

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 537

Introduced by Geist, 25.

Read first time January 19, 2021

Committee:

- 1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend
- 2 sections 43-251.01 and 43-253, Revised Statutes Cumulative
- 3 Supplement, 2020; to change provisions relating to juvenile
- 4 detention; to eliminate obsolete provisions; to harmonize
- 5 provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-251.01, Revised Statutes Cumulative
2 Supplement, 2020, is amended to read:

3 43-251.01 All placements and commitments of juveniles for
4 evaluations or as temporary or final dispositions are subject to the
5 following:

6 (1) No juvenile shall be confined in an adult correctional facility
7 as a disposition of the court;

8 (2) A juvenile who is found to be a juvenile as described in
9 subdivision (3) of section 43-247 shall not be placed in an adult
10 correctional facility, the secure youth confinement facility operated by
11 the Department of Correctional Services, or a youth rehabilitation and
12 treatment center or committed to the Office of Juvenile Services;

13 (3) A juvenile who is found to be a juvenile as described in
14 subdivision (1), (2), or (4) of section 43-247 shall not be assigned or
15 transferred to an adult correctional facility or the secure youth
16 confinement facility operated by the Department of Correctional Services;

17 (4) A juvenile under the age of fourteen years shall not be placed
18 with or committed to a youth rehabilitation and treatment center unless
19 the juvenile poses a significant risk to the physical safety of other
20 persons;

21 (5)(a) A court of competent jurisdiction may detain a juvenile at
22 any hearing pursuant to this subsection. When a juvenile has been taken
23 into temporary custody and must appear before a court of competent
24 jurisdiction pursuant to section 43-253 for a hearing to determine if
25 continued detention, services, or supervision is necessary, the following
26 shall apply before such hearing:

27 (i) The juvenile shall be detained if the juvenile was arrested for
28 or charged with:

29 (A) An offense involving a firearm or an offense that is a Class IA,
30 IB, IC, ID, II, or IIA felony; or

31 (B) Any felony when such juvenile's whereabouts were unknown by the

1 juvenile's probation officer or the juvenile is currently missing or
2 currently has an active capias; and

3 (ii) The juvenile may be detained if:

4 (A) The physical safety of persons in the community would be
5 threatened;

6 (B) Necessary to secure the presence of the juvenile at the next
7 hearing as evidenced by the fact that the juvenile has failed to appear,
8 has run away from the parental or custodial home, has fled from a court-
9 ordered placement, or has been unsuccessfully discharged from a court-
10 ordered placement within the last year;

11 (C) The juvenile has been arrested for or charged with any offense
12 other than a felony and such juvenile's whereabouts are unknown by the
13 juvenile's probation officer or the juvenile is currently missing or
14 currently has an active capias; or

15 (D) The juvenile poses a serious threat to himself or herself or to
16 the property of others;

17 ~~(5)(a) Before July 1, 2019, a juvenile shall not be detained in~~
18 ~~secure detention or placed at a youth rehabilitation and treatment center~~
19 ~~unless detention or placement of such juvenile is a matter of immediate~~
20 ~~and urgent necessity for the protection of such juvenile or the person or~~
21 ~~property of another or if it appears that such juvenile is likely to flee~~
22 ~~the jurisdiction of the court; and~~

23 ~~(b) On and after July 1, 2019:~~

24 ~~(i) A juvenile shall not be detained unless the physical safety of~~
25 ~~persons in the community would be seriously threatened or detention is~~
26 ~~necessary to secure the presence of the juvenile at the next hearing, as~~
27 ~~evidenced by a demonstrable record of willful failure to appear at a~~
28 ~~scheduled court hearing within the last twelve months;~~

29 ~~(b) (ii) A child twelve years of age or younger shall not be placed~~
30 ~~in detention unless the child poses a severe threat to the physical~~
31 ~~safety of other persons, the community, or himself or herself under any~~

1 circumstances; and

2 (c) ~~(iii)~~ A juvenile shall not be placed into detention:

