

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 488

Introduced by Hallstrom, 1.

Read first time January 21, 2025

Committee:

- 1 A BILL FOR AN ACT relating to the administration of justice; to amend
- 2 sections 29-2266.01 and 29-2266.02, Reissue Revised Statutes of
- 3 Nebraska, and sections 43-248 and 43-286.01, Revised Statutes
- 4 Cumulative Supplement, 2024; to require a peace officer to assume
- 5 custody of a probationer or temporary custody of a juvenile upon
- 6 request by a probation officer as prescribed; to harmonize
- 7 provisions; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 29-2266.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 29-2266.01 (1) Whenever a probation officer has reasonable cause to
4 believe that a probationer sentenced for a misdemeanor has committed or
5 is about to commit a violation of a condition of probation, the probation
6 officer shall either:

7 (a) Impose one or more administrative sanctions with the approval of
8 his or her chief probation officer or such chief's designee. The decision
9 to impose an administrative sanction in lieu of formal revocation
10 proceedings rests with the probation officer and his or her chief
11 probation officer or such chief's designee and shall be based upon the
12 probationer's risk level, the severity of the violation, and the
13 probationer's response to the violation. If an administrative sanction is
14 to be imposed, the probationer shall acknowledge in writing the nature of
15 the violation and agree upon the administrative sanction. The probationer
16 has the right to decline to acknowledge the violation; and if he or she
17 declines to acknowledge the violation, the probation officer shall take
18 action pursuant to subdivision (1)(b) of this section. The probation
19 officer shall submit a written report to the county attorney of the
20 county where probation was imposed, outlining the nature of the probation
21 violation and the sanction imposed; or

22 (b) Submit a written report to the sentencing court, with a copy to
23 the county attorney of the county where probation was imposed, outlining
24 the nature of the probation violation and request that formal revocation
25 proceedings be initiated against the probationer in accordance with
26 sections 29-2267 and 29-2268.

27 (2) Whenever a probation officer has reasonable cause to believe
28 that a probationer sentenced for a misdemeanor has violated or is about
29 to violate a condition of his or her probation and that the probationer
30 will attempt to leave the jurisdiction or will place lives or property in
31 danger, the probation officer shall arrest the probationer without a

1 warrant and may call on any peace officer for assistance. If called on by
2 a probation officer, a peace officer shall arrest and assume custody of
3 the probationer. Whenever a probationer is arrested, with or without a
4 warrant, he or she shall be detained in a jail or other detention
5 facility.

6 (3) Immediately after arrest and detention pursuant to subsection
7 (2) of this section, the probation officer shall notify the county
8 attorney of the county where probation was imposed and submit a written
9 report of the reason for such arrest and of any violation of probation.
10 After prompt consideration of such written report, the county attorney
11 shall:

12 (a) Notify the probation officer and the jail or detention facility,
13 in writing, that he or she does not intend to file a motion to revoke
14 probation, and authorize the release of the probationer from confinement;
15 or

16 (b) File with the sentencing court a motion or information to revoke
17 probation in accordance with sections 29-2267 and 29-2268.

18 (4) Whenever a county attorney receives a report from a probation
19 officer that a probationer sentenced for a misdemeanor has violated a
20 condition of probation, the county attorney may file a motion or
21 information to revoke probation in accordance with sections 29-2267 and
22 29-2268.

23 (5) The administrator shall adopt and promulgate rules and
24 regulations to carry out this section.

25 **Sec. 2.** Section 29-2266.02, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 29-2266.02 (1) Whenever a probation officer has reasonable cause to
28 believe that a probationer sentenced for a felony has committed or is
29 about to commit a violation while on probation, the probation officer
30 shall consider:

31 (a) Whether the probation officer is required to arrest the

1 probationer pursuant to subsection (2) of this section;

2 (b) The probationer's risk level, the severity of the violation, and
3 the probationer's response to the violation;

4 (c) Whether to impose administrative sanctions or seek custodial
5 sanctions; or

6 (d) Whether to seek revocation of probation.

