

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1053**

Introduced by Lathrop, 12.

Read first time January 18, 2022

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to courts; to amend section 43-278, Reissue  
2 Revised Statutes of Nebraska, and sections 24-303, 24-734, and  
3 25-2704, Revised Statutes Cumulative Supplement, 2020; to change,  
4 provide, and eliminate provisions relating to conducting court  
5 proceedings by virtual conferencing and telephone or  
6 videoconferencing; to define a term; to provide for rules; to  
7 harmonize provisions; and to repeal the original sections.  
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 24-303, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3 24-303 (1) The judges of the district court shall, the last two  
4 months in each year, fix the time of holding terms of court in the  
5 counties composing their respective districts during the ensuing year,  
6 and cause the same to be published throughout the district, if the same  
7 can be done without expense. All jury terms of the district court shall  
8 be held at the county seat in the courthouse, or other place provided by  
9 the county board, but nothing herein contained shall preclude the  
10 district court, or a judge thereof, from rendering a judgment or other  
11 final order or from directing the entry thereof in any cause, in any  
12 county other than where such cause is pending, where the trial or hearing  
13 upon which such judgment or other final order is rendered took place in  
14 the county in which such cause is pending. Terms of court may be held at  
15 the same time in different counties in the same judicial district, by the  
16 judge of the district court thereof, if there be more than one, and upon  
17 request of the judge or judges of such court, any term in such district  
18 may be held by a judge of the district court of any other district of the  
19 state. The Supreme Court may order the assignment of judges of the  
20 district court to other districts whenever it shall appear that their  
21 services are needed to relieve a congested trial docket or to adjust  
22 judicial case loads, or on account of the disqualification, absence,  
23 disability, or death of a judge, or for other adequate cause. When  
24 necessary, a term of the district court sitting in any county may be  
25 continued into and held during the time fixed for holding such court in  
26 any other county within the district, or may be adjourned and held beyond  
27 such time.

28 (2) Virtual conferencing may be used in court proceedings as  
29 provided in section 24-734. All nonevidentiary hearings, and any  
30 evidentiary hearings approved by the district court and by stipulation of  
31 all parties that have filed an appearance, may be heard by the court

1 ~~telephonically or by videoconferencing or similar equipment at any~~  
2 ~~location within the judicial district as ordered by the court and in a~~  
3 ~~manner that ensures the preservation of an accurate record. Such hearings~~  
4 ~~shall not include trials before a jury. Hearings conducted in this manner~~  
5 ~~shall be consistent with the public's access to the courts.~~

6 Sec. 2. Section 24-734, Revised Statutes Cumulative Supplement,  
7 2020, is amended to read:

8 24-734 (1) A judge of any court established under the laws of the  
9 State of Nebraska shall, in any case in which that judge is authorized to  
10 act, have power to exercise the powers conferred upon the judge and  
11 court, and specifically to:

12 (a) Upon the stipulation of the parties to an action, hear and  
13 determine any matter, including the trial of an equity case or case at  
14 law in which a jury has been waived;

15 (b) Hear and determine pretrial and posttrial matters in civil cases  
16 not involving testimony of witnesses by oral examination;

17 (c) With the consent of the defendant, receive pleas of guilty and  
18 pass sentences in criminal cases;

19 (d) With the consent of the defendant, hear and determine pretrial  
20 and posttrial matters in criminal cases;

21 (e) Hear and determine cases brought by petition in error or appeal  
22 not involving testimony of witnesses by oral examination;

23 (f) Hear and determine any matter in juvenile cases with the consent  
24 of the guardian ad litem or attorney for the minor, the other parties to  
25 the proceedings, and the attorneys for those parties, if any; and

26 (g) Without notice, make any order and perform any act which may  
27 lawfully be made or performed by him or her ex parte in any action or  
28 proceeding which is on file in any district of this state.

29 (2) A judgment or order made pursuant to this section shall be  
30 deemed effective when the judgment is entered in accordance with the  
31 provisions of subsection (3) of section 25-1301.

1           ~~(3)(a) (3)~~ The judge, in his or her discretion, may in any  
2 proceeding authorized by the provisions of this section, subject to this  
3 subsection and subsections (4) through (8) of this section, use virtual  
4 conferencing in a manner that promotes meaningful participation, ensures  
5 the preservation of an accurate record, allows parties to communicate  
6 confidentially with counsel, and is consistent with the public's access  
7 to the courts not involving testimony of witnesses by oral examination,  
8 use telephonic, videoconferencing, or similar methods to conduct such  
9 proceedings. The court may require the parties to make reimbursement for  
10 any charges incurred.

11           (b) For purposes of this section, virtual conferencing means  
12 conducting, appearing in, or participating in a court proceeding by the  
13 use of video, electronic, or telephonic technology with contemporaneous  
14 interaction among the participants.

15           (c) When a judge authorizes the use of virtual conferencing, the  
16 proceedings are deemed to be conducted in the county where the case was  
17 filed.

18           (d) In any proceeding which includes virtual conferencing, the judge  
19 may require the parties to pay the costs reasonably incurred.

20           (4) In any court proceeding that does not involve live witness  
21 testimony, the judge has the discretion to use virtual conferencing.

22           (5) (4) In any criminal case, with the consent of the parties, a  
23 judge may permit any witness who is to be examined by oral examination to  
24 appear by virtual conferencing telephonic, videoconferencing, or similar  
25 methods, with any costs thereof to be taxed as costs.