3 (i) ~~(A)~~ To allow a parent or guardian to avoid his or her legal
4 responsibility;

5 (ii) ~~(B)~~ To punish, treat, or rehabilitate such juvenile;

6 (iii) ~~(C)~~ To permit more convenient administrative access to such
7 juvenile;

8 (iv) ~~(D)~~ To facilitate further interrogation or investigation; or

9 (v) ~~(E)~~ Due to a lack of more appropriate facilities except in case
10 of an emergency as provided in section 43-430;

11 (6) A juvenile alleged to be a juvenile as described in subdivision
12 (3) of section 43-247 shall not be placed in a juvenile detention
13 facility, including a wing labeled as staff secure at such facility,
14 unless the designated staff secure portion of the facility fully complies
15 with subdivision (5) of section 83-4,125 and the ingress and egress to
16 the facility are restricted solely through staff supervision; and

17 (7) A juvenile alleged to be a juvenile as described in subdivision
18 (1), (2), (3)(b), or (4) of section 43-247 shall not be placed out of his
19 or her home as a dispositional order of the court unless:

20 (a) All available community-based resources have been exhausted to
21 assist the juvenile and his or her family; and

22 (b) Maintaining the juvenile in the home presents a significant risk
23 of harm to the juvenile or community.

24 Sec. 2. Section 43-253, Revised Statutes Cumulative Supplement,
25 2020, is amended to read:

26 43-253 (1) Upon delivery to the probation officer of a juvenile who
27 has been taken into temporary custody under section 29-401, 43-248, or
28 43-250, the probation officer shall immediately investigate the situation
29 of the juvenile and the nature and circumstances of the events
30 surrounding his or her being taken into custody. Such investigation may
31 be by informal means when appropriate.

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

5 (3) No juvenile who has been taken into temporary custody under
6 subdivision (1)(c) of section 43-250 or subsection (6) of section
7 43-286.01 or pursuant to an alleged violation of an order for conditional
8 release shall be detained in any detention facility or be subject to an
9 alternative to detention infringing upon the juvenile's liberty interest
10 for longer than twenty-four hours, excluding nonjudicial days, after
11 having been taken into custody unless such juvenile has appeared
12 personally before a court of competent jurisdiction for a hearing to
13 determine if continued detention, services, or supervision is necessary.
14 The juvenile shall be represented by counsel at the hearing. Whether such
15 counsel shall be provided at the cost of the county shall be determined
16 as provided in subsection (1) of section 43-272. If continued secure
17 detention is ordered, such detention shall be in a juvenile detention
18 facility, except that a juvenile charged with a felony as an adult in
19 county or district court may be held in an adult jail as set forth in
20 subdivision (1)(c)(v) of section 43-250. A juvenile who must appear
21 before a court of competent jurisdiction need not have formal service of
22 the hearing but the Office of Probation Administration shall ensure the
23 juvenile has notice of such hearing ~~A juvenile placed in an alternative~~
24 ~~to detention, but not in detention, may waive this hearing through~~
25 ~~counsel.~~

26 (4) When the probation officer deems it to be in the best interests
27 of the juvenile, the probation officer shall immediately release such
28 juvenile to the custody of his or her parent. If the juvenile has both a
29 custodial and a noncustodial parent and the probation officer deems that
30 release of the juvenile to the custodial parent is not in the best
31 interests of the juvenile, the probation officer shall, if it is deemed

1 to be in the best interests of the juvenile, attempt to contact the
2 noncustodial parent, if any, of the juvenile and to release the juvenile
3 to such noncustodial parent. If such release is not possible or not
4 deemed to be in the best interests of the juvenile, the probation officer
5 may release the juvenile to the custody of a legal guardian, a
6 responsible relative, or another responsible person.

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

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

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

21 Sec. 3. Original sections 43-251.01 and 43-253, Revised Statutes
22 Cumulative Supplement, 2020, are repealed.