7 (2) Whenever a probation officer has reasonable cause to believe
8 that a probationer sentenced for a felony has violated or is about to
9 violate a condition of his or her probation and that the probationer will
10 attempt to leave the jurisdiction or will place lives or property in
11 danger, the probation officer shall arrest the probationer without a
12 warrant and may call on any peace officer for assistance. If called on by
13 a probation officer, a peace officer shall arrest and assume custody of
14 the probationer. Whenever a probationer is arrested, with or without a
15 warrant, he or she shall be detained in a jail or other detention
16 facility.

17 (3) Whenever a probation officer has reasonable cause to believe
18 that a probationer sentenced for a felony has committed or is about to
19 commit a violation of a condition of probation, the probation officer
20 shall:

21 (a) Impose one or more administrative sanctions with the approval of
22 his or her chief probation officer or such chief's designee. The decision
23 to impose an administrative sanction rests with the probation officer and
24 his or her chief probation officer or such chief's designee and shall be
25 based upon the probationer's risk level, the severity of the violation,
26 and the probationer's response to the violation. If an administrative
27 sanction is to be imposed, the probationer shall acknowledge in writing
28 the nature of the violation and agree upon the administrative sanction.
29 The probationer has the right to decline to acknowledge the violation;
30 and if he or she declines to acknowledge the violation, the probation
31 officer shall take action pursuant to subdivision (3)(b) or (c) of this

1 section. The probation officer shall submit a written report to the
2 county attorney of the county where probation was imposed, outlining the
3 nature of the probation violation and the sanction imposed;

4 (b) Seek the imposition of a custodial sanction with the approval of
5 his or her chief probation officer or such chief's designee. The decision
6 to impose a custodial sanction rests with the court and shall be based
7 upon the probationer's risk level, the severity of the violation, and the
8 probationer's response to the violation. If a custodial sanction is to be
9 imposed, the probationer shall acknowledge in writing the nature of the
10 violation and agree upon the custodial sanction. The probationer has the
11 right to decline to acknowledge the violation; and if he or she declines
12 to acknowledge the violation, the probation officer shall take action in
13 accordance with section 29-2266.03. If the probationer acknowledges the
14 violation and agrees upon the custodial sanction, the probation officer
15 shall take action in accordance with subsection (1) of section 29-2266.03
16 and shall submit a written report to the county attorney of the county
17 where probation was imposed, outlining the nature of the probation
18 violation and the sanction to be imposed; or

19 (c) Submit a written report to the sentencing court, with a copy to
20 the county attorney of the county where probation was imposed, outlining
21 the nature of the probation violation and request that formal revocation
22 proceedings be initiated against the probationer in accordance with
23 sections 29-2267 and 29-2268.

24 (4) Immediately after arrest and detention pursuant to subsection
25 (2) of this section, the probation officer shall notify the county
26 attorney of the county where probation was imposed and submit a written
27 report of the reason for such arrest and of any violation of probation.
28 After prompt consideration of such written report, the county attorney
29 shall:

30 (a) Notify the probation officer and the jail or detention facility,
31 in writing, that he or she does not intend to file a motion to revoke

1 probation, and authorize the release of the probationer from confinement;
2 or

3 (b) File with the sentencing court a motion or information to revoke
4 probation in accordance with sections 29-2267 and 29-2268.

5 (5) Whenever a county attorney receives a report from a probation
6 officer that a probationer sentenced for a felony has violated a
7 condition of probation, the county attorney may file a motion or
8 information to revoke probation in accordance with sections 29-2267 and
9 29-2268.

10 (6) The administrator shall adopt and promulgate rules and
11 regulations to carry out this section, including, but not limited to,
12 rules and regulations to ensure prompt court review of requests for the
13 imposition of custodial sanctions.

