

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 11**

FINAL READING

Introduced by Krist, 10.

Read first time January 05, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to juveniles; to amend sections 29-1816 and  
2 43-274, Reissue Revised Statutes of Nebraska; to change provisions  
3 relating to transfer of juvenile cases and the appeal of such  
4 transfers; to harmonize provisions; and to repeal the original  
5 sections.

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

1 Section 1. Section 29-1816, Reissue Revised Statutes of Nebraska, 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, 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 43-274, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7 43-274 (1) The county attorney or city attorney, having knowledge of  
8 a juvenile within his or her jurisdiction who appears to be a juvenile  
9 described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and  
10 taking into consideration the criteria in section 43-276, may proceed as  
11 provided in this section.

12 (2) The county attorney or city attorney may offer pretrial  
13 diversion to the juvenile in accordance with a juvenile pretrial  
14 diversion program established pursuant to sections 43-260.02 to  
15 43-260.07.

16 (3)(a) If a juvenile appears to be a juvenile described in  
17 subdivision (1), (2), (3)(b), or (4) of section 43-247 because of a  
18 nonviolent act or acts, the county attorney or city attorney may offer  
19 mediation to the juvenile and the victim of the juvenile's act. If both  
20 the juvenile and the victim agree to mediation, the juvenile, his or her  
21 parent, guardian, or custodian, and the victim shall sign a mediation  
22 consent form and select a mediator or approved center from the roster  
23 made available pursuant to section 25-2908. The county attorney or city  
24 attorney shall refer the juvenile and the victim to such mediator or  
25 approved center. The mediation sessions shall occur within thirty days  
26 after the date the mediation referral is made unless an extension is  
27 approved by the county attorney or city attorney. The juvenile or his or  
28 her parent, guardian, or custodian shall pay the mediation fees. The fee  
29 shall be determined by the mediator in private practice or by the  
30 approved center. A juvenile shall not be denied services at an approved  
31 center because of an inability to pay.

1 (b) Terms of the mediation agreement shall specify monitoring,  
2 completion, and reporting requirements. The county attorney or city  
3 attorney, the court, or the probation office shall be notified by the  
4 designated monitor if the juvenile does not complete the agreement within  
5 the agreement's specified time.

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

7 (i) Participation by the juvenile in certain community service  
8 programs;

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

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

11 (iv) Any other areas of agreement.

12 (d) If no mediation agreement is reached, the mediator or approved  
13 center will report that fact to the county attorney or city attorney  
14 within forty-eight hours of the final mediation session excluding  
15 nonjudicial days.

16 (e) If a mediation agreement is reached and the agreement does not  
17 violate public policy, the agreement shall be approved by the county  
18 attorney or city attorney. If the agreement is not approved and the  
19 victim agrees to return to mediation (i) the juvenile may be referred  
20 back to mediation with suggestions for changes needed in the agreement to  
21 meet approval or (ii) the county attorney or city attorney may proceed  
22 with the filing of a criminal charge or juvenile court petition. If the  
23 juvenile agrees to return to mediation but the victim does not agree to  
24 return to mediation, the county attorney or city attorney may consider  
25 the juvenile's willingness to return to mediation when determining  
26 whether or not to file a criminal charge or a juvenile court petition.

27 (f) If the juvenile meets the terms of an approved mediation  
28 agreement, the county attorney or city attorney shall not file a criminal  
29 charge or juvenile court petition against the juvenile for the acts for  
30 which the juvenile was referred to mediation.

31 (4) The county attorney or city attorney shall file the petition in

1 the court with jurisdiction as outlined in section 43-246.01.

2 (5) When a transfer from juvenile court to county court or district  
3 court is authorized because there is concurrent jurisdiction, the county  
4 attorney or city attorney may move to transfer the proceedings. Such  
5 motion shall be filed with the juvenile court petition unless otherwise  
6 permitted for good cause shown. The juvenile court shall schedule a  
7 hearing on such motion within fifteen days after the motion is filed. The  
8 county attorney or city attorney has the burden by a preponderance of the  
9 evidence to show why such proceeding should be transferred. The juvenile  
10 shall be represented by counsel at the hearing and may present the  
11 evidence as to why the proceeding should be retained. After considering  
12 all the evidence and reasons presented by both parties, the juvenile  
13 court shall retain the proceeding unless the court determines that a  
14 preponderance of the evidence shows that the proceeding should be  
15 transferred to the county court or district court. The court shall make a  
16 decision on the motion within thirty days after the hearing. The juvenile  
17 court shall set forth findings for the reason for its decision.

18 An order granting or denying transfer of the case from juvenile  
19 court to county or district court shall be considered a final order for  
20 the purposes of appeal. Upon the entry of an order, any party may appeal  
21 to the Court of Appeals within ten days. Such review shall be advanced on  
22 the court docket without an extension of time granted to any party except  
23 upon a showing of exceptional cause. Appeals shall be submitted,  
24 assigned, and scheduled for oral argument as soon as the appellee's brief  
25 is due to be filed. The Court of Appeals shall conduct its review in an  
26 expedited manner and shall render the judgment and opinion, if any, as  
27 speedily as possible. During the pendency of any such appeal, the  
28 juvenile court may continue to enter temporary orders in the best  
29 interests of the juvenile pursuant to section 43-295.

30 If the proceeding is transferred from juvenile court to the county  
31 court or district court, the county attorney or city attorney shall file

1 a criminal information in the county court or district court, as  
2 appropriate, and the accused shall be arraigned as provided for a person  
3 eighteen years of age or older in subdivision (1)(b) of section 29-1816.

4 Sec. 3. Original sections 29-1816 and 43-274, Reissue Revised  
5 Statutes of Nebraska, are repealed.