

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 535

Introduced by Schimek, 27; Chambers, 11; McDonald, 41; Pedersen, 39

Read first time January 17, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the County Revenue Assistance Act; to amend
2 sections 29-3923, 43-272, and 43-273, Reissue Revised
3 Statutes of Nebraska, and sections 13-518, 29-3919,
4 29-3920, 29-3922, 29-3924, 29-3927, 29-3929, and 29-3930,
5 Revised Statutes Cumulative Supplement, 2006; to provide
6 for a juvenile legal services division and duties; to
7 eliminate a council and certain reimbursement provisions;
8 to harmonize provisions; to provide an operative date;
9 to repeal the original sections; and to outright repeal
10 sections 29-3932 and 29-3933, Revised Statutes Cumulative
11 Supplement, 2006.

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

1 Section 1. Section 13-518, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 13-518 For purposes of sections 13-518 to 13-522:

4 (1) Allowable growth means (a) for governmental units
5 other than community colleges, the percentage increase in taxable
6 valuation in excess of the base limitation established under
7 section 77-3446, if any, due to improvements to real property as
8 a result of new construction, additions to existing buildings,
9 any improvements to real property which increase the value of
10 such property, and any increase in valuation due to annexation
11 and any personal property valuation over the prior year and (b)
12 for community colleges, (i) for fiscal years prior to fiscal year
13 2003-04 and after fiscal year 2004-05, the percentage increase in
14 excess of the base limitation, if any, in full-time equivalent
15 students from the second year to the first year preceding the
16 year for which the budget is being determined, and (ii) for fiscal
17 year 2003-04 and fiscal year 2004-05, the percentage increase in
18 full-time equivalent students from the second year to the first
19 year preceding the year for which the budget is being determined;

20 (2) Capital improvements means (a) acquisition of real
21 property or (b) acquisition, construction, or extension of any
22 improvements on real property;

23 (3) Governing body has the same meaning as in section
24 13-503;

25 (4) Governmental unit means every political subdivision

1 which has authority to levy a property tax or authority to
2 request levy authority under section 77-3443 except sanitary and
3 improvement districts which have been in existence for five years
4 or less and school districts;

5 (5) Qualified sinking fund means a fund or funds
6 maintained separately from the general fund to pay for acquisition
7 or replacement of tangible personal property with a useful life of
8 five years or more which is to be undertaken in the future but
9 is to be paid for in part or in total in advance using periodic
10 payments into the fund. The term includes sinking funds under
11 subdivision (13) of section 35-508 for firefighting and rescue
12 equipment or apparatus;

13 (6) Restricted funds means (a) property tax, excluding
14 any amounts refunded to taxpayers, (b) payments in lieu of property
15 taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e)
16 state aid, (f) transfers of surpluses from any user fee, permit
17 fee, or regulatory fee if the fee surplus is transferred to fund a
18 service or function not directly related to the fee and the costs
19 of the activity funded from the fee, (g) any funds excluded from
20 restricted funds for the prior year because they were budgeted for
21 capital improvements but which were not spent and are not expected
22 to be spent for capital improvements, (h) the tax provided in
23 sections 77-27,223 to 77-27,227 beginning in the second fiscal year
24 in which the county will receive a full year of receipts, and (i)
25 any excess tax collections returned to the county under section

1 77-1776; and

2 (7) State aid means:

3 (a) For all governmental units, state aid paid pursuant
4 to sections 60-3,202 and 77-3523;

5 (b) For municipalities, state aid to municipalities
6 paid pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3,190,
7 77-27,136, and 77-27,139.04 and insurance premium tax paid to
8 municipalities;

9 (c) For counties, state aid to counties paid pursuant
10 to sections 39-2501 to 39-2520, 47-119.01, 60-3,184 to 60-3,190,
11 77-27,136, and 77-3618, and insurance premium tax paid to counties;
12 ~~and reimbursements to counties from funds appropriated pursuant~~
13 ~~to section 29-3933;~~

14 (d) For community colleges, state aid to community
15 colleges paid under sections 85-1536 to 85-1537;

16 (e) For natural resources districts, state aid to natural
17 resources districts paid pursuant to section 77-27,136;

18 (f) For educational service units, state aid appropriated
19 under section 79-1241; and

20 (g) For local public health departments as defined in
21 section 71-1626, state aid as distributed under section 71-1628.08.