14 **Sec. 3.** Section 43-248, Revised Statutes Cumulative Supplement,
15 2024, is amended to read:

16 43-248 A peace officer shall take a juvenile into temporary custody
17 upon the request for assistance from a probation officer as provided in
18 subsection (6) of section 43-286.01. A peace officer may take a juvenile
19 into temporary custody without a warrant or order of the court and
20 proceed as provided in section 43-250 when:

21 (1) A juvenile has violated a state law or municipal ordinance and
22 such juvenile was eleven years of age or older at the time of the
23 violation, and the officer has reasonable grounds to believe such
24 juvenile committed such violation and was eleven years of age or older at
25 the time of the violation;

26 (2) The officer has reasonable grounds to believe that the juvenile
27 has run away from his or her parent, guardian, or custodian;

28 (3) A probation officer has reasonable cause to believe that a
29 juvenile is in violation of probation and that the juvenile will attempt
30 to leave the jurisdiction or place lives or property in danger;

31 (4) The officer has reasonable grounds to believe the juvenile is

1 truant from school;

2 (5) The officer has reasonable grounds to believe the juvenile is
3 immune from prosecution for prostitution under subsection (5) of section
4 28-801;

5 (6) A juvenile is seriously endangered in his or her surroundings
6 and immediate removal appears to be necessary for the juvenile's
7 protection;

8 (7) A juvenile has committed an act or engaged in behavior described
9 in subdivision (1), (2), (3)(b), or (4) of section 43-247 and such
10 juvenile was under eleven years of age at the time of such act or
11 behavior, and the officer has reasonable cause to believe such juvenile
12 committed such act or engaged in such behavior and was under eleven years
13 of age at such time; or

14 (8) The officer believes the juvenile to be mentally ill and
15 dangerous as defined in section 71-908 and that the harm described in
16 that section is likely to occur before proceedings may be instituted
17 before the juvenile court.

18 **Sec. 4.** Section 43-286.01, Revised Statutes Cumulative Supplement,
19 2024, is amended to read:

20 43-286.01 (1) For purposes of this section, graduated response means
21 an accountability-based series of sanctions, incentives, and services
22 designed to facilitate the juvenile's continued progress in changing
23 behavior, ongoing compliance, and successful completion of probation.
24 Graduated response does not include restrictions of liberty that would
25 otherwise require a hearing under subsection (3) of section 43-253.

26 (2) The Office of Probation Administration may establish a statewide
27 standardized graduated response matrix of incentives for compliance and
28 positive behaviors and sanctions for probationers who violate the terms
29 and conditions of a court order. The graduated response system shall use
30 recognized best practices and be developed with the input of
31 stakeholders, including judges, probation officers, county attorneys,

1 defense attorneys, juveniles, and parents. The office shall provide
2 implementation and ongoing training to all probation officers on the
3 graduated response options.

4 (3) Graduated response sanctions should be immediate, certain,
5 consistent, and fair to appropriately address the behavior. Failure to
6 complete a sanction may result in repeating the sanction, increasing the
7 duration, or selecting a different sanction similar in nature. Continued
8 failure to comply could result in a request for a motion to revoke
9 probation. Once a sanction is successfully completed the alleged
10 probation violation is deemed resolved and cannot be alleged as a
11 violation in future proceedings.

12 (4) Graduated response incentives should provide positive
13 reinforcement to encourage and support positive behavior change and
14 compliance with court-ordered conditions of probation.

15 (5) Whenever a probation officer has reasonable cause to believe
16 that a juvenile subject to the supervision of a probation officer has
17 committed a violation of the terms of the juvenile's probation while on
18 probation, but that such juvenile will not attempt to leave the
19 jurisdiction and will not place lives or property in danger, the
20 probation officer shall either:

21 (a) Impose one or more graduated response sanctions with the
22 approval of his or her chief probation officer or such chief's designee.
23 The decision to impose graduated response sanctions in lieu of formal
24 revocation proceedings rests with the probation officer and his or her
25 chief probation officer or such chief's designee and shall be based upon
26 such juvenile's risk level, the severity of the violation, and the
27 juvenile's response to the violation. If graduated response sanctions are
28 to be imposed, such juvenile shall acknowledge in writing the nature of
29 the violation and agree upon the graduated response sanction with
30 approval of such juvenile's parents or guardian. Such juvenile has the
31 right to decline to acknowledge the violation, and if he or she declines

