

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 981

Introduced by Baker, 30.

Read first time January 10, 2018

Committee: Judiciary

1 A BILL FOR AN ACT relating to juveniles; to amend sections 43-247,
2 43-247.02, 43-289, and 43-412, Reissue Revised Statutes of Nebraska,
3 and section 29-1816, Revised Statutes Supplement, 2017; to change
4 provisions relating to arraignment and placement or commitment of
5 certain juveniles; to authorize jurisdiction by the juvenile court
6 over certain juveniles until the age of twenty-one; to harmonize
7 provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-1816, Revised Statutes Supplement, 2017, is
2 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, or II, ~~or IIA~~ felony was committed;

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 set forth findings for
12 the reason for its decision. If the county court or district court
13 determines that the accused should be transferred to the juvenile court,
14 the complete file in the county court or district court shall be
15 transferred to the juvenile court and the complaint, indictment, or
16 information may be used in place of a petition therein. The county court
17 or district court making a transfer shall order the accused to be taken
18 forthwith to the juvenile court and designate where the juvenile shall be
19 kept pending determination by the juvenile court. The juvenile court
20 shall then proceed as provided in the Nebraska Juvenile Code.

21 (c) An order granting or denying transfer of the case from county or
22 district court to juvenile court shall be considered a final order for
23 the purposes of appeal. Upon entry of an order, any party may appeal to
24 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 an appeal from an order
31 transferring the case to juvenile court, the juvenile court may enter

1 temporary orders in the best interests of the juvenile.

2 (4) When the accused was younger than eighteen years of age when an
3 alleged offense was committed, the county attorney or city attorney shall
4 proceed under section 43-274.

5 Sec. 2. Section 43-247, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 43-247 The juvenile court in each county shall have jurisdiction of:

8 (1) Any juvenile who has committed an act other than a traffic
9 offense which would constitute a misdemeanor or an infraction under the
10 laws of this state, or violation of a city or village ordinance, and who,
11 beginning July 1, 2017, was eleven years of age or older at the time the
12 act was committed;

13 (2) Any juvenile who has committed an act which would constitute a
14 felony under the laws of this state and who, beginning July 1, 2017, was
15 eleven years of age or older at the time the act was committed;

16 (3) Any juvenile:

17 (a) who ~~who~~ is homeless or destitute, or without proper support
18 through no fault of his or her parent, guardian, or custodian; who is
19 abandoned by his or her parent, guardian, or custodian; who lacks proper
20 parental care by reason of the fault or habits of his or her parent,
21 guardian, or custodian; whose parent, guardian, or custodian neglects or
22 refuses to provide proper or necessary subsistence, education, or other
23 care necessary for the health, morals, or well-being of such juvenile;
24 whose parent, guardian, or custodian is unable to provide or neglects or
25 refuses to provide special care made necessary by the mental condition of
26 the juvenile; who is in a situation or engages in an occupation,
27 including prostitution, dangerous to life or limb or injurious to the
28 health or morals of such juvenile; or who, beginning July 1, 2017, has
29 committed an act or engaged in behavior described in subdivision (1),
30 (2), (3)(b), or (4) of this section and who was under eleven years of age
31 at the time of such act or behavior; 7

1 (b)(i) Who ~~who~~, until July 1, 2017, by reason of being wayward or
2 habitually disobedient, is uncontrolled by his or her parent, guardian,
3 or custodian; who departs himself or herself so as to injure or endanger
4 seriously the morals or health of himself, herself, or others; or who is
5 habitually truant from home or school; or

6 (ii) Who ~~who~~, beginning July 1, 2017, is eleven years of age or
7 older and, by reason of being wayward or habitually disobedient, is
8 uncontrolled by his or her parent, guardian, or custodian; who departs
9 himself or herself so as to injure or endanger seriously the morals or
10 health of himself, herself, or others; or who is habitually truant from
11 home or school; or

