

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 391

Introduced by Hansen, M., 26; Pansing Brooks, 28.

Read first time January 17, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend
2 sections 29-401, 43-248.01, and 43-249, Reissue Revised Statutes of
3 Nebraska, and sections 43-250 and 43-2,129, Revised Statutes
4 Cumulative Supplement, 2018; to require notification of a juvenile's
5 parent, guardian, custodian, or relative when a juvenile is taken
6 into custody as prescribed; to require an advisement of a juvenile's
7 rights to be given when a juvenile is taken into custody; to require
8 that a juvenile's parent, guardian, custodian, or relative be
9 present when requested; to prohibit the use of certain statements in
10 court proceedings as prescribed; to define a term; to harmonize
11 provisions; and to repeal the original sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-401, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-401 Every sheriff, deputy sheriff, marshal, deputy marshal,
4 security guard, police officer, or peace officer as defined in
5 subdivision (15) of section 49-801 shall arrest and detain any person
6 found violating any law of this state or any legal ordinance of any city
7 or incorporated village until a legal warrant can be obtained, except
8 that (1) any such law enforcement officer taking a juvenile under the age
9 of eighteen years into his or her custody for any violation herein
10 defined shall proceed as set forth in sections 43-248, 43-248.01, 43-250,
11 43-251, 43-251.01, and 43-253 and section 2 of this act and (2) the court
12 in which the juvenile is to appear shall not accept a plea from the
13 juvenile until finding that the parents of the juvenile have been
14 notified or that reasonable efforts to notify such parents have been made
15 as provided in section 2 of this act ~~43-250~~.

16 Sec. 2. A peace officer who takes a juvenile into temporary custody
17 under section 29-401 or subdivision (1), (4), (5), or (8) of section
18 43-248 shall immediately take reasonable measures to notify the
19 juvenile's parent, guardian, custodian, or relative:

- 20 (1) That the juvenile is in custody;
- 21 (2) Of the juvenile's current location and where he or she will be
22 transferred, if applicable; and
- 23 (3) The reason the juvenile was taken into custody.

24 Sec. 3. Section 43-248.01, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 43-248.01 (1) All law enforcement personnel or other governmental
27 officials having custody of any juvenile person ~~under eighteen years of~~
28 ~~age shall inform the juvenile person in custody, using developmentally~~
29 ~~appropriate language and without unnecessary delay, of such juvenile's~~
30 ~~person's right to call or consult an attorney who is retained by or~~
31 ~~appointed on behalf of such juvenile person or whom the juvenile person~~

1 may desire to consult, ~~and, except~~

2 (2)(a) A peace officer who takes a juvenile into custody shall
3 describe to the juvenile the efforts the peace officer has taken to
4 notify the juvenile's parent, guardian, custodian, or relative. If the
5 parent, guardian, custodian, or relative has not been contacted the peace
6 officer shall inquire from the juvenile if there are any other ways to
7 contact such persons. Prior to any custodial interrogation, the peace
8 officer shall read aloud and provide the juvenile the following written
9 and oral advisement:

10 "1. You have the right to remain silent, which means that you do not
11 have to say anything.

12 2. It is okay if you do not want to talk to me.

13 3. If you do want to talk to me, I can tell the juvenile court
14 judge, adult court judge, prosecutor, and probation officer anything that
15 you tell me.

16 4. You have the right to talk to a lawyer right now. That lawyer
17 works for you and is available at any time, even late at night. That
18 lawyer does not tell anyone what you tell them. That lawyer helps you
19 decide if it is a good idea to answer questions. That lawyer can be with
20 you if you want to talk with me.

21 5. If you and your parents or guardians do not have the money to pay
22 a lawyer, you will be given a lawyer for free who will help you in your
23 defense.

24 6. If you start to answer my questions, you can change your mind and
25 stop at any time. I will not ask you any more questions."

26 (b) Unless counsel is present, following the recitation of each
27 enumerated component of the advisement set forth in subdivision (a) of
28 this subsection, the peace officer shall ask the juvenile to describe
29 what each component of the advisement means and obtain the juvenile's
30 written or recorded understanding of the advisement in the juvenile's own
31 words. The peace officer shall ask the juvenile if he or she understands

1 and if he or she wants to proceed without a lawyer. If he or she answers
2 no to either question, all questioning must cease until counsel is
3 present.