22 Sec. 2. Section 29-3919, Revised Statutes Cumulative
23 Supplement, 2006, is amended to read:

24 29-3919 Sections 29-3919 to ~~29-3933~~ 29-3930 shall be
25 known and may be cited as the County Revenue Assistance Act.

1 Sec. 3. Section 29-3920, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 29-3920 The Legislature finds that:

4 (1) County property owners should be given some relief
5 from the obligation of providing mandated indigent defense services
6 and juvenile legal services which in most instances are required
7 because of state laws establishing crimes and penalties for adult
8 offenders and practices and procedures under the Nebraska Juvenile
9 Code;

10 (2) Property tax relief can be accomplished if the state
11 begins to assist the counties with the obligation of providing
12 indigent defense services and juvenile legal services required by
13 state laws establishing crimes and penalties for adult offenders
14 and practices and procedures under the Nebraska Juvenile Code;

15 (3) Property tax relief in the form of state assistance
16 to the counties of Nebraska in providing for indigent defense
17 services and juvenile legal services will also increase
18 accountability because the state, which is the governmental
19 entity responsible for passing criminal statutes and practices
20 and procedures under the Nebraska Juvenile Code, will likewise be
21 responsible for paying some of the costs;

22 (4) Property tax relief in the form of state assistance
23 to the counties of Nebraska in providing for indigent defense
24 services will also improve inconsistent and inadequate funding
25 of indigent defense services and juvenile legal services by the

1 counties;

2 (5) Property tax relief in the form of state assistance
3 to the counties of Nebraska in providing for indigent defense
4 services and juvenile legal services will also lessen the impact
5 on county property taxpayers of the cost of a high profile
6 death penalty case cases and legal representation of children
7 and families in juvenile court which can significantly affect the
8 finances of the counties; and

9 (6) To accomplish property tax relief in the form of the
10 state assisting the counties of Nebraska in providing for indigent
11 defense services and juvenile legal services, the Commission on
12 Public Advocacy Operations Cash Fund should be established to fund
13 the operation of the Commission on Public Advocacy, ~~and to fund~~
14 ~~reimbursement requests as determined by section 29-3933.~~

15 Sec. 4. Section 29-3922, Revised Statutes Cumulative
16 Supplement, 2006, is amended to read:

17 29-3922 For purposes of the County Revenue Assistance
18 Act:

19 (1) Chief counsel means an attorney appointed to be
20 the primary administrative officer of the commission pursuant to
21 section 29-3928;

22 (2) Commission means the Commission on Public Advocacy;

23 (3) Commission staff means attorneys, investigators, and
24 support staff who are performing work for the capital litigation
25 division, appellate division, DNA testing division, juvenile legal

1 services division, and major case resource center;

2 (4) Contracting attorney means an attorney contracting to
3 ~~act as a public defender pursuant to sections 23-3404 to 23-3408,~~
4 provide juvenile legal services consistent with the act;

5 ~~(5) Council means the Indigent Defense Standards Advisory~~
6 ~~Council;~~

7 ~~(6) (5) Court-appointed attorney means an attorney other~~
8 ~~than a contracting attorney or a public defender appointed by~~
9 ~~the court to represent an indigent person or an individual in a~~
10 ~~juvenile court proceeding;~~

11 (6) Court-appointed special advocate volunteer means an
12 individual appointed by a court pursuant to the Court Appointed
13 Special Advocate Act;