12 (c) Who ~~who~~ is mentally ill and dangerous as defined in section
13 71-908;

14 (4) Any juvenile who has committed an act which would constitute a
15 traffic offense as defined in section 43-245 and who, beginning July 1,
16 2017, was eleven years of age or older at the time the act was committed;

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

19 (6) The proceedings for termination of parental rights;

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

24 (8) Any juvenile who was a ward of the juvenile court at the
25 inception of his or her guardianship and whose guardianship has been
26 disrupted or terminated;

27 (9) The adoption or guardianship proceedings for a child over which
28 the juvenile court already has jurisdiction under another provision of
29 the Nebraska Juvenile Code;

30 (10) The paternity or custody determination for a child over which
31 the juvenile court already has jurisdiction;

1 (11) The proceedings under the Young Adult Bridge to Independence
2 Act; ~~and~~

3 (12) Except as provided in subdivision (11) or (13) of this section,
4 any individual adjudged to be within the provisions of this section until
5 the individual reaches the age of majority or the court otherwise
6 discharges the individual from its jurisdiction; and -

7 (13) Any individual adjudged to be within the provisions of this
8 section until such individual reaches the age of twenty-one years, for
9 purposes of enforcing the court's orders, if the individual and his or
10 her legal counsel consent.

11 Notwithstanding the provisions of the Nebraska Juvenile Code, the
12 determination of jurisdiction over any Indian child as defined in section
13 43-1503 shall be subject to the Nebraska Indian Child Welfare Act; and
14 the district court shall have exclusive jurisdiction in proceedings
15 brought pursuant to section 71-510.

16 Sec. 3. Section 43-247.02, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 43-247.02 (1) Notwithstanding any other provision of Nebraska law,
19 on and after October 1, 2013, a juvenile court shall not:

20 (a) Place any juvenile adjudicated or pending adjudication under
21 subdivision (1), (2), (3)(b), or (4) of section 43-247 with the
22 Department of Health and Human Services or the Office of Juvenile
23 Services, other than as allowed under subsection (2) or (3) of this
24 section;

25 (b) Commit any juvenile adjudicated or pending adjudication under
26 subdivision (1), (2), (3)(b), or (4) of section 43-247 to the care and
27 custody of the Department of Health and Human Services or the Office of
28 Juvenile Services, other than as allowed under subsection (2) or (3) of
29 this section;

30 (c) Require the Department of Health and Human Services or the
31 Office of Juvenile Services to supervise any juvenile adjudicated or

1 pending adjudication under subdivision (1), (2), (3)(b), or (4) of
2 section 43-247, other than as allowed under subsection (2) or (3) of this
3 section; or

4 (d) Require the Department of Health and Human Services or the
5 Office of Juvenile Services to provide, arrange for, or pay for any
6 services for any juvenile adjudicated or pending adjudication under
7 subdivision (1), (2), (3)(b), or (4) of section 43-247, or for any party
8 to cases under those subdivisions, other than as allowed under subsection
9 (2) or (3) of this section.

10 (2) Notwithstanding any other provision of Nebraska law, on and
11 after July 1, 2013, a juvenile court shall not commit a juvenile to the
12 Office of Juvenile Services for placement at a youth rehabilitation and
13 treatment center except as part of an order of intensive supervised
14 probation under subdivision (1)(b)(ii) of section 43-286.