4 (3) If a juvenile requests to speak to a parent, guardian,
5 custodian, relative, or attorney before or during a custodial
6 interrogation, all questioning of the juvenile must cease until such
7 person arrives.

8 (4) The peace officer, law enforcement personnel, or other
9 government official having custody of the juvenile when—exigent
10 circumstances exist, shall without delay permit such juvenile person to
11 call or consult an attorney who is retained by or appointed on behalf of
12 such person or whom the person may desire to consult such attorney
13 without delay. An attorney shall be permitted to see and consult with the
14 juvenile person in custody alone and in private at the place of custody.

15 (5) Upon arrival of a parent, guardian, custodian, or relative to
16 whom the juvenile has requested to speak, the peace officer, law
17 enforcement personnel, or other government official having custody of the
18 juvenile shall without delay permit such person to see and consult with
19 the juvenile alone and in private at the place of custody. Prior to any
20 custodial interrogation with such person present, the peace officer shall
21 again advise the juvenile and such person of the juvenile's
22 constitutional rights under Miranda v. Arizona, 384 U.S. 436 (1966).

23 (6) Except when exigent circumstances exist, any statements of the
24 juvenile taken in violation of this section or of the rights enumerated
25 in the advisement provided in subsection (2) of this section shall not be
26 admissible against the juvenile in any criminal proceeding or proceeding
27 under the Nebraska Juvenile Code.

28 (7) For purposes of this section, custodial interrogation has the
29 meaning prescribed to it under the Fourth and Fifth Amendments to the
30 Constitution of the United States and Article I, sections 3 and 7, of the
31 Constitution of Nebraska, as interpreted by the United States Supreme

1 Court and the Nebraska Supreme Court.

2 Sec. 4. Section 43-249, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 43-249 No juvenile taken into temporary custody under section 43-248
5 shall be considered to have been arrested, except for the purpose of
6 determining the validity of such custody under the Constitution of
7 Nebraska or the United States and determining compliance with section
8 43-248.01.

9 Sec. 5. Section 43-250, Revised Statutes Cumulative Supplement,
10 2018, is amended to read:

11 43-250 (1) A peace officer who takes a juvenile into temporary
12 custody under section 29-401 or subdivision (1), (4), (5), or (8) of
13 section 43-248 shall immediately take reasonable measures to notify the
14 juvenile's parent, guardian, custodian, or relative as provided in
15 section 2 of this act and shall proceed as follows:

16 (a) The peace officer may release a juvenile taken into temporary
17 custody under section 29-401 or subdivision (1), (4), or (8) of section
18 43-248;

19 (b) The peace officer may require a juvenile taken into temporary
20 custody under section 29-401 or subdivision (1) or (4) of section 43-248
21 to appear before the court of the county in which such juvenile was taken
22 into custody at a time and place specified in the written notice prepared
23 in triplicate by the peace officer or at the call of the court. The
24 notice shall also contain a concise statement of the reasons such
25 juvenile was taken into custody. The peace officer shall deliver one copy
26 of the notice to such juvenile and require such juvenile or his or her
27 parent, guardian, other custodian, or relative, or both, to sign a
28 written promise that such signer will appear at the time and place
29 designated in the notice. Upon the execution of the promise to appear,
30 the peace officer shall immediately release such juvenile. The peace
31 officer shall, as soon as practicable, file one copy of the notice with

1 the county attorney or city attorney and, when required by the court,
2 also file a copy of the notice with the court or the officer appointed by
3 the court for such purpose; or

4 (c) The peace officer may retain temporary custody of a juvenile
5 taken into temporary custody under section 29-401 or subdivision (1),
6 (4), or (5) of section 43-248 and deliver the juvenile, if necessary, to
7 the probation officer and communicate all relevant available information
8 regarding such juvenile to the probation officer. The probation officer
9 shall determine the need for detention of the juvenile as provided in
10 section 43-260.01. Upon determining that the juvenile should be placed in
11 detention or an alternative to detention and securing placement in such
12 setting by the probation officer, the peace officer shall implement the
13 probation officer's decision to release or to detain and place the
14 juvenile. When secure detention of a juvenile is necessary, such
15 detention shall occur within a juvenile detention facility except:

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

25 (ii) When a juvenile described in subdivision (1) or (2) of section
26 43-247, except for a status offender, is taken into temporary custody
27 outside of a metropolitan statistical area and where no juvenile
28 detention facility is reasonably available, the juvenile may be
29 delivered, for temporary custody not to exceed twenty-four hours
30 excluding nonjudicial days and while awaiting an initial court
31 appearance, to a secure area of a jail or other facility intended or used

1 for the detention of adults solely for the purposes of identifying the
2 juvenile and ascertaining his or her health and well-being and for
3 safekeeping while awaiting transport to an appropriate juvenile placement
4 or release to a responsible party;

5 (iii) Whenever a juvenile is held in a secure area of any jail or
6 other facility intended or used for the detention of adults, there shall
7 be no verbal, visual, or physical contact between the juvenile and any
8 incarcerated adult and there shall be adequate staff to supervise and
9 monitor the juvenile's activities at all times. This subdivision shall
10 not apply to a juvenile charged with a felony as an adult in county or
11 district court if he or she is sixteen years of age or older;

12 (iv) If a juvenile is under sixteen years of age or is a juvenile as
13 described in subdivision (3) of section 43-247, he or she shall not be
14 placed within a secure area of a jail or other facility intended or used
15 for the detention of adults;

16 (v) If, within the time limits specified in subdivision (1)(c)(i) or
17 (1)(c)(ii) of this section, a felony charge is filed against the juvenile
18 as an adult in county or district court, he or she may be securely held
19 in a jail or other facility intended or used for the detention of adults
20 beyond the specified time limits;

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

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

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

24 (3) If the peace officer takes the juvenile into temporary custody
25 pursuant to subdivision (3) of section 43-248, the peace officer may
26 place the juvenile at a mental health facility for evaluation and
27 emergency treatment or may deliver the juvenile to the Department of
28 Health and Human Services as provided in subsection (2) of this section.
29 At the time of the admission or turning the juvenile over to the
30 department, the peace officer responsible for taking the juvenile into
31 custody pursuant to subdivision (3) of section 43-248 shall execute a

1 written certificate as prescribed by the Department of Health and Human
2 Services which will indicate that the peace officer believes the juvenile
3 to be mentally ill and dangerous, a summary of the subject's behavior
4 supporting such allegations, and that the harm described in section
5 71-908 is likely to occur before proceedings before a juvenile court may
6 be invoked to obtain custody of the juvenile. A copy of the certificate
7 shall be forwarded to the county attorney. The peace officer shall notify
8 the juvenile's parents, guardian, custodian, or relative of the
9 juvenile's placement.

10 (4) When a juvenile is taken into temporary custody pursuant to
11 subdivision (6) of section 43-248, the peace officer shall deliver the
12 juvenile to the enrolled school of such juvenile.

13 (5) A juvenile taken into custody pursuant to a legal warrant of
14 arrest shall be delivered to a probation officer who shall determine the
15 need for detention of the juvenile as provided in section 43-260.01. If
16 detention is not required, the juvenile may be released without bond if
17 such release is in the best interests of the juvenile, the safety of the
18 community is not at risk, and the court that issued the warrant is
19 notified that the juvenile had been taken into custody and was released.

20 (6) In determining the appropriate temporary placement or
21 alternative to detention of a juvenile under this section, the peace
22 officer shall select the placement or alternative which is least
23 restrictive of the juvenile's freedom so long as such placement or
24 alternative is compatible with the best interests of the juvenile and the
25 safety of the community. Any alternative to detention shall cause the
26 least restriction of the juvenile's freedom of movement consistent with
27 the best interest of the juvenile and the safety of the community.

28 Sec. 6. Section 43-2,129, Revised Statutes Cumulative Supplement,
29 2018, is amended to read:

30 43-2,129 Sections 43-245 to 43-2,129 and section 2 of this act shall
31 be known and may be cited as the Nebraska Juvenile Code.

1 Sec. 7. Original sections 29-401, 43-248.01, and 43-249, Reissue
2 Revised Statutes of Nebraska, and sections 43-250 and 43-2,129, Revised
3 Statutes Cumulative Supplement, 2018, are repealed.