14 (7) Indigent defense services means legal services
15 provided to indigent persons by an indigent defense system in
16 capital cases, felony cases, misdemeanor cases, juvenile cases,
17 mental health commitment cases, child support enforcement cases,
18 and paternity establishment cases;

19 (8) Indigent defense system means a system of providing
20 services, including any services necessary for litigating a case,
21 by a contracting attorney, court-appointed attorney, ~~or~~ public
22 defender, or commission staff attorney;

23 (9) Indigent person means a person who is indigent
24 and unable to obtain legal counsel as determined pursuant to
25 subdivision (3) of section 29-3901; ~~and~~

1 (10) Juvenile legal services means legal services
2 provided to children and families by the juvenile justice system;

3 (11) Juvenile justice system means a system of providing
4 services, including any services necessary for the adjudication,
5 disposition, or review of a juvenile court case by a contracting
6 attorney, court-appointed attorney, public defender, guardian ad
7 litem, or court appointed special advocate volunteer; and

8 ~~(10)~~ (12) Public defender means an attorney appointed or
9 elected pursuant to sections 23-3401 to 23-3403 or an attorney who
10 has contracted pursuant to sections 23-3404 to 23-3408 to act as a
11 public defender.

12 Sec. 5. Section 29-3923, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 29-3923 The Commission on Public Advocacy is created. The
15 commission shall provide legal services and resources to assist
16 counties in fulfilling their obligation to provide for effective
17 assistance of counsel for indigent persons and juvenile legal
18 services.

19 Sec. 6. Section 29-3924, Revised Statutes Cumulative
20 Supplement, 2006, is amended to read:

21 29-3924 The commission shall consist of nine members
22 appointed by the Governor from a list of attorneys submitted by
23 the executive council of the Nebraska State Bar Association. ~~after~~
24 ~~consultation with the board of directors of the Nebraska Criminal~~
25 ~~Defense Attorneys Association.~~ A member shall be appointed from

1 each of the six Supreme Court judicial districts, and three members
2 shall be appointed at large. The executive council of the Nebraska
3 State Bar Association shall ensure that the selection process
4 promotes appointees who are independent from partisan political
5 influence. To be eligible for appointment, a person shall be a
6 member of the Nebraska State Bar Association ~~who has substantial~~
7 ~~experience in criminal defense work and, for appointments made~~
8 ~~after September 13, 1997, substantial experience in civil legal~~
9 ~~matters that commonly affect low-income persons and, at the time~~
10 of selection or at any time during the term of office, shall not
11 be a prosecutor, law enforcement official, or judge. All members
12 shall be committed to the principle of providing indigent defense
13 services, juvenile legal services, and civil legal services to
14 low-income persons free from unwarranted judicial or political
15 influence. Each member shall serve for a term of six years, except
16 that three of the initial appointees shall serve terms of two
17 years and three shall serve terms of four years as designated by
18 the Governor. Members may be removed from the commission by the
19 Governor for cause.

20 Sec. 7. Section 29-3927, Revised Statutes Cumulative
21 Supplement, 2006, is amended to read:

22 29-3927 (1) With respect to its duties under section
23 29-3923, the commission shall:

24 (a) Adopt and promulgate rules and regulations for its
25 organization and internal management and rules and regulations

1 governing the exercise of its powers and the fulfillment of its
2 purpose;

3 (b) Appoint and abolish such advisory committees as may
4 be necessary for the performance of its functions and delegate
5 appropriate powers and duties to them;

6 (c) Accept and administer loans, grants, and donations
7 from the United States and its agencies, the State of Nebraska and
8 its agencies, and other sources, public and private, for carrying
9 out the functions of the commission;

10 (d) Enter into contracts, leases, and agreements
11 necessary, convenient, or desirable for carrying out its purposes
12 and the powers granted under this section with agencies of state or
13 local government, corporations, or persons;

14 (e) Acquire, hold, and dispose of personal property in
15 the exercise of its powers;

16 (f) Provide legal services to indigent persons through
17 the divisions in section 29-3930; and

