

**ONE HUNDRED FOURTH LEGISLATURE - SECOND SESSION - 2016**  
**COMMITTEE STATEMENT**  
**LB894**

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**Hearing Date:** Wednesday January 20, 2016  
**Committee On:** Judiciary  
**Introducer:** Pansing Brooks  
**One Liner:** Change provisions relating to appointment of counsel in juvenile cases

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

**Aye:** 8 Senators Seiler, Coash, Ebke, Krist, Pansing Brooks, Williams, Chambers, Morfeld

**Nay:**

**Absent:**

**Present Not Voting:**

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**Verbal Testimony:**

**Proponents:**

SEN. PATTY PANSING BROOKS  
JULIET SUMMERS  
KIM HAWEKOTTE  
MELANIE WILLIAMS-SMOTHERMAN  
VAUGHN CROWELL  
MARGENE TIMM

CHRISTINE HENNINGSEN  
ROGER LOTT

**Representing:**

INTRODUCER  
VOICES FOR CHILDREN  
FOSTER CARE REVIEW OFFICE  
FAMILY ADVOCACY MOVEMENT  
SELF  
LANCASTER COUNTY PUBLIC DEFENDER'S OFFICE  
NEBRASKA YOUTH ADVOCATES  
SELF

**Opponents:**

**Representing:**

**Neutral:**

SHAKIL MALIK  
ELAINE MENZEL

**Representing:**

NE COUNTY ATTORNEYS ASSOCIATION  
NACO

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**Summary of purpose and/or changes:**

Section 1 would entitle a minor brought before a juvenile court to representation by a judicial public defender pursuant to section 29-3915 without regard to the ability of the minor or his or her parent or guardian to afford counsel.

Section 2 would amend section 43-248.01 to require law enforcement or other government officials having custody of a person under age eighteen to inform the person in custody of the person's right to consult with their attorney and to permit consultation with the attorney without delay.

Section 3 would amend section 43-272 to require counsel to be appointed upon the filing of a petition in juvenile court. Under current law, appointment of counsel would occur at the juvenile's first appearance before a juvenile court. The cost of the appointed counsel would be the responsibility of the county. Section 3 would also require the Supreme Court to promulgate guidelines for all attorneys practicing in juvenile court.

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Section 4 would provide the requirements for waiver of a juvenile's right to counsel. A waiver must be made on the record in open court and confirmed in a writing signed by the juvenile. The court could not accept a waiver that has not been made intelligently, knowingly and voluntarily. The juvenile would be allowed to meet with his or her attorney before waiving the right to counsel. The right to counsel could not be waived by a parent, guardian, custodian or any other person on behalf of the juvenile. The right to counsel could not be waived if a juvenile is under the age of fourteen, for a detention hearing, for any dispositional hearing seeking out-of-home placement or if there is a motion to transfer the case to adult court.

Section 5 would amend section 43-279 to allow a juvenile court to accept a waiver of counsel at an adjudication hearing only if it complies with Section 4 of this bill.

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**Explanation of amendments:**

AM1962 is a white copy amendment to LB894 that combines the bill with provisions originally included in LB675, LB709, LB845 and LB893.

Section 7 contains the language from LB675 that would make several changes to the restrictions on placement and detention in section 43-251.01.

The language in subsections (4) and (5) of section 43-251.01 is reorganized and would eliminate the authority to place a juvenile at a youth rehabilitation and treatment center (YRTC) unless it is a matter of immediate and urgent necessity. The new subsection (5) would disallow the use of detention unless the physical safety of persons in the community would be seriously threatened or there is a demonstrable record of willful failure to appear for court hearings.

LB675 would not have allowed juveniles twelve years of age or younger to be placed in detention under any circumstances. AM1962 would not allow a juvenile twelve years of age or younger to be placed in detention unless the juvenile is alleged to have committed a Class I, IA, IB, IC, ID, II or IIA felony.

Under the new subsection (6), the bill would not allow any juveniles to be placed in detention to allow a parent or guardian to avoid legal responsibility; as punishment, treatment or rehabilitation; for more convenient administrative access; to facilitate further interrogation or investigation; due to a lack of more appropriate facilities; or to satisfy the demands of a victim, law enforcement or the community.

The language from LB709 would replace the classification in current law of juvenile programs and facilities that are considered secure detention and nonsecure detention with a new classification of detention and alternatives to detention. The bill would also provide for additional court review of the use of these programs and facilities.

Section 2 of AM1962 would make several changes to the definitions in section 43-245. This section first adds a definition of alternative to detention. This new definition would include a program or directive to increase supervision of a youth in the community, but excludes placements that utilize physical construction or hardware to restrain a youth's freedom of movement and ingress and egress from the placement.

This section would also eliminate a definition for nonsecure detention. This section would amend the definition of staff secure juvenile facility by replacing a reference to section 83-4,125 with the actual language from section 83-4,125(3) referenced in the current definition.

