brought pursuant to section 71-510.

24 Sec. 4. (1) For purposes of this section, all references
25 to the juvenile's age shall be the age at the time the act which

1 occasioned the juvenile court action occurred.

2 (2) The juvenile court shall have:

3 (a) Exclusive original jurisdiction as to:

4 (i) Any juvenile described in subdivision (1) of section
5 43-247 who is under the age of sixteen;

6 (ii) Any juvenile described in subdivision (1) of section
7 43-247 who is sixteen or seventeen, except that the juvenile court
8 shall have concurrent jurisdiction with the county court in any
9 proceeding transferred under subsection (2) of section 43-274;

10 (iii) Any juvenile described in subdivision (2) of
11 section 43-247, except that the juvenile court shall have concurrent
12 jurisdiction with the district court in any proceeding transferred
13 under subsection (2) of section 43-274;

14 (iv) Any juvenile described in subdivision (3) of section
15 43-247; and

16 (v) Parties and proceedings described in subdivisions
17 (5), (6), and (8) of section 43-247;

18 (b) Concurrent original jurisdiction with the county
19 court and the district court as to:

20 (i) Any juvenile described in subdivision (4) of section
21 43-247; and

22 (ii) Any proceeding under subdivision (7) or (11) of
23 section 43-247; and

24 (c) Concurrent original jurisdiction with the county
25 court as to any proceeding under subdivision (9) or (10) of section

1 43-247.

2 Sec. 5. Section 43-247.01, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 ~~43-247.01~~ (1) Pending the adjudication of any case, the
5 court may provide the parties the opportunity to address issues
6 involving the child's care and placement, services to the family, and
7 other concerns through facilitated conferencing. Facilitated
8 conferencing may include prehearing conferences and family group
9 conferences. All discussions taking place during such facilitated
10 conferences, including plea negotiations, shall be considered
11 confidential and privileged communications, except communications
12 required by mandatory reporting under section 28-711 for new
13 allegations of child abuse or neglect which were not previously known
14 or reported.

15 (2) For purposes of this section:

16 (a) Prehearing conference means a facilitated meeting
17 prior to appearing in court and held to gain the cooperation of the
18 parties, to offer services and treatment, and to develop a problem-
19 solving atmosphere in the best interests of children involved in the
20 juvenile court system; and

21 (b) Family group conference means a facilitated
22 collaborative process in which families work with extended family
23 members and others to make decisions and develop plans for the best
24 interests of children who are under the jurisdiction of the court.

25 Sec. 6. Section 43-274, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 43-274 (1) The county attorney, having knowledge of a
3 juvenile in his or her county who appears to be a juvenile described
4 in subdivision (1), (2), (3), or (4) of section 43-247, may file with
5 the clerk of the court having jurisdiction in the matter a petition
6 in writing specifying which subdivision of section 43-247 is alleged,
7 setting forth the facts verified by affidavit, and requesting the
8 court to determine whether support will be ordered pursuant to
9 section 43-290. Allegations under subdivisions (1), (2), and (4) of
10 section 43-247 shall be made with the same specificity as a criminal
11 complaint. It shall be sufficient if the affidavit is based upon
12 information and belief. Such petition and all subsequent proceedings
13 shall be entitled In the Interest of, a Juvenile
14 Under Eighteen Years of Age, inserting the juvenile's name in the
15 blank.

16 (2) When an indictment is brought against a juvenile and
17 filed as a juvenile court petition by the county attorney or city
18 attorney or when a juvenile court petition is filed by the county
19 attorney or city attorney and either petition involves a juvenile
20 under subdivision (2)(a)(ii) or (iii) of section 4 of this act, the
21 county attorney or city attorney may move the juvenile court to
22 transfer the proceeding to the county court or district court. Such
23 motion shall be filed with the juvenile court petition unless
24 otherwise permitted for good cause shown. The juvenile court shall
25 schedule a hearing on such motion within fifteen days. The county

1 attorney or city attorney shall present the evidence and reasons why
2 such proceeding should be transferred, and the juvenile shall present
3 the evidence and reasons why the proceeding should be retained by the
4 juvenile court. Both sides and the court shall consider the criteria
5 in section 43-276. After considering all the evidence and reasons
6 presented by both parties, the juvenile court shall retain the
7 proceeding unless a sound basis exists for transferring the
8 proceeding to the county court or district court. The juvenile court
9 shall set forth findings for the reason for its decision which shall
10 be a final order for the purpose of enabling an appeal. If the
11 proceeding is transferred, the county attorney or city attorney shall
12 file a criminal information in the county court or district court, as
13 appropriate.

14 ~~(2)~~(3) In all cases involving violation of a city or
15 village ordinance, the city attorney or village prosecutor may file a
16 petition in juvenile court. If such a petition is filed, for purposes
17 of such proceeding, references in the Nebraska Juvenile Code to
18 county attorney shall be construed to include a city attorney or
19 village prosecutor.

