

**ONE HUNDREDTH LEGISLATURE - SECOND SESSION -
2008**

COMMITTEE STATEMENT

LB1014

Hearing Date: February 06, 2008

Committee On: Judiciary

Introducer(s): (Ashford)

Title: Change provisions relating to judicial vacancies and judicial resources

Roll Call Vote - Final Committee Action:

Placed on General File with Amendments

Vote Results:

7 Yes Senators Ashford, Lathrop, McDonald, McGill,
Pedersen, Pirsch, Schimek

0 No

1 Absent Senators Chambers

0 Present, not voting

Proponents:

Chief Justice Heavican
John Grant

Representing:

Nebraska Supreme Court
Nebraska Bar Association

Mike Pyrtle
Woody Bradford

Nebraska State Bar Association
Nebraska State Bar Association

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or change:

LB 1014 is a compilation of the recommendations from the Nebraska Judicial Structure & Administration Task Force, a group that was assembled by the Nebraska State Bar Association to study ways for the judicial system to more efficiently utilize judicial resources.

- **Judicial Vacancy:** In limited circumstances, the Nebraska Supreme Court would have the authority to determine in what judicial district a judicial vacancy should be filled. This would provide the Supreme Court with the ability to more promptly and efficiently administer its judicial resources.
 - The Legislature would statutorily provide for the **total** number of judges (124 district, county, and separate juvenile judges). *Under current law, each judicial district is statutorily provided a specific number of district, county, and separate juvenile judges.*
 - The Supreme Court's authority to determine in what judicial district a vacancy should be filled would remain within the current statutory framework for determining vacancies by the Nebraska Judicial Resources Commission (JRC). *Neb. Rev. Stat. §24-1201 et seq.*
 - When a vacancy occurs and the JRC determines that the vacancy should be filled in the same judicial district where the judgeship was vacated and by the same type of judgeship that was vacated, then the JRC would notify the appropriate Judicial Nominating Commission to fill the position in the same judicial district. *This is the current statutory procedure and would not be changed.*
 - When a vacancy occurs and the JRC determines that: 1) the vacancy should be moved to another judicial district; or 2) that the vacancy should be filled in the same judicial district where it was vacated, but should be filled by a different type of judgeship than the vacating judgeship, then the JRC would report such recommendation(s) to the Supreme Court. *Under current law, the JRC makes a recommendation(s) to the Legislature and legislation must be introduced to affect the recommendation(s).*
 - The Supreme Court, by a majority vote, would make an independent determination of where a vacancy should be filled and by what type of judgeship based upon the recommendation from the JRC and a number of other factors, including caseload statistics and access to justice factors.
 - The Supreme Court would represent to the Legislature the need to increase or reduce the number of judges, change judicial district boundaries, or change the number of judicial districts based upon recommendations provided to the Supreme Court by the JRC. *Under current law, the JRC makes such recommendations to the Legislature.*
- **Appeals:**
 - Authorizes the district court to review small claims appeals on the record.
 - Conforms the procedure for admitting the bill of exceptions on appeals from County Court to District Court to that used by the Court of Appeals and the Nebraska Supreme Court for admitting bills of exception in those courts.
 - Conforms the procedure for appealing excessive sentences from County Court to District Court to that followed by the Court of Appeals and the Nebraska Supreme Court.
- **Use of quasi-judicial officers:**
 - Authorizes county and separate juvenile judges to appoint child support referees.
 - Expands the authority of the courts to appoint a referee for any equity matter.
- **Caseload and scheduling management:**
 - Allows for the use of telephonic or videoconference hearings in non-evidentiary hearings and in evidentiary hearings if approved by the court and all parties provided the method utilized ensures the preservation of an accurate record and the public's right of access to the courts. This legislation excludes from its purview trials to a jury.

- Requires the mandatory filing of felony and misdemeanors in district court when they arise from the same incident.
- Requires the presiding judges of the district and county court in each judicial district to review the caseload of the two benches and create an annual plan on how to assign between the courts cases involving domestic relations matters and Class IV felonies. Under the legislation the consent of the parties is not required and the cases remain filed in the court where they were originally filed.
- Amends current statutory language that limits the Supreme Court's ability to fairly compensate retired judges who might be willing to hear court proceedings on a temporary basis.

