

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 673

Introduced by Krist, 10.

Read first time January 03, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend
- 2 section 43-286, Revised Statutes Supplement, 2017; to change
- 3 provisions relating to procedures for alleged violations of
- 4 probation, supervision, or court orders by juveniles; and to repeal
- 5 the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-286, Revised Statutes Supplement, 2017, is
2 amended to read:

3 43-286 (1) When any juvenile is adjudicated to be a juvenile
4 described in subdivision (1), (2), or (4) of section 43-247:

5 (a)(i) This subdivision applies until October 1, 2013. The court may
6 continue the dispositional portion of the hearing, from time to time upon
7 such terms and conditions as the court may prescribe, including an order
8 of restitution of any property stolen or damaged or an order requiring
9 the juvenile to participate in community service programs, if such order
10 is in the interest of the juvenile's reformation or rehabilitation, and,
11 subject to the further order of the court, may:

12 (A) Place the juvenile on probation subject to the supervision of a
13 probation officer;

14 (B) Permit the juvenile to remain in his or her own home or be
15 placed in a suitable family home, subject to the supervision of the
16 probation officer; or

17 (C) Cause the juvenile to be placed in a suitable family home or
18 institution, subject to the supervision of the probation officer. If the
19 court has committed the juvenile to the care and custody of the
20 Department of Health and Human Services, the department shall pay the
21 costs of the suitable family home or institution which are not otherwise
22 paid by the juvenile's parents.

23 Under subdivision (1)(a)(i) of this section, upon a determination by
24 the court that there are no parental, private, or other public funds
25 available for the care, custody, and maintenance of a juvenile, the court
26 may order a reasonable sum for the care, custody, and maintenance of the
27 juvenile to be paid out of a fund which shall be appropriated annually by
28 the county where the petition is filed until a suitable provision may be
29 made for the juvenile without such payment.

30 (ii) This subdivision applies beginning October 1, 2013. The court
31 may continue the dispositional portion of the hearing, from time to time

1 upon such terms and conditions as the court may prescribe, including an
2 order of restitution of any property stolen or damaged or an order
3 requiring the juvenile to participate in community service programs, if
4 such order is in the interest of the juvenile's reformation or
5 rehabilitation, and, subject to the further order of the court, may:

6 (A) Place the juvenile on probation subject to the supervision of a
7 probation officer; or

8 (B) Permit the juvenile to remain in his or her own home or be
9 placed in a suitable family home or institution, subject to the
10 supervision of the probation officer;

11 (b)(i) This subdivision applies to all juveniles committed to the
12 Office of Juvenile Services prior to July 1, 2013. The court may commit
13 such juvenile to the Office of Juvenile Services, but a juvenile under
14 the age of fourteen years shall not be placed at the Youth Rehabilitation
15 and Treatment Center-Geneva or the Youth Rehabilitation and Treatment
16 Center-Kearney unless he or she has violated the terms of probation or
17 has committed an additional offense and the court finds that the
18 interests of the juvenile and the welfare of the community demand his or
19 her commitment. This minimum age provision shall not apply if the act in
20 question is murder or manslaughter.

21 (ii) This subdivision applies to all juveniles committed to the
22 Office of Juvenile Services for placement at a youth rehabilitation and
23 treatment center on or after July 1, 2013.

24 When it is alleged that the juvenile has exhausted all levels of
25 probation supervision and options for community-based services and
26 section 43-251.01 has been satisfied, a motion for commitment to a youth
27 rehabilitation and treatment center may be filed and proceedings held as
28 follows:

29 (A) The motion shall set forth specific factual allegations that
30 support the motion and a copy of such motion shall be served on all
31 persons required to be served by sections 43-262 to 43-267; and

1 (B) The juvenile shall be entitled to a hearing before the court to
2 determine the validity of the allegations. At such hearing the burden is
3 upon the state by a preponderance of the evidence to show that:

4 (I) All levels of probation supervision have been exhausted;

5 (II) All options for community-based services have been exhausted;

6 and

7 (III) Placement at a youth rehabilitation and treatment center is a
8 matter of immediate and urgent necessity for the protection of the
9 juvenile or the person or property of another or if it appears that such
10 juvenile is likely to flee the jurisdiction of the court.

11 After the hearing, the court may commit such juvenile to the Office
12 of Juvenile Services for placement at a youth rehabilitation and
13 treatment center as a condition of an order of intensive supervised
14 probation. Upon commitment by the court to the Office of Juvenile
15 Services, the court shall immediately notify the Office of Juvenile
16 Services of the commitment. Intensive supervised probation for purposes
17 of this subdivision means that the Office of Juvenile Services shall be
18 responsible for the care and custody of the juvenile until the Office of
19 Juvenile Services discharges the juvenile from commitment to the Office
20 of Juvenile Services. Upon discharge of the juvenile, the court shall
21 hold a review hearing on the conditions of probation and enter any order
22 allowed under subdivision (1)(a) of this section.

23 The Office of Juvenile Services shall notify those required to be
24 served by sections 43-262 to 43-267, all interested parties, and the
25 committing court of the pending discharge of a juvenile from the youth
26 rehabilitation and treatment center sixty days prior to discharge and
27 again in every case not less than thirty days prior to discharge. Upon
28 notice of pending discharge by the Office of Juvenile Services, the court
29 shall set a continued disposition hearing in anticipation of reentry. The
30 Office of Juvenile Services shall work in collaboration with the Office
31 of Probation Administration in developing an individualized reentry plan

1 for the juvenile as provided in section 43-425. The Office of Juvenile
2 Services shall provide a copy of the individualized reentry plan to the
3 juvenile, the juvenile's attorney, and the county attorney or city
4 attorney prior to the continued disposition hearing. At the continued
5 disposition hearing, the court shall review and approve or modify the
6 individualized reentry plan, place the juvenile under probation
7 supervision, and enter any other order allowed by law. No hearing is
8 required if all interested parties stipulate to the individualized
9 reentry plan by signed motion. In such a case, the court shall approve
10 the conditions of probation, approve the individualized reentry plan, and
11 place the juvenile under probation supervision.

