

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 15

FINAL READING

Introduced by Krist, 10.

Read first time January 08, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to juveniles; to amend section 43-272, Reissue
2 Revised Statutes of Nebraska, and section 43-272.01, Revised
3 Statutes Cumulative Supplement, 2014; to require the Supreme Court
4 to provide standards for guardians ad litem; to provide and change
5 duties for guardians ad litem; to provide for compensation of
6 guardians ad litem; to define terms; to repeal the original
7 sections; and to declare an emergency.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-272, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 43-272 (1) When any juvenile shall be brought without counsel before
4 a juvenile court, the court shall advise such juvenile and his or her
5 parent or guardian of their right to retain counsel and shall inquire of
6 such juvenile and his or her parent or guardian as to whether they desire
7 to retain counsel. The court shall inform such juvenile and his or her
8 parent or guardian of such juvenile's right to counsel at county expense
9 if none of them is able to afford counsel. If the juvenile or his or her
10 parent or guardian desires to have counsel appointed for such juvenile,
11 or the parent or guardian of such juvenile cannot be located, and the
12 court ascertains that none of such persons are able to afford an
13 attorney, the court shall forthwith appoint an attorney to represent such
14 juvenile for all proceedings before the juvenile court, except that if an
15 attorney is appointed to represent such juvenile and the court later
16 determines that a parent of such juvenile is able to afford an attorney,
17 the court shall order such parent or juvenile to pay for services of the
18 attorney to be collected in the same manner as provided by section
19 43-290. If the parent willfully refuses to pay any such sum, the court
20 may commit him or her for contempt, and execution may issue at the
21 request of the appointed attorney or the county attorney or by the court
22 without a request.

23 (2) The court, on its own motion or upon application of a party to
24 the proceedings, shall appoint a guardian ad litem for the juvenile: (a)
25 If the juvenile has no parent or guardian of his or her person or if the
26 parent or guardian of the juvenile cannot be located or cannot be brought
27 before the court; (b) if the parent or guardian of the juvenile is
28 excused from participation in all or any part of the proceedings; (c) if
29 the parent is a juvenile or an incompetent; (d) if the parent is
30 indifferent to the interests of the juvenile; or (e) in any proceeding
31 pursuant to the provisions of subdivision (3)(a) of section 43-247.

1 A guardian ad litem shall have the duty to protect the interests of
2 the juvenile for whom he or she has been appointed guardian, and shall be
3 deemed a parent of the juvenile as to those proceedings with respect to
4 which his or her guardianship extends.

5 (3) The court shall appoint an attorney as guardian ad litem. A
6 guardian ad litem shall act as his or her own counsel and as counsel for
7 the juvenile, unless there are special reasons in a particular case why
8 the guardian ad litem or the juvenile or both should have separate
9 counsel. In such cases the guardian ad litem shall have the right to
10 counsel, except that the guardian ad litem shall be entitled to appointed
11 counsel without regard to his or her financial ability to retain counsel.
12 Whether such appointed counsel shall be provided at the cost of the
13 county shall be determined as provided in subsection (1) of this section.

14 (4) By July 1, 2015, the Supreme Court shall provide by court rule
15 standards for guardians ad litem for juveniles in juvenile court
16 proceedings.

17 Sec. 2. Section 43-272.01, Revised Statutes Cumulative Supplement,
18 2014, is amended to read:

19 43-272.01 (1) A guardian ad litem as provided for in subsections (2)
20 and (3) of section 43-272 shall be appointed when a child is removed from
21 his or her surroundings pursuant to subdivision (2) or (3) of section
22 43-248, subsection (2) of section 43-250, or section 43-251. If removal
23 has not occurred, a guardian ad litem shall be appointed at the
24 commencement of all cases brought under subdivision (3)(a) or (7) of
25 section 43-247 and section 28-707.

26 (2) In the course of discharging duties as guardian ad litem, the
27 person so appointed shall consider, but not be limited to, the criteria
28 provided in this subsection. The guardian ad litem:

29 (a) Is appointed to stand in lieu of a parent for a protected
30 juvenile who is the subject of a juvenile court petition, shall be
31 present at all hearings before the court in such matter unless expressly

1 excused by the court, and may enter into such stipulations and agreements
2 concerning adjudication and disposition deemed by him or her to be in the
3 juvenile's best interests;

4 (b) Is not appointed to defend the parents or other custodian of the
5 protected juvenile but shall defend the legal and social interests of
6 such juvenile. Social interests shall be defined generally as the usual
7 and reasonable expectations of society for the appropriate parental
8 custody and protection and quality of life for juveniles without regard
9 to the socioeconomic status of the parents or other custodians of the
10 juvenile;

