

## LEGISLATIVE BILL 1106

Approved by the Governor April 12, 1994

Introduced by Beutler, 28

AN ACT relating to juvenile courts; to amend sections 25-1901, 25-2729, and 25-2733, Reissue Revised Statutes of Nebraska, 1943, and sections 25-2728, 43-287.01, 43-2,106, 43-2,126, and 43-2,129, Revised Statutes Supplement, 1992; to provide that all appeals from the juvenile courts be taken to the Court of Appeals; to transfer provisions for such appeals; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 25-1901, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1901. A judgment rendered or final order, ~~except an order in proceedings for the termination of parental rights, made by any tribunal, board, or officer exercising judicial functions and inferior in jurisdiction to the district court, other than a juvenile court as defined in section 43-245,~~ may be reversed, vacated, or modified by the district court.

Sec. 2. That section 25-2728, Revised Statutes Supplement, 1992, be amended to read as follows:

25-2728. (1) Any party in a civil case and any defendant in a criminal case may appeal from the final judgment or final order of the county court to the district court of the county where the county court is located, ~~except in cases of appeals from proceedings for the termination of parental rights in the county court sitting as a juvenile court and except as provided in sections 43-287.01 to 43-287.06.~~ In a criminal case, a prosecuting attorney may obtain review by exception proceedings pursuant to sections 29-2317 to 29-2319.

(2) In cases of appeals from adoption proceedings and proceedings under the Nebraska Probate Code, an appeal may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby.

(3) In cases of appeals from proceedings in the county court sitting as a juvenile court, an appeal may be taken by-

(a) The juvenile;  
 (b) The guardian ad litem;  
 (c) The juvenile's parent, custodian, or guardian, and for purposes of this subdivision, custodian or guardian shall include, but not be limited to, the Department of Social Services, an association, or an individual to whose care the juvenile has been awarded pursuant to the Nebraska Juvenile Code; or

(d) The county attorney or petitioner, except that in any case determining delinquency issues in which the juvenile has been placed legally in jeopardy, an appeal of such issues may only be taken by exception proceedings pursuant to sections 29-2317 to 29-2319.

(4) In cases of appeals from proceedings for the termination of parental rights in the county court sitting as a juvenile court, the appeal shall be taken directly to the Court of Appeals in the same manner as cases appealed from a separate juvenile court pursuant to section 43-2,126.

(5) In cases of appeals from inheritance tax matters, an appeal may also be taken by any person dissatisfied with and affected by the appraisal or assessment.

(4) (6) Sections 25-2728 to 25-2738 shall not apply to appeals in eminent domain proceedings as provided in sections 76-715 to 76-723 or to appeals in proceedings in the county court sitting as a juvenile court as provided in sections 43-287.01 to 43-287.06 and 43-2,106 and section 6 of this act.

Sec. 3. That section 25-2729, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-2729. (1) In order to perfect an appeal from the county court, the appealing party shall within thirty days after the rendition of the judgment or making of the final order complained of:

(a) File with the clerk of the county court a notice of appeal; and  
 (b) Deposit with the clerk of the county court a docket fee in the amount of the filing fee in district court.

(2) Satisfaction of the requirements of subsection (1) of this section shall perfect the appeal and give the district court jurisdiction of

the matter appealed, ~~7~~ except that in appeals from the county court sitting as a juvenile court, ~~7~~ the county court may act in accordance with section 43-27106.

(3) The time of rendition of a judgment or making of a final order is the time at which the action of the judge in announcing the judgment or final order is noted on the trial docket or, if the action is not noted on the trial docket, the time at which the journal entry of the action is filed.

(4) The appealing party shall also within the time fixed by subsection (1) of this section:

(a) In matters arising under the Nebraska Probate Code only, when the appeal is by someone other than an executor, administrator, personal representative, conservator, trustee, guardian, or guardian ad litem, deposit with the clerk of the county court a cash bond or undertaking in such sum as the court shall direct, with at least one good and sufficient surety approved by the court, conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her, including costs under subsection (2) of section 25-2737, unless the court directs that no cash bond or undertaking need be deposited; and

(b) In appeals from the Small Claims Court only, deposit with the clerk of the county court a cash bond or undertaking, with at least one good and sufficient surety approved by the court, in the amount of fifty dollars, conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her.

(5) A notice of appeal or docket fee filed or deposited after the announcement of a decision or final order but before the rendition of the judgment or making of the final order shall be treated as filed or deposited after the rendition of the judgment or making of the final order and on the day thereof.

(6) The party appealing shall serve a copy of the notice of appeal upon all parties who have appeared in the action or upon their attorney of record. Proof of service shall be filed with the notice of appeal.

(7) If an appellant fails to comply with any provision of subsection (4) or (6) of this section, the district court on motion and notice may take such action, including dismissal of the appeal, as is just.

Sec. 4. That section 25-2733, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-2733. (1) In all cases other than appeals from the Small Claims Court, the district court shall review the case for error appearing on the record made in the county court, ~~1~~ or on the record made, ~~7~~ if prior to July 1, 1985, in the municipal court. The district court shall render a judgment which may affirm, affirm but modify, or reverse the judgment or final order of the county court, ~~1~~ or the judgment or final order, ~~7~~ if entered prior to July 1, 1985, of the municipal court. If the district court reverses, it may enter judgment in accordance with its findings or remand the case to the county court for further proceedings consistent with the judgment of the district court. Within two judicial days after the decision of the district court becomes final, the clerk of the district court shall issue a mandate in appeals from the county court and transmit the mandate in appeals to the clerk of the county court on the form prescribed by the Supreme Court together with a copy of such decision.

