

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 445

Introduced by Hansen, M., 26.

Read first time January 15, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to juveniles; to amend sections 29-401,
2 43-248.01, and 43-249, Reissue Revised Statutes of Nebraska, and
3 sections 43-250 and 43-253, Revised Statutes Cumulative Supplement,
4 2020; to require notification of a juvenile's parent, guardian, or
5 custodian when a juvenile is taken into custody as prescribed; to
6 define terms; to require that a juvenile's parent, guardian, or
7 custodian be present when requested; to prohibit the use of certain
8 statements in court proceedings as prescribed; to harmonize
9 provisions; and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-401, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-401 Every sheriff, deputy sheriff, marshal, deputy marshal,
4 security guard, police officer, or peace officer as defined in
5 ~~subdivision (15) of~~ section 49-801 shall arrest and detain any person
6 found violating any law of this state or any legal ordinance of any city
7 or incorporated village until a legal warrant can be obtained, except
8 that (1) any such law enforcement officer taking a juvenile under the age
9 of eighteen years into his or her custody for any violation herein
10 defined shall proceed as set forth in sections 43-248, 43-248.01, 43-250,
11 43-251, 43-251.01, and 43-253 and (2) the court in which the juvenile is
12 to appear shall not accept a plea from the juvenile until finding that
13 the parent, guardian, or custodian ~~parents~~ of the juvenile has ~~have~~ been
14 notified or that reasonable efforts to notify such person ~~has~~ ~~parents~~
15 ~~have~~ been made as provided in section 43-250.

16 Sec. 2. Section 43-248.01, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 43-248.01 (1) All law enforcement personnel or other governmental
19 officials having custody of any juvenile ~~person under eighteen years of~~
20 ~~age~~ shall inform the juvenile ~~person in custody~~, using developmentally
21 appropriate language and without unnecessary delay, of such juvenile's
22 ~~person's~~ right to call or consult an attorney who is retained by or
23 appointed on behalf of such juvenile ~~person~~ or whom the juvenile ~~person~~
24 may desire to consult and, except when exigent circumstances exist, shall
25 permit such juvenile ~~person~~ to call or consult such attorney without
26 unnecessary delay. An attorney shall be permitted to see and consult with
27 the juvenile ~~person in custody~~ alone and in private at the place of
28 custody.

29 (2) A peace officer who takes a juvenile into custody under section
30 29-401 or subdivision (1), (4), (5), or (8) of section 43-248 shall
31 describe to the juvenile the efforts the peace officer has taken to

1 notify the juvenile's parent, guardian, or custodian as provided for in
2 section 43-250.

3 (3) If a juvenile requests to speak to a parent, guardian,
4 custodian, or attorney before or during a custodial interrogation, the
5 custodial interrogation of the juvenile must cease until such person
6 arrives.

7 (4)(a) Except as provided in subdivision (4)(b) of this section,
8 upon arrival of a parent, guardian, or custodian to whom the juvenile has
9 requested to speak, the peace officer shall without unnecessary delay
10 permit such person to see and consult with the juvenile alone and in
11 private at the place of custody. Prior to any custodial interrogation
12 with such person present, the peace officer shall advise the juvenile and
13 such person of the juvenile's constitutional rights.

14 (b) Subdivision (4)(a) of this section does not apply when there is
15 reasonable suspicion to believe that the parent, guardian, or custodian
16 is involved in a crime related to the juvenile's detention or is a danger
17 to the juvenile.

18 (5) Any statement of a juvenile taken in violation of this section
19 shall not be admissible against the juvenile in any criminal proceeding
20 or proceeding under the Nebraska Juvenile Code.

21 (6) For purposes of this section, custodial interrogation has the
22 meaning prescribed to it under the Fourth and Fifth Amendments to the
23 Constitution of the United States and Article I, sections 3 and 7, of the
24 Constitution of Nebraska, as interpreted by the Supreme Court of the
25 United States and the Nebraska Supreme Court.

26 Sec. 3. Section 43-249, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 43-249 No juvenile taken into temporary custody under section 43-248
29 shall be considered to have been arrested, except for the purpose of
30 determining the validity of such custody under the Constitution of
31 Nebraska or the Constitution of the United States and determining whether

1 there has been compliance with section 43-248.01.

