

LEGISLATIVE BILL 541

Approved by the Governor April 21, 1975

Introduced by Judiciary Committee, Luedtke, 28, Chmn.; Barnett, 26; DeCamp, 40; Schmit, 23; Nichol, 48; Anderson, 37

AN ACT to amend section 43-210, Revised Statutes Supplement, 1974, relating to juvenile court procedure; to provide procedures for revocation of probation; and to repeal the original section.

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

Section 1. That section 43-210, Revised Statutes Supplement, 1974, be amended to read as follows:

43-210. When any child is adjudicated to be a child described in subdivision (3) of (4) of section 43-202, the court may:

(1) Continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged when the same is in the interest of the child's reformation or rehabilitation and, subject to the further order of the court, may:

(a) Place the child under on probation subject to the supervision of a probation officer;

(b) Permit said child to remain in its own home, subject to the supervision of the probation officer; or

(c) Cause the child to be placed in a suitable family home or institution, subject to the friendly supervision of the probation officer; Provided, that under subdivision (1) (a), (1) (b), or (1) (c) of this section upon a determination by the court that there are no private or other public funds available for the care, custody and maintenance of a child, the court may order a reasonable sum for the care, custody and maintenance of the child to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until a suitable provision may be made for the child without such payment; or

(2) The court may commit such child to the care and custody of the Department of Correctional Services; Provided, that a delinquent child under the age of twelve

years shall not be committed to the Youth Development Center-Geneva or to the Youth Development Center-Kearney unless he or she has violated the terms of probation or has committed an additional offense and the court finds that the interests of the child and the welfare of the community demand his or her commitment. This minimum age provision shall not apply if the act in question is murder or manslaughter; -

(3) When a child is placed on probation or under the supervision of the court and it is alleged that the child is again a child as defined by section 43-202, a petition may be filed and the same procedure followed and rights given at a hearing on the original petition. If an adjudication is made that the allegations of the petition are true, the court may make any disposition authorized by this act for such adjudications; or

(4) When a child is placed on probation or under the supervision of the court for conduct under either subdivision (3) or (4) of section 43-202 and it is alleged that the child has violated a term of probation or supervision, or that the child has violated an order of the court, a motion to revoke probation or supervision or to change the disposition may be filed and proceedings held as follows:

(a) The motion shall set forth specific factual allegations of the alleged violations and a copy of such motion shall be served on all persons required to be served by the provisions of section 43-206;

(b) The child shall be given a preliminary hearing before an impartial person other than his probation officer or any person directly involved with the case;

(c) At the preliminary hearing the child may appear and speak in his own behalf and present documents, witnesses or other evidence on his own behalf. He may confront persons who have given adverse information concerning the alleged violations and may cross-examine such persons unless the hearing officer determines that the informant would be subjected to risk of harm if his identity were disclosed;

(d) Based on the information before him, the preliminary hearing officer shall determine whether there is probable cause to refer the child to the court for final decision. Such a determination shall state the reasons for the determination and the evidence relied upon but does not require formal findings of fact and conclusions of law;



(e) If the preliminary hearing officer finds probable cause to refer the child to the court for the final decision of the court, the child shall be entitled to a hearing before the court. When a hearing is held before the court, the child shall have an opportunity to be heard, shall be entitled to the provisions of section 43-205.06 as to right of counsel and section 43-405.04 as to detention, and to show, if he can, that he did not violate the conditions of his probation or, if he did, that circumstances and mitigation suggest that the violation does not warrant revocation. The revocation hearing before the court must be tendered within a reasonable time after the child is taken into custody;

(f) Both the preliminary hearing and the hearing before the court shall be in an informal manner and shall be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial;

(g) If the child is found by the court to have violated the terms of his probation, the court may modify the terms and conditions of the probation order, extend the period of probation, enter any order of disposition that could have been made at the time the original order of probation was entered or, in the case of the child adjudicated to be within the definitions of subdivision (4) of section 43-202, the court, after considering the dispositions available, may in addition commit such child to the Department of Public Institutions or the Department of Correctional Services under section 43-210.01; and

(h) In cases when the court revokes probation, it shall enter a written statement as to the evidence relied on and the reasons for revocation.

Sec. 2. That original section 43-210, Revised Statutes Supplement, 1974, is repealed.