11 (c) May at any time after the filing of the petition move the court
12 of jurisdiction to provide medical or psychological treatment or
13 evaluation as set out in section 43-258. The guardian ad litem shall have
14 access to all reports resulting from any examination ordered under
15 section 43-258, and such reports shall be used for evaluating the status
16 of the protected juvenile;

17 (d) Shall make every reasonable effort to become familiar with the
18 needs of the protected juvenile which (i) shall include consultation with
19 the juvenile in his or her respective placement within two weeks after
20 the appointment and once every six months thereafter and inquiry of the
21 most current caseworker, foster parent, or other custodian, unless the
22 court approves other forms of consultation, and (ii) may include inquiry
23 of others directly involved with the juvenile or who may have information
24 or knowledge about the circumstances which brought the juvenile court
25 action or related cases and the development of the juvenile, including
26 biological parents, physicians, psychologists, teachers, and clergy
27 members;

28 (e) May present evidence and witnesses and cross-examine witnesses
29 at all evidentiary hearings. In any proceeding under this section
30 relating to a child of school age, certified copies of school records
31 relating to attendance and academic progress of such child are admissible

1 in evidence;

2 (f) Shall be responsible for making written reports and
3 recommendations to the court at every dispositional, review, or
4 permanency planning hearing regarding the temporary and permanent
5 placement of the protected juvenile, the type and number of contacts with
6 the juvenile, the type and number of contacts with other relevant
7 stakeholders, and any further relevant information on a form prepared by
8 the Supreme Court. A copy of the written reports and recommendations to
9 the court shall also be submitted to the Foster Care Review Office for
10 any juvenile in foster care placement as defined in section 43-1301 and
11 ~~shall submit a written report to the court at every dispositional or~~
12 ~~review hearing,~~ or in the alternative, the court may provide the guardian
13 ad litem with a checklist that shall be completed and presented to the
14 court at every dispositional or review hearing;

15 (g) Shall consider such other information as is warranted by the
16 nature and circumstances of a particular case; and

17 (h) May file a petition in the juvenile court on behalf of the
18 juvenile, including a supplemental petition as provided in section
19 43-291.

20 (3) Nothing in this section shall operate to limit the discretion of
21 the juvenile court in protecting the best interests of a juvenile who is
22 the subject of a juvenile court petition.

23 (4) For purposes of subdivision (2)(d) of this section, the court
24 may order the expense of such consultation, if any, to be paid by the
25 county in which the juvenile court action is brought or the court may,
26 after notice and hearing, assess the cost of such consultation, if any,
27 in whole or in part to the parents of the juvenile. The ability of the
28 parents to pay and the amount of the payment shall be determined by the
29 court by appropriate examination.

30 (5) The guardian ad litem may be compensated on a per-case
31 appointment system or pursuant to a system of multi-case contracts.

1 Regardless of the method of compensation, billing hours and expenses for
2 court-appointed guardian ad litem services shall be submitted to the
3 court for approval and shall be recorded on a written, itemized billing
4 statement signed by the attorney responsible for the case. Billing hours
5 and expenses for guardian ad litem services rendered under a contract for
6 such services shall be submitted to the entity with whom the guardian ad
7 litem contracts in the form and manner prescribed by such entity for
8 approval. Case time for guardian ad litem services shall be scrupulously
9 accounted for by the attorney responsible for the case. Additionally, in
10 the case of a multi-lawyer firm or organization retained for guardian ad
11 litem services, the name of the attorney or attorneys assigned to each
12 guardian ad litem case shall be recorded.

13 (6) For purposes of subdivision (2)(d) of this section and this
14 subsection:

15 (a) Consultation with the juvenile means meeting in person with the
16 juvenile unless prohibited or made impracticable by exceptional
17 circumstances; and

18 (b) Exceptional circumstances includes, but is not limited to,
19 situations in which an unreasonable geographical distance is involved
20 between the location of the guardian ad litem and the juvenile. When such
21 exceptional circumstances exist, the guardian ad litem shall attempt
22 consultation with the juvenile by other reasonable means, including, but
23 not limited to, telephonic or other suitable electronic means, if the
24 juvenile is of sufficient age and capacity to participate in such means
25 of communication and there are no other barriers preventing such
26 communication. When consultation by telephonic or other suitable
27 electronic means is not feasible, the guardian ad litem shall seek
28 direction from the court as to any other acceptable method by which to
29 accomplish consultation with the juvenile.

30 Sec. 3. Original section 43-272, Reissue Revised Statutes of
31 Nebraska, and section 43-272.01, Revised Statutes Cumulative Supplement,

1 2014, are repealed.

2 Sec. 4. Since an emergency exists, this act takes effect when
3 passed and approved according to law.