18 (g) Provide juvenile legal services through the divisions
19 in section 29-3930; and

20 (h) Adopt guidelines and standards for juvenile legal
21 services, including, but not limited to, standards relating to
22 the following: The use and expenditure of funds appropriated
23 by the Legislature; attorney eligibility and qualifications for
24 court appointments; rules for appointment of counsel; compensation
25 rates, including reimbursing defense expenses; maximum caseloads;

1 conflicts of interest; continuing legal education and training;
2 and availability of supportive services and expert witnesses. In
3 cases filed in the juvenile court, the courts of Nebraska shall
4 follow the guidelines and standards adopted and promulgated by the
5 commission for appointing and compensating counsel.

6 ~~(g) Adopt guidelines and standards, which are recommended~~
7 ~~to the commission by the council, for county indigent defense~~
8 ~~systems, including, but not limited to, standards relating to~~
9 ~~the following: The use and expenditure of funds appropriated~~
10 ~~by the Legislature to reimburse counties which qualify for~~
11 ~~reimbursement; attorney eligibility and qualifications for court~~
12 ~~appointments; compensation rates for salaried public defenders;~~
13 ~~contracting attorneys, and court-appointed attorneys and overall~~
14 ~~funding of the indigent defense system; maximum caseloads for~~
15 ~~all types of systems; systems administration, including rules for~~
16 ~~appointing counsel, awarding defense contracts, and reimbursing~~
17 ~~defense expenses; conflicts of interest; continuing legal education~~
18 ~~and training; and availability of supportive services and expert~~
19 ~~witnesses.~~

20 ~~(2) The standards adopted by the commission under~~
21 ~~subdivision (1)(g) of this section are intended to be used as a~~
22 ~~guide for the proper methods of establishing and operating indigent~~
23 ~~defense systems. The standards are not intended to be used as~~
24 ~~criteria for the judicial evaluation of alleged misconduct of~~
25 ~~defense counsel to determine the validity of a conviction. They may~~

1 ~~or may not be relevant in such judicial evaluation, depending upon~~
2 ~~all the circumstances.~~

3 ~~(3)~~ (2) With respect to its duties related to the
4 provision of civil legal services to eligible low-income persons,
5 the commission shall have such powers and duties as described in
6 sections 25-3001 to 25-3004.

7 Sec. 8. Section 29-3929, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 29-3929 The primary duties of the chief counsel shall
10 be to provide direct legal services to indigent defendants and
11 administer the juvenile legal services division, and the chief
12 counsel shall:

13 (1) Supervise the operations of the appellate division,
14 the capital litigation division, the DNA testing division, the
15 juvenile legal services division, and the major case resource
16 center;

17 (2) Prepare a budget and disburse funds for the
18 operations of the commission;

19 (3) Present to the commission an annual report on the
20 operations of the commission, including an accounting of all funds
21 received and disbursed, an evaluation of the cost-effectiveness of
22 the commission, and recommendations for improvement;

23 (4) Convene or contract for conferences and training
24 seminars related to criminal defense and juvenile legal services;

25 (5) Perform other duties as directed by the commission;

1 (6) Establish and administer projects and programs for
2 the operation of the commission;

3 (7) Appoint and remove employees of the commission and
4 delegate appropriate powers and duties to them;

5 (8) Adopt and promulgate rules and regulations for the
6 management and administration of policies of the commission and the
7 conduct of employees of the commission;

8 (9) Transmit monthly to the commission a report of the
9 operations of the commission for the preceding calendar month;

10 (10) Execute and carry out all contracts, leases, and
11 agreements authorized by the commission with agencies of federal,
12 state, or local government, corporations, or persons; and

13 (11) Exercise all powers and perform all duties necessary
14 and proper in carrying out his or her responsibilities.

