

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 556**

Introduced by Ashford, 20

Read first time January 17, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Nebraska Juvenile Code; to amend section  
2 43-272, Reissue Revised Statutes of Nebraska; to change  
3 provisions relating to counsel and guardian ad litem; and  
4 to repeal the original section.

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

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

3           43-272 (1) When any juvenile ~~shall be~~ is brought without  
4 counsel before a juvenile court, the court shall advise such  
5 juvenile and his or her parent or guardian of their right to retain  
6 counsel and shall inquire of such juvenile and his or her parent  
7 or guardian as to whether they desire to retain counsel. The court  
8 shall inform such juvenile and his or her parent or guardian of  
9 such juvenile's right to counsel at county expense if none of them  
10 is able to afford counsel. If the juvenile or his or her parent  
11 or guardian desires to have counsel appointed for such juvenile,  
12 or the parent or guardian of such juvenile cannot be located,  
13 and the court ascertains that none of such persons are able to  
14 afford an attorney, the court shall forthwith appoint an attorney  
15 to represent such juvenile for all proceedings before the juvenile  
16 court, except that if an attorney is appointed to represent such  
17 juvenile and the court later determines that a parent of such  
18 juvenile is able to afford an attorney, the court shall order  
19 such parent or juvenile to pay for services of the attorney to be  
20 collected in the same manner as provided by section 43-290. If the  
21 parent willfully refuses to pay any such sum, the court may commit  
22 him or her for contempt, and execution may issue at the request  
23 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

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

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

14 (3) The court shall appoint an attorney as guardian ad  
15 litem. A guardian ad litem shall act as his or her own counsel and  
16 as counsel for the juvenile, unless there are special reasons in a  
17 particular case why the guardian ad litem or the juvenile or both  
18 should have separate counsel. In such cases:

19 (a) The ~~the~~ guardian ad litem shall have the right to  
20 counsel, except that the guardian ad litem shall be entitled to  
21 appointed counsel without regard to his or her financial ability  
22 to retain counsel. Whether such appointed counsel shall be provided  
23 at the cost of the county shall be determined as provided in  
24 subsection (1) of this section; or -

25 (b) If the court determines that a conflict of interest

1 exists or may arise in the guardian ad litem's dual role on  
2 behalf of the juvenile, for example, but not limited to, when  
3 a guardian ad litem may become a witness in the proceeding or  
4 conflicting interests of the juvenile have arisen and privileged  
5 information has been revealed by the juvenile to the guardian ad  
6 litem, the court shall appoint a replacement guardian ad litem for  
7 the juvenile and appoint the original guardian ad litem as separate  
8 counsel for the juvenile.

9           Sec. 2. Original section 43-272, Reissue Revised Statutes  
10 of Nebraska, is repealed.