15 (3) Nothing in this section shall be construed to limit the
16 authority or duties of the Department of Health and Human Services in
17 relation to juveniles adjudicated under subdivision (1), (2), (3)(b), or
18 (4) of section 43-247 who were committed to the care and custody of the
19 Department of Health and Human Services prior to October 1, 2013, to the
20 Office of Juvenile Services for community-based services prior to October
21 1, 2013, or to the Office of Juvenile Services for placement at a youth
22 rehabilitation and treatment center prior to July 1, 2013. The care and
23 custody of such juveniles with the Department of Health and Human
24 Services or the Office of Juvenile Services shall continue in accordance
25 with the Nebraska Juvenile Code and the Juvenile Services Act as such
26 acts existed on January 1, 2013, until:

27 (a) The juvenile reaches the age of majority;

28 (b) The individual reaches the age of twenty-one years if:

29 (i) The individual committed the act which forms the basis for
30 jurisdiction under subdivision (1), (2), (3)(b), or (4) of section 43-247
31 before he or she reached the age of majority; and

1 (ii) The individual and his or her legal counsel consent to such
2 continuation of care and custody and to the jurisdiction of the juvenile
3 court under subdivision (13) of section 43-247;

4 (c) {b} The juvenile is no longer under the care and custody of the
5 department pursuant to a court order or for any other reason, a guardian
6 other than the department is appointed for the juvenile, or the juvenile
7 is adopted;

8 (d) {e} The juvenile is discharged pursuant to section 43-412, as
9 such section existed on January 1, 2013; or

10 (e) {d} A juvenile court terminates its jurisdiction of the
11 juvenile.

12 Sec. 4. Section 43-289, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 43-289 In no case shall a juvenile committed under the terms of the
15 Nebraska Juvenile Code be confined after he or she reaches the age of
16 majority or twenty-one years of age if he or she has consented to
17 jurisdiction under subdivision (13) of section 43-272. The court may,
18 when the health or condition of any juvenile adjudged to be within the
19 terms of such code shall require it, cause the juvenile to be placed in a
20 public hospital or institution for treatment or special care or in an
21 accredited and suitable private hospital or institution which will
22 receive the juvenile for like purposes. Whenever any juvenile has been
23 committed to the Department of Health and Human Services, the department
24 shall follow the court's orders, if any, concerning the juvenile's
25 specific needs for treatment or special care for his or her physical
26 well-being and healthy personality. If the court finds any such juvenile
27 to be a person with an intellectual disability, the court may, upon
28 attaching a physician's certificate and a report as to the mental
29 capacity of such person, commit such juvenile directly to an authorized
30 and appropriate state or local facility or home.

31 The marriage of any juvenile committed to a state institution under

1 the age of nineteen years shall not make such juvenile of the age of
2 majority.

3 A juvenile committed to any such institution shall be subject to the
4 control of the superintendent thereof, and the superintendent, with the
5 advice and consent of the Department of Health and Human Services, shall
6 adopt and promulgate rules and regulations for the promotion, paroling,
7 and final discharge of residents such as shall be considered mutually
8 beneficial for the institution and the residents. Upon final discharge of
9 any resident, such department shall file a certified copy of the
10 discharge with the court which committed the resident.

11 Sec. 5. Section 43-412, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 43-412 (1) Every juvenile committed to the Office of Juvenile
14 Services pursuant to the Nebraska Juvenile Code shall remain committed
15 until he or she ~~attains the age of nineteen or is legally discharged or~~
16 until he or she attains the age of nineteen years, or twenty-one years if
17 he or she has consented to jurisdiction under subdivision (13) of section
18 43-272.

19 (2) Upon attainment of the age of nineteen or absent a continuing
20 order of intensive supervised probation, discharge of any juvenile
21 pursuant to the rules and regulations shall be a complete release from
22 all penalties incurred by conviction or adjudication of the offense for
23 which he or she was committed.

24 (3) The Office of Juvenile Services shall provide the committing
25 court, Office of Probation Administration, county attorney, defense
26 attorney, if any, and guardian ad litem, if any, with written
27 notification of the juvenile's discharge within thirty days prior to a
28 juvenile being discharged from the care and custody of the office.

29 Sec. 6. Original sections 43-247, 43-247.02, 43-289, and 43-412,
30 Reissue Revised Statutes of Nebraska, and section 29-1816, Revised
31 Statutes Supplement, 2017, are repealed.