

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB595

Hearing Date: Wednesday March 06, 2019
Committee On: Judiciary
Introducer: Albrecht
One Liner: Change Office of Dispute Resolution to Office of Restorative Justice and Dispute Resolution and change powers and duties of the office

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

Vote Results:

Aye: 8 Senators Brandt, Chambers, DeBoer, Lathrop, Morfeld, Pansing Brooks, Slama, Wayne
Nay:
Absent:
Present Not Voting:

Oral Testimony:

Proponents:

Senator Joni Albrecht
Corey Steel
Debora Denny
Julie Summers
Aniyah Tucker
Alisha Caldwell Jimenez
James Jones
Casey Karges
Connie Edmond
Charles Lieske
Diane Amdor
Ronald Volkmer
Kellee Kucera Moreno

Representing:

Introducer
Nebraska Supreme Court
Nebraska Supreme Court Office of Dispute Resolution
Voices for Children in Nebraska
self
Nebraska Supreme Court Office of Dispute Resolution
Community Justice Center
The Mediation Center; Nebraska Mediation Association
Mediation Center
Mediation West
The Nebraska Mediation Association
self
self

Opponents:

Representing:

Neutral:

Bill Mueller

Representing:

Nebraska State Bar Association

Summary of purpose and/or changes:

LB 595 adds restorative justice programs to the current Dispute Resolution Act and retitles the Act. Restorative justice programs provide an informal opportunity for the person causing harm to accept responsibility, and for victims to describe the impact of the harm and identify the losses incurred. Programs can include mediation, conferences and panels as well as projects or classes. Allows for development of a reparation plan which may include apologies, community service, or restitution. Develops the program by outlining training, establishment of approved centers, and an Advisory Council. The bill provides for use of restorative justice programs in juvenile court and school settings.

Section 1 Title Retitles Dispute Resolution Act to Restorative Justice and Dispute Resolution Act.

Section 2 Findings Amends section 25-2901 by adding language that describes positive aspects of Restorative Justice including an informal process, addresses harms to victims and research indicating that such programs reduce recidivism.

Section 3 Amends section 25-2903 which contains definitions for the Dispute Resolution Act to add the new title and definitions for:

Deputy Director Deputy director for the Restorative Justice and Dispute Resolution Act.

Restorative justice facilitator Person trained in restorative justice practices

Restorative justice Programs emphasizing repairing harm to victims and community by an offender

Section 4 Amends section 25-2904 to add reference to the new title. Creates new deputy director appointed by director of office.

Section 5 Amends 25-2905 regarding members of the Advisory Council. Changes membership by adding members from Probation Office and County Attorneys. Adds potential members from law enforcement, victim advocates and participants in restorative justice. Council is appointed by Supreme Court.

Section 6 Amends section 25-2906 addressing terms on the Council to reference the new members.

Section 7 Amends section 25-2907 to add a reference to the new title.

Section 8 Amends section 25-2908 listing the directors duties to add reference to the title and add supervision of approved centers.

Section 9 New section outlining duties of the deputy director including collecting and evaluating data, coordinating training and promoting awareness.

Section 10 Amends section 25-2909 regarding grants to approved centers by adding an audit provision in the grant application.

Section 11 Amends section 25-2911 to expand the types of cases accepted at approved centers to include disputes with youth and families, in an educational setting or in the community and adult offenses that involve juvenile adult or community victims. Restorative justice practices can be used in addition to other conditions, consequences or sentences imposed by a court, probation office or other community programs.

Section 12 Amends section 23-2912 to include a restorative justice in a requirement to set forth the procedures prior to the beginning of the process.

Section 13 New section describing restorative justice programs. These include conferences, mediation, or panels. May also involve projects or classes, meetings between victims and the person causing harm. Goals of the program are to provide the person causing harm a platform to accept responsibility, provide the victim a platform to describe the impact of the harm and identify losses, provide an opportunity to develop a reparation plan, provide an opportunity to develop consequences to repair harm including apologies, community service, restitution and others.

Section 14 New section that requires the office and approved centers to operate in accordance with best practices and adopt policies and procedures to accomplish.

Section 15 Amends section 25-2913 regarding training and duties of mediators to reference and address restorative justice facilitators. New subsections require restorative justice facilitators to have at least 16 hours of training in addition to the 30 hours of basic mediation training.

Section 16 Amends section 25-2914 to divide the section into five subsections.

Section 17 New section that provides that communications in a restorative justice program are confidential and privileged. Confessions or incriminating information from a juvenile in a restorative justice program is admissible evidence against a juvenile but may be considered by a court at sentencing or disposition proceedings. Confidential communications may be waived when agreed to by all parties. Confidentiality does not apply in certain cases including in furtherance of a crime or involves a new allegation of child abuse.

Section 18 Amends section 25-2915 to add facilitators to a liability limitations for mediators and approved centers.

Section 19 Amends section 25-2916 to add a new subsection addressing agreements reached through the program. The agreements must be in writing and signed by the parties. The agreements can include apologies, restitution, community service and other reparations agreed to. The agreement must specify the time period agreed to .

Section 20 Amends section 25-2917 to add restorative justice process to tolling the statute of limitations on civil actions during the process.

