

ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010
COMMITTEE STATEMENT
LB800

Hearing Date: Wednesday January 27, 2010
Committee On: Judiciary
Introducer: Ashford
One Liner: Provide methods of early intervention for children at risk

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	7	Senators Ashford, Christensen, Coash, Lathrop, Lautenbaugh, McGill, Rogert
Nay:		
Absent:		
Present Not Voting:	1	Senator Council

Proponents:

Sen. Brad Ashford
Fr. Steven Boes
Pat Connell

Justin Tolston
Chris Rodgers
Alex Hayes
Nicole Goaley
Mark Young
John Cavanaugh
Kim Hawekotte

Kim Culp
Todd Reckling
Linda Cox
Bradley White
Michelle Oldham
Jackie Madara-Campbell
Jane Martin-Hoffman

Sarah Newell
Jay Sears
Tiffany Seibert
Mary Bahney

Opponents:

Neutral:

Elizabeth Crnkovich

Representing:

Introducer
Boys Town
Nebraska Association of Behavioral Health Organizations
Self
Douglas County Board of Commissioners
Omaha Police Department
Douglas County Attorney's Office
Grand Island Public Schools; Hall County Attorney
Building Bright Futures
UNO; Building Bright Futures School Engagement & Attendance Initiatives
Douglas County Juvenile Assessment Center
Health and Human Services
Foster Care Review Board
Nebraska State Bar Association
Nebraska State Bar Association
Nebraska State Bar Association
Nebraska Justice Center; Nebraska ODR Mediation Centers
Lancaster County Public Defender's Office
Nebraska State Education Association
Voices for Children in Nebraska
National Association of Social Workers

Representing:

Representing:

Douglas County Separate Juvenile Court

Summary of purpose and/or changes:

Legislative Bill 800 would enact reform in the juvenile justice system and provide for early intervention with at-risk children and families. The bill addresses early intervention, parental involvement, school attendance, and alternatives to detention through the following proposals:

- Authorize the implementation of civil citations for juveniles with minor offenses to avoid creating an arrest record.
- Explicitly prohibit status offenders from being sent to secure detention.
- Enact graduated sanctions for violations of probation.
- Evaluations
 - Authorize OJS to identify the appropriate post-adjudication evaluation and be responsible for completing it.
 - Reduce the timeframe for completing evaluations.
 - Establish timeframe for a hearing on the evaluation results.
- Change provisions related to temporary placement to emphasize the need to place juveniles in the least restrictive environment possible
- Authorize the use of videoconferencing in certain juvenile proceedings.
- Truancy
 - Remove language allowing each district to define and use the distinction between excused and unexcused absence.
 - Remove language allowing the school to end efforts to meet with parents after the parent refuses to participate in a meeting to address the student's truancy if the request and refusal are documented.
 - Add provision requiring school administrators, attendance officers or enforcement officers to make contact with family of the truant student after 5, 10 and 20 truantries and document the contact. After the third contact, the case can be referred to the county attorney. There must be three documented attempts to get the student to school or the county attorney will not accept the filing.
 - Authorize county attorney to issue an infraction against the parent of a truant student. The first infraction would carry a \$300 fine that could be waived if the parent participates in mediation with a representative from the school. The second infraction would carry a \$500 fine and could be waived with participation in mediation. After the third infraction, the parent can be charged with a Class III misdemeanor.
 - Require each school district to provide a report to Department of Education regarding truancy and strategies developed by district to address truancy.
- Authorize school districts within a Learning Community to establish a reintegration center to assist students who have been out of school for some time or those who have dropped out completely.
- Authorize the Learning Community Coordinating Council to award grants to non-profit organizations providing intervention services for at-risk juveniles focusing on closing the learning gap.
- Require school districts to report to the Department of Education on expulsions, suspensions, referrals to the county attorney for truancy and any contact with law enforcement within 48 hours of occurrence.
- Establish a child-at-risk task force that includes the Department of Education, Probation, HHS, school superintendents and the UNMC College of Public Health.
- Eliminate the use of three-judge panel appeals of juvenile cases where the court orders implementation of a plan different from what HHS recommended and expedite appeals of juvenile cases at the Court of Appeals.
- Clarify juvenile court jurisdiction over parents by giving the court authority to require the parent, guardian or custodian to participate in the therapeutic services necessary for the rehabilitation of the juvenile.
- Add language to provide that in distributing funds provided under the County Juvenile Services Aid Program, counties shall prioritize programs and services that will reduce the juvenile detention population.

