

AMENDMENTS TO LB15

Introduced by Judiciary.

1           1. Strike the original sections and insert the following new  
2 sections:

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

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

25           (2) The court, on its own motion or upon application of a party to  
26 the proceedings, shall appoint a guardian ad litem for the juvenile: (a)  
27 If the juvenile has no parent or guardian of his or her person or if the

1 parent or guardian of the juvenile cannot be located or cannot be brought  
2 before the court; (b) if the parent or guardian of the juvenile is  
3 excused from participation in all or any part of the proceedings; (c) if  
4 the parent is a juvenile or an incompetent; (d) if the parent is  
5 indifferent to the interests of the juvenile; or (e) in any proceeding  
6 pursuant to the provisions of subdivision (3)(a) of section 43-247.

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

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

20 (4) By July 1, 2015, the Supreme Court shall formally promulgate the  
21 Guidelines for Guardians ad Litem for Juveniles in Juvenile Court  
22 Proceedings adopted by the Supreme Court on July 18, 2007, into the rules  
23 of the Supreme Court.

24 Sec. 2. Section 43-272.01, Revised Statutes Cumulative Supplement,  
25 2014, is amended to read:

26 43-272.01 (1) A guardian ad litem as provided for in subsections (2)  
27 and (3) of section 43-272 shall be appointed when a child is removed from  
28 his or her surroundings pursuant to subdivision (2) or (3) of section  
29 43-248, subsection (2) of section 43-250, or section 43-251. If removal  
30 has not occurred, a guardian ad litem shall be appointed at the  
31 commencement of all cases brought under subdivision (3)(a) or (7) of

1 section 43-247 and section 28-707.

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

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

11 (b) Is not appointed to defend the parents or other custodian of the  
12 protected juvenile but shall defend the legal and social interests of  
13 such juvenile. Social interests shall be defined generally as the usual  
14 and reasonable expectations of society for the appropriate parental  
15 custody and protection and quality of life for juveniles without regard  
16 to the socioeconomic status of the parents or other custodians of the  
17 juvenile;

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

24 (d) Shall make every reasonable effort to become familiar with the  
25 needs of the protected juvenile which (i) shall include consultation with  
26 the juvenile in his or her respective placement within two weeks after  
27 the appointment and once every three ~~six~~ months thereafter and inquiry of  
28 the most current caseworker, foster parent, or other custodian, unless  
29 the court approves other forms of consultation, and (ii) may include  
30 inquiry of others directly involved with the juvenile or who may have  
31 information or knowledge about the circumstances which brought the

1 juvenile court action or related cases and the development of the  
2 juvenile, including biological parents, physicians, psychologists,  
3 teachers, and clergy members;

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

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

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

24 (h) May file a petition in the juvenile court on behalf of the  
25 juvenile, including a supplemental petition as provided in section  
26 43-291.

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

30 (4) For purposes of subdivision (2)(d) of this section, the court  
31 may order the expense of such consultation, if any, to be paid by the

1 county in which the juvenile court action is brought or the court may,  
2 after notice and hearing, assess the cost of such consultation, if any,  
3 in whole or in part to the parents of the juvenile. The ability of the  
4 parents to pay and the amount of the payment shall be determined by the  
5 court by appropriate examination.

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

20 (6) For purposes of subdivision (2)(d) of this section and this  
21 subsection:

22 (a) Consultation with the juvenile means meeting in person with the  
23 juvenile unless prohibited or made impracticable by exceptional  
24 circumstances; and

25 (b) Exceptional circumstances includes, but is not limited to,  
26 situations in which an unreasonable geographical distance is involved  
27 between the location of the guardian ad litem and the juvenile. When such  
28 exceptional circumstances exist, the guardian ad litem shall attempt  
29 consultation with the juvenile by other reasonable means, including, but  
30 not limited to, telephonic or other suitable electronic means, if the  
31 juvenile is of sufficient age and capacity to participate in such means

1 of communication and there are no other barriers preventing such  
2 communication. When consultation by telephonic or other suitable  
3 electronic means is not feasible, the guardian ad litem shall seek  
4 direction from the court as to any other acceptable method by which to  
5 accomplish consultation with the juvenile.

6       Sec. 3.    Original section 43-272, Reissue Revised Statutes of  
7 Nebraska, and section 43-272.01, Revised Statutes Cumulative Supplement,  
8 2014, are repealed.

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