1 to acknowledge the violation, the probation officer shall submit a
2 written report pursuant to subdivision (5)(b) of this section. If the
3 juvenile fails to satisfy the graduated response sanctions and the office
4 determines that a motion to revoke probation should be pursued, the
5 probation officer shall submit a written report pursuant to subdivision
6 (5)(b) of this section. A copy of the report shall be submitted to the
7 county attorney of the county where probation was imposed; or

8 (b) Submit a written report to the county attorney of the county
9 where probation was imposed and to the juvenile's attorney of record,
10 outlining the nature of the probation violation and request that formal
11 revocation proceedings be instituted against the juvenile subject to the
12 supervision of a probation officer. The report shall also include a
13 statement regarding why graduated response sanctions were not utilized or
14 were ineffective. If there is no attorney of record for the juvenile, the
15 office shall notify the court and counsel for the juvenile shall be
16 appointed.

17 (6) Whenever a probation officer has reasonable cause to believe
18 that a juvenile subject to the supervision of a probation officer has
19 violated a condition of his or her probation and that such juvenile will
20 attempt to leave the jurisdiction or will place lives or property in
21 danger, the probation officer shall take such juvenile into temporary
22 custody without a warrant and may call on any peace officer for
23 assistance as provided in section 43-248. If called on by a probation
24 officer, a peace officer shall take the juvenile into temporary custody.
25 Continued detention or deprivation of liberty shall be subject to the
26 criteria and requirements of sections 43-251.01, 43-260, and 43-260.01
27 and subdivision (5)(b)(iv) of section 43-286, and a hearing shall be held
28 before the court within twenty-four hours as provided in subsection (3)
29 of section 43-253.

30 (7) Immediately after detention or deprivation of liberty pursuant
31 to subsection (6) of this section, the probation officer shall notify the

1 county attorney of the county where probation was imposed and the
2 juvenile's attorney of record and submit a written report describing the
3 risk of harm to lives or property or of fleeing the jurisdiction which
4 precipitated the need for such detention or deprivation of liberty and of
5 any violation of probation. If there is no attorney of record for the
6 juvenile, the office shall notify the court and counsel for the juvenile
7 shall be appointed. After prompt consideration of the written report, the
8 county attorney shall:

9 (a) Order the release of the juvenile from confinement or
10 alternative to detention subject to the supervision of a probation
11 officer; or

12 (b) File with the adjudicating court a motion to revoke the
13 probation.

14 (8) Whenever a county attorney receives a report from a probation
15 officer that a juvenile subject to the supervision of a probation officer
16 has violated a condition of probation and the probation officer is
17 seeking revocation of probation, the county attorney may file a motion to
18 revoke probation.

19 (9) Whenever a juvenile subject to supervision of a probation
20 officer is engaging in positive behavior, completion of goals, and
21 compliance with the terms of probation, the probation officer shall use
22 graduated incentives to provide positive reinforcement and encouragement
23 of such behavior. The office shall keep records of all incentives and
24 provide such records to the county attorney or the juvenile's attorney
25 upon request.

26 (10) During the term of probation, the court, on application of a
27 probation officer or of the juvenile or on its own motion, may reduce or
28 eliminate any of the conditions imposed on the juvenile. Upon completion
29 of the term of probation or the earlier discharge of the juvenile, the
30 juvenile shall be relieved of any obligations imposed by the order of the
31 court and his or her record shall be sealed pursuant to section

1 43-2,108.04.

2 (11) The probation administrator shall adopt and promulgate rules
3 and regulations to carry out this section.

4 **Sec. 5.** Original sections 29-2266.01 and 29-2266.02, Reissue
5 Revised Statutes of Nebraska, and sections 43-248 and 43-286.01, Revised
6 Statutes Cumulative Supplement, 2024, are repealed.