Explanation of amendments, if any:

Committee Amendment is a compilation of the provisions of LB 1014 and eight other court related bills that were heard by the Judiciary Committee in the 2008 session including provisions of LB 1085, LB 1159, LB 1160, LB 1107, LB 933, LB 935, LB 606, and LB 804. The provisions added to LB 1014 can be summarized as follows:

Legislative Bill 1085 changes provisions in the Parenting Act that were passed into law last year in LB 554. These changes include:

- Requiring a plaintiff living in an undisclosed location (to protect their safety) to provide an alternative address for the mailing of notice;
- Limiting the duration of all ex-parte orders under §42-357 to 10 days or until the hearing is held determining the temporary custody of any minor children;
- Removing a requirement that the court consider a separate financial plan that would be submitted with the parenting plan when determining the amount of child support;
- Clarifying §42-364 as to what shall be contained in a decree for dissolution, legal separation or paternity order regarding various expenses, including:
 - Financial arrangements for each party's responsibility,
 - Reasonable & necessary medical, dental and eye care, medical reimbursements, day care, extracurricular activities, education,
 - Extraordinary expenses of the child, and
 - Calculation of child support;
- Amending §42-371, which pertains to the release or subordination of a lien for a support order to provide that a judgment debtor can file a motion requesting such release or subordination.
- Providing for a paternity proceeding and procedures in certain circumstances;
- Clarifying the definition of "domestic intimate partner abuse" in §42-2922;
- Adding a definition of "mediator" to §42-2922;
- Removing provisions regarding the consideration of the absence or relocation of a party in determining the "best interests of the child" in §42-2922;
- Removes requirement that judges and attorneys involved in parenting act cases participate in training to recognize and handle abuse cases, but retains the requirement that mediators take the training;
- Removing the authority of the judge to order a child of a party to attend a child of divorce class;
- Requiring that the "child information affidavit" be offered as an exhibit rather than be filed with the court as set forth in §42-2930;
- Revising §42-2930 to allow for the optional disclosure of information regarding abuse or conflict in the "child information affidavit";
- Revising §42-2934 regarding certain inconsistent court orders;
- Changing references to a child's "birthdate" to "year of birth" to protect the child's privacy on support orders;

- Making it discretionary for the State Court Administrator to develop rules to implement the Parenting Act;
- Making other technical and clerical changes

Legislative Bill 1159 does the following:

- Sec. 1 - Changes rules of evidence to allow certified copies of school records related to attendance and performance to be admissible in cases where the custody of a child is at issue.
- Sec. 2 - Changes rules of evidence to allow certified copies of school records related to attendance and performance to be admissible in cases where a GAL has been appointed.
- Sec. 3 - Requires a foster child to attend the same school they attended before entering foster care unless the court finds it is not in the best interest of the child.
- Sec. 4 – The plan established by the court following the initial placement of a child in foster care shall contain the name of the school the child attended prior to placement
- Sec. 5 – Any funds not distributed to counties under the County Juvenile Services Aid Program shall be retained by the commission to be distributed on a competitive basis.
- Sec. 6 - Adds a provision to the list of issues used to determine the Best Interest of the Child to explicitly include concern for the child's attendance and progress in school.
- Sec. 7 - Adds a provision to the list of issues to be addressed in a parenting plan to explicitly include concern for the child's attendance and progress in school.
- Sec. 8 - Creates an exception to the statutory prohibition to publicly disclose information about a child to allow certified copies of school records related to attendance and performance to be admissible.
- Sec. 9 – Provides that a foster child shall be deemed a resident of the school district the child attended prior to placement unless the court finds it is not in the best interest of the child to remain in the school or school district the child was in prior to placement.

