

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 774

Introduced by Pansing Brooks, 28; Wayne, 13.

Read first time January 03, 2018

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend
2 sections 43-248, 43-250, and 43-251.02, Reissue Revised Statutes of
3 Nebraska; to eliminate obsolete provisions; to change provisions
4 relating to temporary custody of a juvenile and referral of children
5 and parents to community-based providers; and to repeal the original
6 sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-248, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 43-248 A peace officer may take a juvenile into temporary custody
4 without a warrant or order of the court and proceed as provided in
5 section 43-250 when:

6 ~~(1) A (1)(a) Until July 1, 2017, a juvenile has violated a state law~~
7 ~~or municipal ordinance and the officer has reasonable grounds to believe~~
8 ~~such juvenile committed such violation or (b) beginning July 1, 2017, a~~
9 juvenile has violated a state law or municipal ordinance and such
10 juvenile was eleven years of age or older at the time of the violation,
11 and the officer has reasonable grounds to believe such juvenile committed
12 such violation and was eleven years of age or older at the time of the
13 violation;

14 (2) A juvenile is seriously endangered in his or her surroundings
15 and immediate removal appears to be necessary for the juvenile's
16 protection;

17 (3) The officer believes the juvenile to be mentally ill and
18 dangerous as defined in section 71-908 and that the harm described in
19 that section is likely to occur before proceedings may be instituted
20 before the juvenile court;

21 (4) The officer has reasonable grounds to believe that the juvenile
22 has run away from his or her parent, guardian, or custodian;

23 (5) A probation officer has reasonable cause to believe that a
24 juvenile is in violation of probation and that the juvenile will attempt
25 to leave the jurisdiction or place lives or property in danger;

26 (6) The officer has reasonable grounds to believe the juvenile is
27 truant from school;

28 (7) The officer has reasonable grounds to believe the juvenile is
29 immune from prosecution for prostitution under subsection (5) of section
30 28-801; or

31 (8) ~~A Beginning July 1, 2017, the juvenile has committed an act or~~

1 engaged in behavior described in subdivision (1), (2), (3)(b), or (4) of
2 section 43-247 and such juvenile was under eleven years of age at the
3 time of such act or behavior, and the officer has reasonable cause to
4 believe such juvenile committed such act or engaged in such behavior and
5 was under eleven years of age at such time.

6 Sec. 2. Section 43-250, Reissue Revised Statutes of Nebraska, is
7 amended to read:

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

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

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

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

13 (i) When a juvenile described in subdivision (1) or (2) of section
14 43-247, except for a status offender, is taken into temporary custody
15 within a metropolitan statistical area and where no juvenile detention
16 facility is reasonably available, the juvenile may be delivered, for
17 temporary custody not to exceed six hours, to a secure area of a jail or
18 other facility intended or used for the detention of adults solely for
19 the purposes of identifying the juvenile and ascertaining his or her
20 health and well-being and for safekeeping while awaiting transport to an
21 appropriate juvenile placement or release to a responsible party;

22 (ii) When a juvenile described in subdivision (1) or (2) of section
23 43-247, except for a status offender, is taken into temporary custody
24 outside of a metropolitan statistical area and where no juvenile
25 detention facility is reasonably available, the juvenile may be
26 delivered, for temporary custody not to exceed twenty-four hours
27 excluding nonjudicial days and while awaiting an initial court
28 appearance, to a secure area of a jail or other facility intended or used
29 for the detention of adults solely for the purposes of identifying the
30 juvenile and ascertaining his or her health and well-being and for
31 safekeeping while awaiting transport to an appropriate juvenile placement

1 or release to a responsible party;

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

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

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

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

29 (vii) A juvenile described in subdivision (1) or (2) of section
30 43-247, except for a status offender, may be held in a secure area of a
31 jail or other facility intended or used for the detention of adults for

1 up to six hours before and six hours after any court appearance.

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

21 (3) If the peace officer takes the juvenile into temporary custody
22 pursuant to subdivision (3) of section 43-248, the peace officer may
23 place the juvenile at a mental health facility for evaluation and
24 emergency treatment or may deliver the juvenile to the Department of
25 Health and Human Services as provided in subsection (2) of this section.
26 At the time of the admission or turning the juvenile over to the
27 department, the peace officer responsible for taking the juvenile into
28 custody pursuant to subdivision (3) of section 43-248 shall execute a
29 written certificate as prescribed by the Department of Health and Human
30 Services which will indicate that the peace officer believes the juvenile
31 to be mentally ill and dangerous, a summary of the subject's behavior

1 supporting such allegations, and that the harm described in section
2 71-908 is likely to occur before proceedings before a juvenile court may
3 be invoked to obtain custody of the juvenile. A copy of the certificate
4 shall be forwarded to the county attorney. The peace officer shall notify
5 the juvenile's parents, guardian, custodian, or relative of the
6 juvenile's placement.

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

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

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

25 Sec. 3. Section 43-251.02, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 43-251.02 A peace officer, upon making contact with a child who has
28 ~~not committed a criminal offense but who appears to be a juvenile as~~
29 ~~described in subdivision (3)(b) of section 43-247 and~~ who is in need of
30 assistance, may refer the child and child's parent or parents or guardian
31 to a clinically credentialed community-based provider for immediate

1 crisis intervention, de-escalation, and respite care services.

2 Sec. 4. Original sections 43-248, 43-250, and 43-251.02, Reissue

3 Revised Statutes of Nebraska, are repealed.