2 Sec. 4. Section 43-250, Revised Statutes Cumulative Supplement,
3 2020, is amended to read:

4 43-250 (1) A peace officer who takes a juvenile into temporary
5 custody under section 29-401 or subdivision (1), (4), (5), or (8) of
6 section 43-248 shall:

7 (a) Immediately ~~immediately~~ take reasonable measures to notify the
8 juvenile's parent, guardian, or custodian; ~~or relative~~

9 (i) That the juvenile is in custody;

10 (ii) Of the juvenile's current location and where the juvenile will
11 be transferred, if applicable; and

12 (iii) The reason the juvenile was taken into custody unless the
13 peace officer has a reasonable suspicion that the disclosure of such
14 reason will jeopardize public safety or the integrity of the
15 investigation; and

16 (b) Proceed ~~and shall proceed~~ as follows:

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

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

1 peace officer shall, as soon as practicable, file one copy of the notice
2 with the county attorney or city attorney and, when required by the
3 court, also file a copy of the notice with the court or the officer
4 appointed by the court for such purpose; or

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

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

28 (B) ~~(ii)~~ When a juvenile described in subdivision (1) or (2) of
29 section 43-247, except for a status offender, is taken into temporary
30 custody outside of a metropolitan statistical area and where no juvenile
31 detention facility is reasonably available, the juvenile may be

1 delivered, for temporary custody not to exceed twenty-four hours
2 excluding nonjudicial days and while awaiting an initial court
3 appearance, to a secure area of a jail or other facility intended or used
4 for the detention of adults solely for the purposes of identifying the
5 juvenile and ascertaining his or her health and well-being and for
6 safekeeping while awaiting transport to an appropriate juvenile placement
7 or release to a responsible party;

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

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

19 (E) ~~(v)~~ If, within the time limits specified in subdivision ~~(1)(b)~~
20 ~~(iii)(A) (1)(c)(i)~~ or ~~(B) (1)(c)(ii)~~ of this section, a felony charge is
21 filed against the juvenile as an adult in county or district court, he or
22 she may be securely held in a jail or other facility intended or used for
23 the detention of adults beyond the specified time limits;

24 (F) ~~(vi)~~ A status offender or nonoffender taken into temporary
25 custody shall not be held in a secure area of a jail or other facility
26 intended or used for the detention of adults. ~~Until January 1, 2013, a~~
27 ~~status offender accused of violating a valid court order may be securely~~
28 ~~detained in a juvenile detention facility longer than twenty-four hours~~
29 ~~if he or she is afforded a detention hearing before a court within~~
30 ~~twenty-four hours, excluding nonjudicial days, and if, prior to a~~
31 ~~dispositional commitment to secure placement, a public agency, other than~~

1 ~~a court or law enforcement agency, is afforded an opportunity to review~~
2 ~~the juvenile's behavior and possible alternatives to secure placement and~~
3 ~~has submitted a written report to the court; and~~

4 (G) ~~(vii)~~ A juvenile described in subdivision (1) or (2) of section
5 43-247, except for a status offender, may be held in a secure area of a
6 jail or other facility intended or used for the detention of adults for
7 up to six hours before and six hours after any court appearance.

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

28 (3) If the peace officer takes the juvenile into temporary custody
29 pursuant to subdivision (3) of section 43-248, the peace officer may
30 place the juvenile at a mental health facility for evaluation and
31 emergency treatment or may deliver the juvenile to the Department of

1 Health and Human Services as provided in subsection (2) of this section.
2 At the time of the admission or turning the juvenile over to the
3 department, the peace officer responsible for taking the juvenile into
4 custody pursuant to subdivision (3) of section 43-248 shall execute a
5 written certificate as prescribed by the Department of Health and Human
6 Services which will indicate that the peace officer believes the juvenile
7 to be mentally ill and dangerous, a summary of the subject's behavior
8 supporting such allegations, and that the harm described in section
9 71-908 is likely to occur before proceedings before a juvenile court may
10 be invoked to obtain custody of the juvenile. A copy of the certificate
11 shall be forwarded to the county attorney. The peace officer shall notify
12 the juvenile's parents, guardian, custodian, or adult relative of the
13 juvenile's placement.

