

## LEGISLATIVE BILL 15

Approved by the Governor April 29, 2015

Introduced by Krist, 10.

A BILL FOR AN ACT relating to juveniles; to amend section 43-272, Reissue Revised Statutes of Nebraska, and section 43-272.01, Revised Statutes Cumulative Supplement, 2014; to require the Supreme Court to provide standards for guardians ad litem; to provide and change duties for guardians ad litem; to provide for compensation of guardians ad litem; to repeal the original sections; and to declare an emergency.

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

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

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

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

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

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

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

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

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

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

(a) Is appointed to stand in lieu of a parent for a protected juvenile who is the subject of a juvenile court petition, shall be present at all hearings before the court in such matter unless expressly excused by the court, and may enter into such stipulations and agreements concerning adjudication and disposition deemed by him or her to be in the juvenile's best interests;

(b) Is not appointed to defend the parents or other custodian of the protected juvenile but shall defend the legal and social interests of such juvenile. Social interests shall be defined generally as the usual and reasonable expectations of society for the appropriate parental custody and

protection and quality of life for juveniles without regard to the socioeconomic status of the parents or other custodians of the juvenile;

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

(d) Shall make every reasonable effort to become familiar with the needs of the protected juvenile which (i) shall include consultation with the juvenile in his or her respective placement within two weeks after the appointment and once every six months thereafter, unless the court approves other methods of consultation as provided in subsection (6) of this section, and inquiry of the most current caseworker, foster parent, or other custodian and (ii) may include inquiry of others directly involved with the juvenile or who may have information or knowledge about the circumstances which brought the juvenile court action or related cases and the development of the juvenile, including biological parents, physicians, psychologists, teachers, and clergy members;

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

(f) Shall be responsible for making written reports and recommendations to the court at every dispositional, review, or permanency planning hearing regarding the temporary and permanent placement of the protected juvenile, the type and number of contacts with the juvenile, the type and number of contacts with other individuals described in subdivision (d) of this subsection, and any further relevant information on a form prepared by the Supreme Court. As an alternative to the written reports and recommendations and shall submit a written report to the court at every dispositional or review hearing, or in the alternative, the court may provide the guardian ad litem with a checklist that shall be completed and presented to the court at every dispositional or review hearing. A copy of the written reports and recommendations to the court or a copy of the checklist presented to the court shall also be submitted to the Foster Care Review Office for any juvenile in foster care placement as defined in section 43-1301;

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

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

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

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

(5) The guardian ad litem may be compensated on a per-case appointment system or pursuant to a system of multi-case contracts. Regardless of the method of compensation, billing hours and expenses for court-appointed guardian ad litem services shall be submitted to the court for approval and shall be recorded on a written, itemized billing statement signed by the attorney responsible for the case. Billing hours and expenses for guardian ad litem services rendered under a contract for such services shall be submitted to the entity with whom the guardian ad litem contracts in the form and manner prescribed by such entity for approval. Case time for guardian ad litem services shall be scrupulously accounted for by the attorney responsible for the case. Additionally, in the case of a multi-lawyer firm or organization retained for guardian ad litem services, the name of the attorney or attorneys assigned to each guardian ad litem case shall be recorded.

(6) The guardian ad litem shall meet in person with the juvenile for purposes of the consultation required by subdivision (2)(d) of this section unless prohibited or made impracticable by exceptional circumstances, including, but not limited to, situations in which an unreasonable geographical distance is involved between the location of the guardian ad litem and the juvenile. When such exceptional circumstances exist, the guardian ad litem shall attempt such consultation by other reasonable means, including, but not limited to, by telephone or suitable electronic means, if the juvenile is of sufficient age and capacity to participate in such means of communication and there are no other barriers preventing such means of communication. If consultation by telephone or suitable electronic means is not feasible, the guardian ad litem shall seek direction from the court as to any other acceptable method by which to accomplish consultation required by subdivision (2)(d) of this section.

Sec. 3. Original section 43-272, Reissue Revised Statutes of Nebraska, and section 43-272.01, Revised Statutes Cumulative Supplement, 2014, are repealed.

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