15 Sec. 9. Section 29-3930, Revised Statutes Cumulative
16 Supplement, 2006, is amended to read:

17 29-3930 The following divisions are established within
18 the commission:

19 (1) The capital litigation division shall be available
20 to assist in the defense of capital cases in Nebraska, subject to
21 caseload standards of the commission;

22 (2) The appellate division shall be available to
23 prosecute appeals to the Court of Appeals and the Supreme Court,
24 subject to caseload standards of the commission;

25 (3) The violent crime and drug defense division shall

1 be available to assist in the defense of certain violent and
2 drug crimes as defined by the commission, subject to the caseload
3 standards of the commission;

4 (4) The DNA testing division shall be available to assist
5 in representing persons who are indigent who have filed a motion
6 pursuant to the DNA Testing Act, subject to caseload standards; and

7 (5) The juvenile legal services division shall provide
8 for quality legal services for all juvenile court cases in the
9 State of Nebraska; and

10 ~~(5)~~ (6) The major case resource center shall be
11 available to assist public defenders, contracting attorneys, or
12 court-appointed attorneys with the defense of a felony offense,
13 subject to caseload standards of the commission.

14 Sec. 10. Section 43-272, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 43-272 (1) When any juvenile shall be brought without
17 counsel before a juvenile court, the court shall advise such
18 juvenile and his or her parent or guardian of their right to
19 retain counsel and shall inquire of such juvenile and his or her
20 parent or guardian as to whether they desire to retain counsel. The
21 court shall inform such juvenile and his or her parent or guardian
22 of such juvenile's right to counsel at ~~county~~ state expense if
23 none of them is able to afford counsel. If the juvenile or his
24 or her parent or guardian desires to have counsel appointed for
25 such juvenile, or the parent or guardian of such juvenile cannot

1 be located, and the court ascertains that none of such persons
2 are able to afford an attorney, the court shall forthwith appoint
3 an attorney to represent such juvenile for all proceedings before
4 the juvenile court, except that if an attorney is appointed to
5 represent such juvenile and the court later determines that a
6 parent of such juvenile is able to afford an attorney, the court
7 shall order such parent or juvenile to pay for services of the
8 attorney to be collected in the same manner as provided by section
9 43-290. If the parent willfully refuses to pay any such sum, the
10 court may commit him or her for contempt, and execution may issue
11 at the request of the appointed attorney or the county attorney or
12 by the court without a request.

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

23 A guardian ad litem shall have the duty to protect the
24 interests of the juvenile for whom he or she has been appointed
25 guardian, and shall be deemed a parent of the juvenile as to those

1 proceedings with respect to which his or her guardianship extends.

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

12 (4) The court shall appoint attorneys under this section
13 in accordance with the guidelines and standards for juvenile legal
14 services adopted pursuant to section 29-3927.

15 Sec. 11. Section 43-273, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 43-273 Counsel and guardians ad litem appointed as
18 provided in section 43-272 shall apply ~~to the court before which~~
19 ~~the proceedings were had for fees~~ in accordance with the guidelines
20 and standards for juvenile legal services adopted pursuant to
21 section 29-3927 for services performed. ~~The court upon hearing the~~
22 ~~application shall fix reasonable fees. The county board of the~~
23 ~~county wherein the proceedings were had shall allow the account,~~
24 ~~bill, or claim presented by any attorney or guardian ad litem for~~
25 ~~services performed under section 43-272 in the amount determined by~~

1 ~~the court. No such account, bill, or claim shall be allowed by the~~
2 ~~county board until the amount thereof shall have been determined by~~
3 ~~the court.~~

4 Sec. 12. This act becomes operative on January 1, 2008.

5 Sec. 13. Original sections 13-518, 29-3923, 43-272, and
6 43-273, Reissue Revised Statutes of Nebraska, and sections 29-3919,
7 29-3920, 29-3922, 29-3924, 29-3927, 29-3929, and 29-3930, Revised
8 Statutes Cumulative Supplement, 2006, are repealed.

9 Sec. 14. The following sections are outright repealed:
10 Sections 29-3932 and 29-3933, Revised Statutes Cumulative
11 Supplement, 2006.