Explanation of amendments:

AM2109 to LB800

1. Authorizes a pilot project to implement civil citations (Sections 8, 9, 10, 11)

a. Section 9 - A pilot project may be established in a county containing a city of the metropolitan class to authorize the use of civil citations. A peace officer may issue a civil citation to a juvenile who has committed a misdemeanor other than an offense involving a firearm, sexual assault or domestic violence. A civil citation is a non-criminal notice given to the juvenile, the county attorney, the juvenile assessment center and the parent or guardian. The juvenile must report to the juvenile assessment center within seventy-two hours for assessment and diversion referrals to community service and treatment services. If the juvenile fails to report or comply with his or her diversion assignments or if the juvenile commits a third offense, then a peace officer may take the juvenile into temporary custody.

b. Section 10 - The Supreme Court will promulgate the civil citation form.

c. Sec. 43-245(4) - Defines civil citation as a non-criminal notice which cannot result in a criminal record.

2. Temporary Custody by a law enforcement officer (Sections 13, 14)

a. Sec. 43-248(1) & (2) - Combine (1) & (2) to allow officer to take a juvenile into temporary custody if there are reasonable grounds to believe the juvenile has committed a violation of state law or municipal ordinance (misdemeanor offense does not have to be committed in presence of officer for purposes of temporary custody)

b. Sec. 43-248(6) - Add language to allow officer to take a juvenile into temporary custody if there are reasonable grounds to believe the juvenile is truant from school.

c. Sec. 43-250(4) - If a juvenile is taken into temporary custody because there are reasonable grounds to believe the juvenile is truant from school, the officer shall deliver the juvenile to school.

3. Status offenders in secure detention for violating a valid court order (Section 14)

Sec. 43-250(1)(c)(vi) - Adds language to phase out, before January 1, 2013, the practice of ordering status offenders who have violated a valid court order into secure detention. This provision corresponds with the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2009.

4. Enact graduated (administrative) sanctions for violations of probation (Sections 5, 6, 8, 13)

a. Sec. 29-2258 - authorizes probation officers to exercise power of temporary custody if there is reasonable cause to believe that a juvenile has or is about to violate his or her probation and that the juvenile will attempt to leave the jurisdiction or place lives or property in danger.

b. Section 6 - Establishes administrative sanctions for juveniles within the Probation Administration Act (Sec. 29-2269). With full knowledge and consent of the juvenile and his or her parent or guardians, additional probation requirements may be imposed on juveniles under supervision of probation for substance abuse and status offense violations of conditions of their probation. Sanctions may be imposed in lieu of formal revocation proceedings at the discretion of the probation officer and his or her chief probation officer. Sanctions may include: counseling, increased supervision, increased substance abuse counseling, referral for evaluation, curfew modification, community service, travel restrictions, etc.

c. Sec. 43-248(5) - Adds language to provide that a juvenile may be taken into temporary custody by a peace officer without a warrant when a probation officer has reasonable cause to believe that a juvenile has or is about to violate his or her probation and that the juvenile will attempt to leave the jurisdiction or place lives or property in danger.

5. Establish timeframe for hearings on the evaluation results (Sections 19, 31)

a. Sec. 43-258 - Require a juvenile to appear in front of a judge for a hearing on the report within ten days of the court receiving the pre-adjudication evaluation report.

b. Sec. 43-415 - Require the court to hold a hearing within 10 days after the post-adjudication evaluation is completed and returned to the court by OJS.