Section 6 of AM1962 would replace a reference to secure or nonsecure placements in the temporary custody procedures in section 43-250 with a reference to detention or an alternative to detention. This section would also update section 43-250(6) to include reference to alternatives to detention and require that any placement or alternative to detention least restrict the juvenile's freedom consistent with the best interest of the juvenile and safety of the community.

Section 8 would amend the intake investigation procedures in section 43-253 to require that a decision to place a juvenile in an alternative to detention also be based on the standardized juvenile detention screening instrument required by section 43-260.01.

Section 8 would also require that any juvenile taken into temporary custody for a violation of state law or municipal ordinance, running away from his or her parent or guardian, violating probation, attempting to leave the jurisdiction or placing lives or property in danger and subjected to an alternative to detention infringing upon the juvenile's liberty must appear before a court within twenty-four hours for a hearing to determine whether the alternative to detention is necessary. Such a hearing is already required under current law when a juvenile is placed in a secure detention facility.

Section 9 would amend section 43-255 to require that a juvenile be unconditionally released from a temporarily imposed alternative to detention within forty-eight hours unless a motion alleging a violation of a court order, a juvenile court petition or a criminal complaint has been filed. Unconditional release from detention or placement in such circumstances is already required under current law.

Section 10 would amend section 43-256 to allow a juvenile, his or her parent, guardian or attorney to request a probable cause hearing when the court has ordered a continuing alternative to detention that infringes the juvenile's liberty interest. The court must hold the hearing within forty-eight hours and places the burden on the state to prove that the juvenile is within the jurisdiction of the court. Such a hearing is already authorized for placements and detention under existing law.

Section 11 would amend section 43-260 to replace the references to secure and nonsecure detention with references to detention and alternatives to detention. Section 43-260 requires the Office of Probation Administration to prepare a standardized juvenile detention screening instrument and requires juvenile probation officers to use the instrument as an assessment tool to determine whether detention is necessary.

Section 12 would amend section 43-260.01 to replace the references to secure and nonsecure detention with references to detention and alternatives to detention. Section 43-260.01 provides the procedure for using a standardized juvenile detention screening instrument at intake.

Section 16 would amend section 43-3504(1)(d) to change a reference from secure and nonsecure detention to detention and alternatives to detention. Section 43-3504 outlines the requirements for county juvenile services plans.

The language from LB845 would create documentation and reporting requirements related to the use of room confinement of juveniles.

Section 17 would amend section 83-4,125 to add definitions for juvenile facility and room confinement. Juvenile facility was defined in LB845 as any residential facility housing youth under the age of majority. The definition in Section 17 of AM1962 would more specifically define juvenile facility to include a residential child-caring agency, a juvenile detention facility, staff secure juvenile facility, a facility operated by the Department of Correctional Services or a youth rehabilitation and treatment center. Room confinement is defined as the involuntary restriction of a juvenile to a cell, room, or other area alone, except during normal sleeping hours.

Section 21 would create additional requirements for the use and reporting of room confinement in juvenile facilities. Subsection 2(a) would require room confinement of more than one hour to be approved and documented in writing by a facility supervisor. This subsection also enumerates the information required to be included in the documentation.

Subsection 2(b) would require that any physical or mental health evaluation performed while the juvenile is in room confinement for more than one hour to be considered in any decision to place a juvenile in or to continue room confinement.

Subsection 2(c) would require juvenile facilities to report quarterly to the Legislature on the use of room confinement of juveniles and specifically address room confinement of a juvenile for more than four hours. The report must specifically include all corrective measures and reasons that attempts to return a juvenile to general population were unsuccessful.

Subsection 2(d) would require the Inspector General of Nebraska Child Welfare to review all data collected pursuant to Section 21 of AM1962 and assess the use of room confinement for juveniles and prepare an annual report.

The language from LB893 would create a minimum age of eleven years old in juvenile court delinquency and status offense cases. AM1962 would add an effective date of July 1, 2017 for this change.

Section 3 would amend section 43-247 to reclassify juvenile court jurisdiction over delinquency and status offense cases for juveniles under the age of eleven as child welfare cases under subsection 3(a).

Section 4 would amend section 43-248 to reorganize the instances when a peace officer is permitted to take a juvenile into temporary custody. Juveniles under the age of eleven are moved to a new subsection (8).

Section 6 would require a peace officer that takes a juvenile into temporary custody under the new section 43-248(8) created in Section 4 to deliver the juvenile to the Department of Health and Human Services pursuant to section 43-250(2).

Section 7 would amend section 43-251.01(6) to prohibit a juvenile alleged to be a juvenile under section 43-247(3) from being placed in a juvenile detention facility. The current statute only references section 43-247(3)(b).

The original language from LB894 is included in AM1962 in Sections 1, 5, 13, 14, 15.

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Les Seiler, Chairperson