20 ~~(3)~~(4) The county attorney or city attorney may offer
21 pretrial diversion to the juvenile in accordance with a juvenile
22 pretrial diversion program established pursuant to sections 43-260.02
23 to 43-260.07.

24 ~~(4)(a)~~(5)(a) If a juvenile appears to be a juvenile
25 described in subdivision (1), (2), (3)(b), or (4) of section 43-247

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

15 (b) Terms of the agreement shall specify monitoring,
16 completion, and reporting requirements. The county attorney, the
17 court, or the probation office shall be notified by the designated
18 monitor if the juvenile does not complete the agreement within the
19 agreement's specified time.

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

22 (i) Participation by the juvenile in certain community
23 service programs;

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

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

2 and

3 (iv) Any other areas of agreement.

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

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

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

23 Sec. 7. Section 43-276, Revised Statutes Cumulative
24 Supplement, 2012, is amended to read:

25 43-276 In cases coming within subdivision ~~(1) of section~~

1 ~~43-247, when there is concurrent jurisdiction, or subdivision (2) or~~
2 ~~(4) of section 43-247, when the juvenile is under the age of sixteen~~
3 ~~years, (2)(a)(i), (ii), or (iii) or (2)(b)(i) of section 4 of this~~
4 act, the county attorney or city attorney shall, in making the
5 determination whether to transfer the proceeding to county court or
6 district court or to file a criminal charge, file a juvenile court
7 petition, offer juvenile pretrial diversion, or offer mediation,
8 consider: (1) The type of treatment such juvenile would most likely
9 be amenable to; (2) whether there is evidence that the alleged
10 offense included violence or was committed in an aggressive and
11 premeditated manner; (3) the motivation for the commission of the
12 offense; (4) the age of the juvenile and the ages and circumstances
13 of any others involved in the offense; (5) the previous history of
14 the juvenile, including whether he or she had been convicted of any
15 previous offenses or adjudicated in juvenile court, and, if so,
16 whether such offenses were crimes against the person or relating to
17 property, and other previous history of antisocial behavior, if any,
18 including any patterns of physical violence; (6) the sophistication
19 and maturity of the juvenile as determined by consideration of his or
20 her home, school activities, emotional attitude and desire to be
21 treated as an adult, pattern of living, and whether he or she has had
22 previous contact with law enforcement agencies and courts and the
23 nature thereof; (7) whether there are facilities particularly
24 available to the juvenile court for treatment and rehabilitation of
25 the juvenile; (8) whether the best interests of the juvenile and the

1 security of the public may require that the juvenile continue in
2 secure detention or under supervision for a period extending beyond
3 his or her minority and, if so, the available alternatives best
4 suited to this purpose; (9) whether the victim agrees to participate
5 in mediation; (10) whether there is a juvenile pretrial diversion
6 program established pursuant to sections 43-260.02 to 43-260.07; (11)
7 whether the juvenile has been convicted of or has acknowledged
8 unauthorized use or possession of a firearm; (12) whether a juvenile
9 court order has been issued for the juvenile pursuant to section
10 43-2,106.03; (13) whether the juvenile is a criminal street gang
11 member; (14) whether the juvenile has been previously committed to a
12 youth rehabilitation and treatment center; and (15) such other
13 matters as the county attorney deems relevant to his or her decision.

14 Sec. 8. Section 43-2,129, Revised Statutes Cumulative
15 Supplement, 2012, is amended to read:

16 43-2,129 Sections 43-245 to 43-2,129 and sections 4 and 5
17 of this act shall be known and may be cited as the Nebraska Juvenile
18 Code.

19 Sec. 9. Section 43-412, Revised Statutes Cumulative
20 Supplement, 2012, is amended to read:

21 43-412 (1) Every juvenile committed to the Office of
22 Juvenile Services pursuant to the Nebraska Juvenile Code or pursuant
23 to subsection (3) of section 29-2204 shall remain committed until he
24 or she attains ~~the age of nineteen~~ twenty-one years of age or is
25 legally discharged.

1 (2) The discharge of any juvenile pursuant to the rules
2 and regulations or upon his or her attainment of the age of nineteen
3 shall be a complete release from all penalties incurred by conviction
4 or adjudication of the offense for which he or she was committed.

5 (3) The Office of Juvenile Services shall provide the
6 committing court with written notification of the juvenile's
7 discharge within thirty days of a juvenile being discharged from the
8 care and custody of the office.

9 Sec. 10. This act becomes operative on January 1, 2014.

10 Sec. 11. Original sections 43-247, 43-247.01, and 43-274,
11 Reissue Revised Statutes of Nebraska, and sections 24-517, 29-1816,
12 43-276, 43-2,129, and 43-412, Revised Statutes Cumulative Supplement,
13 2012, are repealed.