(2) The bill of exceptions, if filed with the clerk at or before the hearing, shall be considered admitted in evidence on the hearing of the appeal unless the court on objection by a party excludes all or part of it.

(3) In all cases other than ~~appeals from the county court sitting as a juvenile court,~~ appeals in adoption proceedings, ~~7~~ and appeals under the Nebraska Probate Code, the judgment of the district court shall vacate the judgment in the county court, ~~1~~ or the judgment, ~~7~~ if entered prior to July 1, 1985, of the municipal court. The taxation of costs in the district court shall include the costs in the county court. If a judgment of the county ~~or such municipal~~ court is affirmed or affirmed but modified, interest on the amount of the judgment in the district court that does not exceed the amount of the judgment in the county ~~or such municipal~~ court shall run from the date of the judgment appealed from the county ~~or such municipal~~ court.

(4) In all ~~appeals from the county court sitting as a juvenile court,~~ appeals in adoption proceedings, ~~7~~ and appeals under the Nebraska Probate Code, the judgment of the district court shall be certified without cost to the county court for further proceedings consistent with the determination of the district court.

Sec. 5. That section 43-287.01, Revised Statutes Supplement, 1992, be amended to read as follows:

43-287.01. The purpose of sections 43-287.01 to 43-287.06 is to provide for an expedited review of juvenile dispositions by the courts. It is

the intent to allow such review only when a court orders the implementation of a plan different than the plan prepared by the Department of Social Services for the care, placement, and services to be provided to such juvenile and the department or any other party believes such court-ordered plan not to be in the best interests of the juvenile.

It is the intent of sections 43-287.01 to 43-287.06 to remove contested dispositional plans from the appellate process for the purpose of expediting review by a juvenile review panel. Nothing in such sections shall otherwise limit the right of any party to appeal other final orders of a juvenile court pursuant to sections 25-2728, 25-2729, 25-2733, 43-27106, and 43-27126 section 43-2,106 and section 6 of this act.

Sec. 6. That section 43-2,126, Revised Statutes Supplement, 1992, be amended to read as follows:

43-2,126. (1) Any final order or judgment entered by a separate juvenile court may be appealed to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals. The appellate court shall conduct its review within the same time and in the same manner prescribed by law for review of an order or judgment of the district court, except as provided in sections 43-287.01 to 43-287.06 and except that when appeal is taken from a finding by the juvenile court terminating parental rights, the cause shall be advanced for argument before the appellate court and the appellate court shall, in order to expedite the preferred disposition of the case and the juvenile, render the judgment and write its opinion, if any, as speedily as possible.

(2) An appeal may be taken by:

(a) The juvenile;

(b) The guardian ad litem;

(c) The juvenile's parent, custodian, or guardian. For purposes of this subdivision, custodian or guardian shall include, but not be limited to, the Department of Social Services, an association, or an individual to whose care the juvenile has been awarded pursuant to the Nebraska Juvenile Code; or

(d) The county attorney or petitioner, except that in any case determining delinquency issues in which the juvenile has been placed legally in jeopardy, an appeal of such issues may only be taken by exception proceedings pursuant to sections 29-2317 to 29-2319.

(3) In all appeals from the county court sitting as a juvenile court, the judgment of the appellate court shall be certified without cost to the juvenile court for further proceedings consistent with the determination of the appellate court.

Sec. 7. That section 43-2,106, Revised Statutes Supplement, 1992, be amended to read as follows:

43-2,106. When a juvenile court proceeding has been instituted before a county court sitting as a juvenile court, the original jurisdiction of the county court shall continue until the final disposition thereof and, except in proceedings for the termination of parental rights and except as provided in sections 43-287.01 to 43-287.06, appeal may be had to the district court as in civil cases, but no such appeal shall stay the enforcement of any order entered in the county court. After appeal has been filed, the district appellate court, upon application and hearing, may stay any order, judgment, or decree on appeal if suitable arrangement is made for the care and custody of the juvenile. The county court shall continue to exercise supervision over the juvenile until a hearing is had in the district appellate court and the district appellate court enters an order making other disposition. If the district appellate court adjudges the juvenile to be a juvenile meeting the criteria established in subdivision (1), (2), (3), or (4) of section 43-247, the district appellate court shall affirm the disposition made by the county court unless it is shown by clear and convincing evidence that the disposition of the county court is not in the best interest of such juvenile. Upon determination of the appeal, the district appellate court shall remand the case to the county court for further proceedings consistent with the determination of the district appellate court. In the event of an appeal of a proceeding for termination of parental rights, the matter shall be reviewed by the Court of Appeals or the Supreme Court within the same time and in the same manner prescribed by law for review of an order or judgment of the district court, except that such termination order or judgment shall be advanced for argument before the appellate court and the appellate court, in order to expedite the preferred disposition of the case and the juvenile, shall render the judgment and write an opinion as speedily as possible.

Sec. 8. That section 43-2,129, Revised Statutes Supplement, 1992, be amended to read as follows:

43-2,129. Sections 43-245 to 43-2,129 and section 6 of this act shall be known and may be cited as the Nebraska Juvenile Code.

Sec. 9. That original sections 25-1901, 25-2729, and 25-2733, Reissue Revised Statutes of Nebraska, 1943, and sections 25-2728, 43-287.01, 43-2,106, 43-2,126, and 43-2,129, Revised Statutes Supplement, 1992, are repealed.