Section 21 Amends section 25-2918 to reference the new title and provide that the director may adopt policies and procedures to carry out the Act.

Section 22 Amends section 25-2920 to reference the new title and add a reference to restorative justice facilitators.

Section 23 Amends 25-2920 to make reference to restorative justice for purposes of the director's annual report.

Section 24 Amends section 25-2921 to reference restorative justice in the associated Cash Fund.

Section 25 to 27 Amends various sections to reference the new title

Section 28 Amends section 43-245 containing definitions for the Juvenile Code to strike a definition of mediator and add definitions for restorative justice and facilitators

Section 29 Amends section 43-246 addressing goals of juvenile court to add references to the restorative justice programs and apologies, reparation plans.

Section 30 Amends section 43-247.03 to replace facilitate conferencing and mediation with restorative justice practices and juvenile offender dialogue with victim youth conferencing.

Section 31 Amends section 43-247.04 to reference the new title, victim youth conference, and restorative justice practices.

Section 32 Amends section 43-260.06 to replace juvenile offender and victim mediation with restorative justice practice.

Section 33 Amends section 43-274 to replace language regarding a county or city attorney utilizing mediation as a tool in juvenile cases with restorative justice practices. The approved centers conduct assessments to determine if the process is appropriate. Victims and their parents are not charged a fee but juveniles and parents may be. If a reparation agreement is reached, which may include an apology, restitution, and restitution and others, a copy is provided to the county attorney. The county attorney may refer the agreement back to the approved center for modification or may take the agreement into account when deciding how to proceed with the juvenile court case.

Section 34 and 35 Amends section 43-275 to replace references to mediation with restorative justice.

Section 36 Amends section 43-286 to allow the court to require participation in a restorative justice program in addition to other adjudicative options.

Section 37 to 40 Amends various sections to add restorative justice reference.

Section 41 to 44 Amends section 43-2922 to reference the new title in the Parenting Act.

Section 45 Amends section 43-4203 regarding the Nebraska Children's Commission to reference the new title.

Section 46 Amends section 79-209, regarding school attendance issues to allow a referral to restorative justice program at an approved center.

Section 47 Amends section 79-2104, regarding school discipline to add referral to restorative justice services.

Section 48 Amends section 79-2104 regarding Learning Communities to reference the new title.

Section 49 Repeals original sections

Explanation of amendments:

The Judiciary Committee amendment to LB 595, AM 1164, makes several changes in the white copy amendment. The broadest change is to remove the proposed title change from "Restorative Justice and Dispute Resolution Act" and maintain the "Dispute Resolution Act" title. This results in numerous sections of the original bill being removed and several others being amended.

The amendment also eliminates the proposed creation of a Deputy Director position for the Office of Dispute Resolution and moves the duties outlined in LB 595 to the Director of the Office.

AM 1164 adds language to allow licensed attorneys to act as a mediator in developing a parenting plan if agreed to by the parties. Additional wording changes are made to LB 595 to clarify that certain facilitator requirements apply only to those affiliated with Dispute Resolution centers. An example of this change is replacing "approved center" with "restorative justice facilitator" in a few sections and modifying the definition of "restorative justice facilitator".

The committee amendment also modifies language regarding the county attorneys' role in reviewing reparation plans and provides that the facilitator gives notice to the county attorney of the juvenile's compliance with the plan. Should the juvenile not satisfactorily complete the plan, the county attorney may refer the matter back to the facilitator or file juvenile court or criminal charges.

Section by section (section references are to original LB 595)

Title changes: The proposed title change is removed throughout the bill. Sections impacted include: 3, 8, 9, 21, 23, 24, 28, 29, 31, 36, 41, 42, 46, and 47. Sections 7, 22, 25, 26, 27, 43, 44, 45, and 48 of the original bill are removed from the amendment as these sections contained only the title change.

Section 3 Strikes language creating the Deputy Director position.

Section 4 Removes reference to Deputy Director

Section 6 Minor rewording regarding terms and vacancies of the Advisory Council.

Section 9 Moves duties of Deputy Director to the Director (section 7 of AM1164)

Section 13 Replaces "by court order" with "referral for assessment by court order".

Section 28 Removes subsection (15) defining "mediation for juvenile offender and victim mediation". Placed in subsection (22) as "restorative justice facilitator".

Section 30 Adjusts cross reference. Restores definition of "juvenile victim offender dialogue".

Section 31 Restores reference to juvenile victim offender dialogue

Section 33 Strikes subsection (3)(b) that provided that approved centers conduct restorative justice and replaces "approved centers" with restorative justice facilitator in subsection (3)(c). Strikes language that approved center is

responsible only if funding available. Subsection (3)(g) is amended to change the County Attorney's role with respect to restorative justice.

Section 36 Replaces language in subsection (3) by removing court order and replacing with an order for an assessment for referral in restorative justice program.

Section 41 Amends definition of mediator in subsection (15) to include those authorized to mediate under the Parenting Act.

Adds a new section (section 37 of AM 1164) to provide a reference for approval of mediators.

Section 42 Adds a new subsection (4) that allows licensed attorneys to serve as a mediator under the Parenting Act if the parties agree.

Steve Lathrop, Chairperson