6. Enhance provisions related to temporary placement to emphasize the need to place juveniles in the least restrictive environment possible (Sections 12, 19)

a. Sec. 43-246(9) - When temporary placement of a juvenile is necessary, emphasize the need to place juveniles in the least restrictive environment possible that is consistent with public safety and in the best interest of the juvenile.

b. Sec. 43-258(2) - When temporary placement of a juvenile is necessary for pre-adjudication evaluation, emphasize the need to place juveniles in the least restrictive environment possible that is consistent with public safety and in the best interest of the juvenile.

7. Authorize the use of videoconferencing in certain juvenile proceedings (Section 21)

Sec. 43-278 - Add language to allow the use of videoconferencing for all communications, notices, orders, authorizations and requests, for nonevidentiary hearings, for all evidentiary hearings approved by the court and by stipulation of the parties.

8. Truancy (Sections 23, 33, 34)

a. Require each school district to have a policy on excessive absenteeism developed in collaboration with the county attorney.

b. Remove language allowing the school to end efforts to meet with parents after the parent refuses to participate in a meeting to address the student's truancy if the request and refusal are documented.

c. Require the district to report a case to the county attorney after 20 days of absence per year or the hourly equivalent regardless of whether the absence was excused.

d. Section 23 - Authorize juvenile court to suspend driving privileges of truant juveniles (and law violators). Violations of such a court order shall be handled in the juvenile court. Authorize juvenile court to issue fines not exceeding \$500 or order community service for parents of truant juveniles.

9. Require school districts to report data to the Department of Education (Section 35)

Sec. 79-527(2) - Requires school districts to report to the Commissioner on Education on a monthly basis indicating the occurrence of and the reason for excessive absenteeism, suspension, expulsion, referral to the county attorney for truancy and any contact with law enforcement.

10. Establish the Truancy Intervention Task Force (Section 36)

The task force shall include the Commissioner of Education, the Probation Administrator and the Chief Executive Officer of HHS. The task force will evaluate the data that is sent to the department, including excessive absence, suspension, expulsion, referrals for excessive absence and contact with law enforcement. The task force will develop recommendations on how to reduce truancy and report to the Legislature on or before July 1, 2011.

11. Juvenile appeals (Sections 1, 3, 22, 24)

a. Sec. 24-313, Sec. 25-2728, Sec. 43-285(2)(3) - strike language related to juvenile review panels

b. Sec. 43-287.01 - 43-287.05 - Outright repeal these sections in order to eliminate the use of three-judge panel appeals of juvenile cases in which the court orders implementation of a plan that differs from the plan recommended by HHS.

c. Sec. 42-2,106.01 - Amends language to provide that the Court of Appeals shall conduct its review of final orders or judgments from a juvenile court in an expedited manner.

12. County Juvenile Services Aid Program (Section 32)

Sec. 43-2404.02(3) - Add language to provide that in distributing funds provided under the County Juvenile Services Aid Program, counties shall prioritize programs and services that will reduce the juvenile detention population.

13. Sealing juvenile records as described in LB 923 (Sections 2, 11, 25, 26, 27, 29, 30)

a. Provide a process for juvenile records to be sealed.

b. Sealing a record means that the record will not be available to the public except upon order of a court for good cause shown.

c. The sealing process is available to juveniles (under age 18 at time of offense) who: are offered pretrial diversion or mediation by the county attorney; are the subject of a juvenile court petition filed by the county attorney in juvenile court for a misdemeanor offense, felony offense, status offense or traffic offense; and are the subject of a criminal complaint filed by the county attorney in county court for a misdemeanor or infraction, except for waivable traffic offenses.

d. The county attorney or city attorney must provide a juvenile who is eligible for the sealing process with written notice of the following:

i. Plain language statement that the juvenile may petition the court to have records sealed when the juvenile completes diversion, mediation, probation, supervision, treatment or rehabilitation provided for under the juvenile code, or when the juvenile completes the diversion or sentence ordered by the county court; and

ii. Plain language description of what sealing the record means.