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

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

24 (6) In determining the appropriate temporary placement or
25 alternative to detention of a juvenile under this section, the peace
26 officer shall select the placement or alternative which is least
27 restrictive of the juvenile's freedom so long as such placement or
28 alternative is compatible with the best interests of the juvenile and the
29 safety of the community. Any alternative to detention shall cause the
30 least restriction of the juvenile's freedom of movement consistent with
31 the best interest of the juvenile and the safety of the community.

1 Sec. 5. Section 43-253, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 43-253 (1) Upon delivery to the probation officer of a juvenile who
4 has been taken into temporary custody under section 29-401, 43-248, or
5 43-250, the probation officer shall immediately investigate the situation
6 of the juvenile and the nature and circumstances of the events
7 surrounding his or her being taken into custody. Such investigation may
8 be by informal means when appropriate.

9 (2) The probation officer's decision to release the juvenile from
10 custody or place the juvenile in detention or an alternative to detention
11 shall be based upon the results of the standardized juvenile detention
12 screening instrument described in section 43-260.01.

13 (3) No juvenile who has been taken into temporary custody under
14 subdivision (1)(b)(iii) ~~(1)(e)~~ of section 43-250 or subsection (6) of
15 section 43-286.01 or pursuant to an alleged violation of an order for
16 conditional release shall be detained in any detention facility or be
17 subject to an alternative to detention infringing upon the juvenile's
18 liberty interest for longer than twenty-four hours, excluding nonjudicial
19 days, after having been taken into custody unless such juvenile has
20 appeared personally before a court of competent jurisdiction for a
21 hearing to determine if continued detention, services, or supervision is
22 necessary. The juvenile shall be represented by counsel at the hearing.
23 Whether such counsel shall be provided at the cost of the county shall be
24 determined as provided in subsection (1) of section 43-272. If continued
25 secure detention is ordered, such detention shall be in a juvenile
26 detention facility, except that a juvenile charged with a felony as an
27 adult in county or district court may be held in an adult jail as set
28 forth in subdivision (1)(b)(iii)(E) ~~(1)(e)(v)~~ of section 43-250. A
29 juvenile placed in an alternative to detention, but not in detention, may
30 waive this hearing through counsel.

31 (4) When the probation officer deems it to be in the best interests

1 of the juvenile, the probation officer shall immediately release such
2 juvenile to the custody of his or her parent. If the juvenile has both a
3 custodial and a noncustodial parent and the probation officer deems that
4 release of the juvenile to the custodial parent is not in the best
5 interests of the juvenile, the probation officer shall, if it is deemed
6 to be in the best interests of the juvenile, attempt to contact the
7 noncustodial parent, if any, of the juvenile and to release the juvenile
8 to such noncustodial parent. If such release is not possible or not
9 deemed to be in the best interests of the juvenile, the probation officer
10 may release the juvenile to the custody of a legal guardian, a
11 responsible adult relative, or another responsible adult person.

12 (5) The court may admit such juvenile to bail by bond in such amount
13 and on such conditions and security as the court, in its sole discretion,
14 shall determine, or the court may proceed as provided in section 43-254.
15 In no case shall the court or probation officer release such juvenile if
16 it appears that:

17 (a) Before July 1, 2019, further detention or placement of such
18 juvenile is a matter of immediate and urgent necessity for the protection
19 of such juvenile or the person or property of another or if it appears
20 that such juvenile is likely to flee the jurisdiction of the court; and

21 (b) On or after July 1, 2019, the physical safety of persons in the
22 community would be seriously threatened or that detention is necessary to
23 secure the presence of the juvenile at the next hearing, as evidenced by
24 a demonstrable record of willful failure to appear at a scheduled court
25 hearing within the last twelve months.

26 Sec. 6. Original sections 29-401, 43-248.01, and 43-249, Reissue
27 Revised Statutes of Nebraska, and sections 43-250 and 43-253, Revised
28 Statutes Cumulative Supplement, 2020, are repealed.