26           (6)(a) In (5)(a) Unless an objection under subdivision (5)(c) of  
27 this section is sustained, in any civil court proceeding involving live  
28 witness testimony case, a judge has the discretion to use virtual  
29 conferencing: shall, for good cause shown, permit any witness who is to  
30 be examined by oral examination to appear by telephonic,  
31 videoconferencing, or similar methods.

- 1           (i) Upon a finding of good cause; or  
2           (ii) With the consent of all the parties.

3           (b) For purposes of this subsection, a judge ~~Unless the court orders~~  
4 ~~otherwise for good cause shown, all costs of testimony taken by~~  
5 ~~telephone, videoconferencing, or similar methods shall be provided and~~  
6 ~~paid by the requesting party and may not be charged to any other party. A~~  
7 ~~court may find that there is good cause to allow the use of virtual~~  
8 ~~conferencing testimony of a witness to be taken by telephonic,~~  
9 ~~videoconferencing or similar methods if:~~

10           (i) A party, an attorney, or a ~~The witness is unable to personally~~  
11 ~~otherwise unavailable to appear because of injury age, infirmity, or~~  
12 ~~illness;~~

13           (ii) ~~The personal appearance of the witness cannot be secured by~~  
14 ~~subpoena or other reasonable means;~~

15           (iii) ~~A personal appearance would be an undue burden or expense to a~~  
16 ~~party, a witness, or an interpreter; or~~

17           (iv) ~~There are any other circumstances that constitute good cause~~  
18 ~~for allowing live the testimony of the witness testimony to be taken by~~  
19 ~~virtual conferencing telephonic, videoconferencing, or similar methods.~~

20           (c) ~~A party may object to examination by telephonic,~~  
21 ~~videoconferencing, or similar methods under subdivision (5)(a) of this~~  
22 ~~section on grounds of unreliability or unfairness. The objecting party~~  
23 ~~has the burden of proving unreliability or unfairness by a preponderance~~  
24 ~~of the evidence.~~

25           (d) ~~Nothing in this section shall prohibit an award of expenses,~~  
26 ~~including attorney fees, pursuant to Neb. Ct. R. of Discovery 6-337.~~

27           (7) Nothing in (6) ~~The enumeration of the powers in subsections (1),~~  
28 ~~(2), (3), (4), and (5) of this section shall not be construed to:~~

29           (a) Deny ~~deny~~ the right of a party to trial by jury in the county in  
30 which the action was first filed if such right otherwise exists; or -

31           (b) Exempt court proceedings from the Supreme Court's rules

1 governing the conditions under which a hearing may be closed to the  
2 public.

3 (8) The Supreme Court may, consistent with the provisions of this  
4 section, promulgate uniform court rules addressing the use of virtual  
5 conferencing in court proceedings.

6 ~~(7) Nothing in this section shall be construed to exempt proceedings~~  
7 ~~under this section from the provisions of the Guidelines for Use by~~  
8 ~~Nebraska Courts in Determining When and Under What Conditions a Hearing~~  
9 ~~Before Such Court May Be Closed in Whole or in Part to the Public,~~  
10 ~~adopted by the Supreme Court of the State of Nebraska September 8, 1980,~~  
11 ~~and any amendments to those provisions.~~

12 Sec. 3. Section 25-2704, Revised Statutes Cumulative Supplement,  
13 2020, is amended to read:

14 25-2704 (1) In any civil action in county court, the summons,  
15 pleadings, and time for filings shall be the same as provided for civil  
16 actions in district court. A case shall stand for trial at the earliest  
17 available time on the trial docket after the issues therein are or,  
18 according to the times fixed for pleading, should have been made up.

19 (2) Virtual conferencing may be used in court proceedings as  
20 provided in section 24-734 ~~All nonevidentiary hearings, and any~~  
21 ~~evidentiary hearings approved by the county court and by stipulation of~~  
22 ~~all parties that have filed an appearance, may be heard by the court~~  
23 ~~telephonically or by videoconferencing or similar equipment at any~~  
24 ~~location within the judicial district as ordered by the court and in a~~  
25 ~~manner that ensures the preservation of an accurate record. Such hearings~~  
26 ~~shall not include trials before a jury. Hearings conducted in this manner~~  
27 ~~shall be consistent with the public's access to the courts.~~

28 Sec. 4. Section 43-278, Reissue Revised Statutes of Nebraska, is  
29 amended to read:

30 43-278 Except as provided in sections 43-254.01 and 43-277.01, all  
31 cases filed under subdivision (3) of section 43-247 shall have an

1 adjudication hearing not more than ninety days after a petition is filed.  
2 Upon a showing of good cause, the court may continue the case beyond the  
3 ninety-day period. The court shall also review every case filed under  
4 such subdivision which has been adjudicated or transferred to it for  
5 disposition not less than once every six months. All court proceedings,  
6 communications, notices, orders, authorizations, and requests authorized  
7 or required in the Nebraska Juvenile Code may be conducted or done using  
8 virtual conferencing as provided in section 24-734 ; ~~all nonevidentiary~~  
9 ~~hearings; and any evidentiary hearings approved by the court and by~~  
10 ~~stipulation of all parties may be heard by the court telephonically or by~~  
11 ~~videoconferencing in a manner that ensures the preservation of an~~  
12 ~~accurate record. All of the orders generated by way of a telephonic or~~  
13 ~~videoconference hearing shall be recorded as if the judge were conducting~~  
14 ~~a hearing on the record.~~

15       Sec. 5.   Original section 43-278, Reissue Revised Statutes of  
16 Nebraska, and sections 24-303, 24-734, and 25-2704, Revised Statutes  
17 Cumulative Supplement, 2020, are repealed.