e. If no petition or complaint was filed against the juvenile or if the resulting diversion or mediation is completed, the county attorney or city attorney must notify the appropriate public office or agency responsible for arrest or custody. Upon receiving such notice the office or agency shall immediately seal all original records housed at the office or agency pertaining to the citation, arrest, custody, complaint, disposition, diversion or mediation.

f. If a juvenile who is eligible for the sealing process has satisfactorily completed diversion, mediation, probation, supervision, treatment or rehabilitation provided for under the juvenile code, or the diversion or sentence ordered by the county court and the juvenile has reached the age of 17, the court shall automatically initiate proceedings to seal the records.

g. If a juvenile who is eligible for the sealing process has satisfactorily completed diversion, mediation, probation, supervision, treatment or rehabilitation provided for under the juvenile code, or the diversion or sentence ordered by the county court, the court may initiate proceedings to seal the records upon the motion of the juvenile or upon the court's own motion regardless of the juvenile's age.

h. Proceedings to seal records are initiated by notifying the county attorney or city attorney and DHHS if the juvenile is a ward of the state or if DHHS was a party in the case. The county attorney, city attorney or DHHS may file a response within 30 days of notice. If no response is filed or the response does not contain an objection to the records being sealed, the court may order the records sealed without a hearing. The court has discretion to conduct a hearing on the motion to seal the records within 30 days of the court's decision to hold the hearing. If the county attorney, city attorney or DHHS objects to the sealing of the records, the court must conduct a hearing on the motion within 30 days after receiving the response. After the hearing, the court may order the sealing of the records if it finds that the juvenile has been rehabilitated to a satisfactory degree based on the following: age; nature of the offense and role of the juvenile; behavior after adjudication and response to treatment; education and employment history; and any other circumstances related to the rehabilitation. The court shall notify the juvenile whose records are sealed. If the court does not order the records to be sealed, the juvenile may not move the court to have the records sealed for 1 year, unless waived by the court.

i. If the court orders the records be sealed, the juvenile may reply that no record exists upon any inquiry in the matter. The court, county attorneys, institution, persons and agencies must reply that no record exists upon public inquiry. The court must do the following:

j. Order that any information or other data related to the matter be deemed never to have occurred.

k. Send notice of order to seal to any law enforcement agencies, county attorneys, city attorneys, institutions, persons, agencies, treatment providers, therapists or other service providers referenced in the court record and order that all original records of the case be sealed. The order to seal a record applies to every public office or agency regardless of receiving notice. Upon written request of the subject of the order and a copy of the order, a public office or agency shall seal all records related to the case.

l. A sealed record shall be accessible to law enforcement officers, county attorneys, city attorneys and the sentencing judge in the prosecuting and sentencing of criminal defendants. Inspection of the records may be done by the following persons:

i. The court or any person allowed to inspect by order of the court for good cause shown

ii. Probation

iii. DHHS for purposes of juvenile intake services, preparation of case plans and reports, preparations of evaluations, the supervision and protection of persons placed with HHS or for licensing or certification purposes

iv. The juvenile subject of the sealed records

v. Party to a civil action based on the sealed records

vi. Persons engaged in bona fide research

m. No person shall knowingly release, disseminate or make available the sealed records or they may be held in contempt of court. However, DHHS may release, disseminate or make available information from a sealed record in performance of its duties in supervising and protecting persons placed with the department.

n. In applications for employment, license or other privilege, a person cannot be questioned about the sealed records.

If questioned, the person subject to the sealed records may respond as if the incident leading to the sealed records did not occur.

o. Applications for employment shall state that applicant is not obligated to disclose sealed juvenile records. Employers cannot ask if an applicant has had a juvenile record sealed. The Department of Labor shall develop a link on its website to inform employers of their duties and prohibitions pertaining to sealed juvenile records.

14. Funding for the Office of Violence Prevention grants (Section 7)

Sec. 29-1161.07 - \$350,000 will be transferred from the Probation Program Cash Fund to the Violence Prevention Cash Fund. The OVP shall distribute the funds through a grant process to organizations and governmental entities for the reduction of street and gang violence and the reduction of homicides and injuries caused by firearms.

Brad Ashford, Chairperson