Legislative Bill 1160 provides the following:

- Sec. 1 – Clarifies that a juvenile charged in criminal court (county or district court) can make a motion to the county court, if that is where the case was filed, to have his or her case waived down to juvenile court. Also, requires the juvenile to make the motion for waiver not later than thirty days after their arraignment, unless good cause is shown for an extension. Under current law, the waiver motion can be made anytime, but no later than fifteen days before trial.
- Sec. 2 - Clarifies that the juvenile court has authority over parents of the juvenile that is under the court's jurisdiction regardless of whether that parent has custody.
- Sec. 3 - Clarifies that mediated pre-hearing conferences for children involved in the juvenile court are confidential and that any information shared during the conference will be protected except that which is required by mandatory reporting under §28-711 for new allegations of child abuse or neglect which were not previously known or reported.
- Sec. 4 - Adds to the list of matters that must be considered by the county attorney in deciding where to file and by the judge when considering the transfer of a case down to juvenile court in cases of concurrent jurisdiction. The county attorney and judge must consider any previous firearm related conviction or acknowledgment of unauthorized use or possession of a firearm and any order declaring the juvenile as not amenable to the rehabilitative treatment of the juvenile court.
- Sec. 5 – Gives authority to any party of the court on its own motion to move the juvenile court for a hearing on the amenability of the juvenile to the rehabilitative services available under the juvenile code. Gives juvenile court judges the authority to issue an order, after a hearing on the matter, indicating that a juvenile is not amenable to the rehabilitative treatment of the juvenile court. This would be an order issued by the court that the county attorney could use to show that a repeat juvenile offender should not be transferred down to juvenile court from criminal court.
- Sec. 6 – Indicates that the new sections in this bill will go into the juvenile code.
- Sec. 7 – Repeals original sections.
- Sec. 8 – outright repeals a statute - providing the process for a juvenile to get a case waived down to juvenile court - that is redundant with section 29-1816.

Legislative Bill 1107 amends §§24-1301 and 24-1302 to add problem solving court programs to the statutes that codify the drug court programs. Problem solving court programs already exist in the state, but this bill will codify them. Like the drug courts, problem solving courts offer an accused person an alternative to the traditional criminal justice and juvenile justice proceedings. Also like the drug courts, the problem solving courts will be subject to rules established by the Nebraska Supreme Court.

LB 1107 also adds a provision indicating the intent of Legislature to appropriate funds separately to the Supreme Court for the operation of each drug court program and problem solving court program.

Legislative Bill 933 amends §24-508 to remove outdated provisions related to the training of clerk magistrates and clarifies that the Supreme Court has authority to establish education requirements for clerk magistrates.

LB 933 also amends subsection 4 of §24-508 to remove an irrelevant provision reflecting a change in title, from associate county judge to clerk magistrate, that was implemented in 1986.

Legislative Bill 935 amends §25-534 to remove provisions regulating the service and delivery of court papers, including orders, motions, notices, or other documents excluding summons documents. The bill adds a provision authorizing the Supreme Court to establish rules regarding service and delivery of court papers pursuant to the Court's authority to promulgate rules of pleading in civil actions under §25-801.01.

Under current law, service and delivery of court documents is explicitly regulated by statute. This bill would allow the regulations to be changed outside of the legislative process by the Supreme Court with court rules.

Legislative Bill 606 provides authority for Nebraska courts to refer civil cases to mediation and other forms of alternative dispute resolution (ADR). Once a case is referred to ADR, the parties may file a motion to object to the referral. Although the parties may be ordered to some form of ADR, any resulting agreement or resolution must be entered into voluntarily pursuant to the Nebraska State Constitution which provides "the Legislature may provide for the enforcement of mediation, binding arbitration agreements, and other forms of dispute resolution which are entered into voluntarily." Neb. Const. art. I, sec. 13 (1875); Amended 1996, Laws 1995, LR 1CA, sec. 1. If the order referring a case to ADR includes a date for the case to return to court, the date must be within 90 days after the date on which the order was signed.

LB 606 also provides that an individual trial court, an appellate court or the Supreme Court may adopt rules of practice regarding the referral process. The mediation and other ADR services may be provided by an approved center on a sliding fee scale under the Dispute Resolution Act.

Legislative Bill 804 provides that jurors may take notes during both civil and criminal trials regardless of whether the parties agree. The notes may be referred to during deliberations, but will be treated as confidential between the note taker and the other jurors. The trial judge will ensure the confidentiality of the notes and must see that they are destroyed upon return of the verdict.

Under current case law, jurors are permitted to take notes if the parties agree to allow it. The notes may be used during deliberations, but will be treated as confidential between the jurors and not preserved for review on appeal. Federal courts in Nebraska have traditionally allowed jurors to take notes.

Senator Brad Ashford, Chairperson