

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 445**

Introduced by Hansen, M., 26.

Read first time January 15, 2021

Committee:

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  
status offender accused of violating a valid court order may be securely  
detained in a juvenile detention facility longer than twenty-four hours  
if he or she is afforded a detention hearing before a court within  
twenty-four hours, excluding nonjudicial days, and if, prior to a  
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)(c)~~ 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)(c)(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.