

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 307**

Introduced by Pansing Brooks, 28; Cavanaugh, J., 9; DeBoer, 10; Lathrop,  
12; McKinney, 11; Vargas, 7; Williams, 36.

Read first time January 12, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to juveniles; to amend section 43-3102,  
2 Reissue Revised Statutes of Nebraska; to change provisions relating  
3 to waivers of counsel; to require appointment of counsel; to provide  
4 a duty for the Supreme Court of Nebraska; to harmonize provisions;  
5 and to repeal the original section.

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

1 Section 1. Section 43-3102, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 43-3102 (1) In any court proceeding, any waiver of the right to  
4 counsel by a juvenile shall be made in open court, shall be recorded, and  
5 shall be confirmed in a writing signed by the juvenile.

6 (2) A court shall not accept a juvenile's waiver of the right to  
7 counsel unless the waiver satisfies subsection (1) of this section and is  
8 an affirmative waiver that is made intelligently, voluntarily, and  
9 understandingly. In determining whether such waiver was made  
10 intelligently, voluntarily, and understandingly, the court shall  
11 consider, among other things: (a) The age, intelligence, and education of  
12 the juvenile, (b) the juvenile's emotional stability, and (c) the  
13 complexity of the proceedings.

14 (3)(a) The court shall not accept a juvenile's waiver of the right  
15 to counsel unless the county attorney or city attorney, on the record,  
16 waives any possible pre-adjudication or post-adjudication placements of  
17 the juvenile outside of the juvenile's home.

18 (b) If the court accepts the juvenile's waiver of counsel, the court  
19 order and any probation order shall affirmatively show that the juvenile  
20 cannot be removed from the home or detained outside the home by the court  
21 on the adjudicated petition. This shall apply:

22 (i) To any period between adjudication and disposition;

23 (ii) To any period of probation; or

24 (iii) In response to an alleged violation of probation on the  
25 adjudicated petition.

26 (c) The county attorney or city attorney may withdraw such  
27 attorney's waiver under this section prior to the adjudication of the  
28 petition, and at such time the juvenile shall be appointed counsel.

29 (4) On or before July 1, 2022, the Supreme Court shall provide, by  
30 court rule, a process to ensure that juveniles are provided the  
31 opportunity to consult with counsel to assist the juvenile in making the

1 decision to waive counsel.

2 (5) ~~(3)~~ The court shall ensure that a juvenile represented by an  
3 attorney consults with his or her attorney before any waiver of counsel.

4 (6) ~~(4)~~ No parent, guardian, custodian, or other person may waive  
5 the juvenile's right to counsel.

6 (7) ~~(5)~~ A juvenile's right to be represented by counsel may not be  
7 waived in the following circumstances:

8 (a) If the juvenile is under the age of fourteen;

9 (b) For a detention hearing;

10 (c) For any dispositional hearing where out-of-home placement is  
11 sought;~~or~~

12 (d) If there is a motion to transfer the juvenile from juvenile  
13 court to county court or district court;or ~~or~~

14 (e) For any adjudication on a juvenile petition that may be used  
15 later to enhance or sustain a criminal conviction in an adult proceeding.

16 Sec. 2. Original section 43-3102, Reissue Revised Statutes of  
17 Nebraska, is repealed.