12 The Office of Juvenile Services is responsible for transportation of
13 the juvenile to and from the youth rehabilitation and treatment center.
14 The Office of Juvenile Services may contract for such services. A plan
15 for a juvenile's transport to return to the community shall be a part of
16 the individualized reentry plan. The Office of Juvenile Services may
17 approve family to provide such transport when specified in the
18 individualized reentry plan; or

19 (c) Beginning July 1, 2013, and until October 1, 2013, the court may
20 commit such juvenile to the Office of Juvenile Services for community
21 supervision.

22 (2) When any juvenile is found by the court to be a juvenile
23 described in subdivision (3)(b) of section 43-247, the court may enter
24 such order as it is empowered to enter under subdivision (1)(a) of this
25 section or until October 1, 2013, enter an order committing or placing
26 the juvenile to the care and custody of the Department of Health and
27 Human Services.

28 (3) When any juvenile is adjudicated to be a juvenile described in
29 subdivision (1), (2), (3)(b), or (4) of section 43-247 because of a
30 nonviolent act or acts and the juvenile has not previously been
31 adjudicated to be such a juvenile because of a violent act or acts, the

1 court may, with the agreement of the victim, order the juvenile to attend
2 juvenile offender and victim mediation with a mediator or at an approved
3 center selected from the roster made available pursuant to section
4 25-2908.

5 (4) When a juvenile is placed on probation and a probation officer
6 has reasonable cause to believe that such juvenile has committed a
7 violation of a condition of his or her probation, the probation officer
8 shall take appropriate measures as provided in section 43-286.01.

9 (5)(a) When a juvenile is placed on probation or under the
10 supervision of the court and it is alleged that the juvenile is again a
11 juvenile described in subdivision (1), (2), (3)(b), or (4) of section
12 43-247, a petition may be filed and the same procedure followed and
13 rights given at a hearing on the original petition. If an adjudication is
14 made that the allegations of the petition are true, the court may make
15 any disposition authorized by this section for such adjudications and the
16 county attorney may file a motion to revoke the juvenile's probation.

17 (b) When a juvenile is placed on probation or under the supervision
18 of the court for conduct under subdivision (1), (2), (3)(b), or (4) of
19 section 43-247 and it is alleged that the juvenile has violated a term of
20 probation or supervision or that the juvenile has violated an order of
21 the court, a motion to revoke probation or supervision or to change the
22 disposition may be filed and proceedings held as follows:

23 (i) The motion shall set forth specific factual allegations of the
24 alleged violations and a copy of such motion shall be served on all
25 persons required to be served by sections 43-262 to 43-267;

26 (ii) The juvenile shall be entitled to a hearing before the court to
27 determine the validity of the allegations. At such hearing the juvenile
28 shall be entitled to those rights relating to counsel provided by section
29 43-272 and those rights relating to detention provided by sections 43-254
30 to 43-256. The juvenile shall also be entitled to speak and present
31 documents, witnesses, or other evidence on his or her own behalf. He or

1 she may confront persons who have given adverse information concerning
2 the alleged violations, may cross-examine such persons, and may show that
3 he or she did not violate the conditions of his or her probation or
4 supervision or an order of the court or, if he or she did, that
5 mitigating circumstances suggest that the violation does not warrant
6 revocation of probation or supervision or a change of disposition. The
7 hearing shall be held within a reasonable time after the juvenile is
8 taken into custody;

9 (iii) The hearing shall be conducted in an informal manner and shall
10 be flexible enough to consider evidence, including letters, affidavits,
11 and other material, that would not be admissible in an adversarial
12 criminal trial;

13 (iv) The juvenile shall not be confined, detained, or otherwise
14 significantly deprived of his or her liberty pursuant to the filing of a
15 motion described in this section unless the requirements of subdivision
16 (5) of section 43-251.01 and section 43-260.01 have been met. In all
17 cases when the requirements of subdivision (5) of section 43-251.01 and
18 section 43-260.01 have been met and the juvenile is confined, detained,
19 or otherwise significantly deprived of his or her liberty as a result of
20 his or her alleged violation of probation, supervision, or a court order,
21 the juvenile shall be given a preliminary hearing. ~~Such preliminary~~
22 ~~hearing shall be held before an impartial person other than his or her~~
23 ~~probation officer or any person directly involved with the case.~~ If, as a
24 result of such preliminary hearing, probable cause is found to exist, the
25 juvenile shall be entitled to a hearing before the court in accordance
26 with this subsection;

27 (v) If the juvenile is found by the court to have violated the terms
28 of his or her probation or supervision or an order of the court, the
29 court may modify the terms and conditions of the probation, supervision,
30 or other court order, extend the period of probation, supervision, or
31 other court order, or enter any order of disposition that could have been

1 made at the time the original order was entered; and

2 (vi) In cases when the court revokes probation, supervision, or
3 other court order, it shall enter a written statement as to the evidence
4 relied on and the reasons for revocation.

5 (6) Costs incurred on behalf of a juvenile under this section shall
6 be paid as provided in section 43-290.01.

7 (7) When any juvenile is adjudicated to be a juvenile described in
8 subdivision (4) of section 43-247, the juvenile court shall within thirty
9 days of adjudication transmit to the Director of Motor Vehicles an
10 abstract of the court record of adjudication.

11 Sec. 2. Original section 43-286, Revised Statutes Supplement, 2017,
12 is repealed.