

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 158

Introduced by Pansing Brooks, 28.

Read first time January 09, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to juveniles; to amend sections 43-272 and
2 43-3102, Reissue Revised Statutes of Nebraska; to change provisions
3 relating to appointment of counsel for juveniles and standards for
4 guardians ad litem and attorneys in juvenile court; to provide for
5 rescission of a waiver of counsel by a juvenile; to harmonize
6 provisions; and to repeal the original sections.

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

24 ~~(b) In counties having a population of one hundred fifty thousand or more~~
25 ~~inhabitants, when any juvenile court petition is filed alleging~~
26 ~~jurisdiction of a juvenile pursuant to subdivision (1), (2), (3)(b), or~~
27 ~~(4) of section 43-247, counsel shall be appointed for such juvenile. At~~
28 ~~the first court appearance, the The court shall inform such juvenile and~~
29 ~~his or her parent or guardian of such juvenile's right to continued~~
30 ~~representation by counsel at county expense if none of them is able to~~
31 ~~afford counsel. If the juvenile or his or her parent or guardian desires~~

1 ~~to have counsel appointed for such juvenile, or the parent or guardian of~~
2 ~~such juvenile cannot be located, and the court ascertains that the~~
3 ~~juvenile and his or her parent or guardian that none of such persons are~~
4 ~~unable~~ able to afford an attorney, the court shall continue the
5 appointment of counsel forthwith ~~appoint an attorney~~ to represent such
6 juvenile for all proceedings before the juvenile court unless the
7 juvenile waives counsel in accordance with section 43-3102. If , ~~except~~
8 ~~that if~~ an attorney is appointed to represent such juvenile and the court
9 later determines that a parent or guardian of such juvenile is able to
10 afford an attorney, the court shall order such parent or guardian
11 juvenile to pay for services of the attorney to be collected in the same
12 manner as provided by section 43-290. If the parent or guardian willfully
13 refuses to pay any such sum, the court may commit him or her for
14 contempt, and execution may issue at the request of the appointed
15 attorney or the county attorney or by the court without a request. Upon
16 entering an appearance on behalf of a juvenile, any counsel shall
17 continue to represent such juvenile through post-dispositional
18 proceedings unless relieved by the court upon the request of the
19 juvenile, upon the substitution of other counsel, or for cause.

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

29 A guardian ad litem shall have the duty to protect the interests of
30 the juvenile for whom he or she has been appointed guardian, and shall be
31 deemed a parent of the juvenile as to those proceedings with respect to

1 which his or her guardianship extends.

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

11 (4) By July 1, 2015, the Supreme Court shall provide by court rule
12 standards for guardians ad litem for juveniles in juvenile court
13 proceedings. The Supreme Court shall periodically review and maintain
14 such standards.

15 (5) By July 1, 2017, the Supreme Court shall provide guidelines
16 setting forth standards for all attorneys who practice in juvenile court.
17 The Supreme Court shall periodically review and maintain such guidelines.

18 Sec. 2. Section 43-3102, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 43-3102 (1) In any court proceeding, any waiver of the right to
21 counsel by a juvenile shall be made in open court, shall be recorded, and
22 shall be confirmed in a writing signed by the juvenile.

23 (2) A court shall not accept a juvenile's waiver of the right to
24 counsel unless the waiver satisfies subsection (1) of this section and is
25 an affirmative waiver that is made intelligently, voluntarily, and
26 understandingly. In determining whether such waiver was made
27 intelligently, voluntarily, and understandingly, the court shall
28 consider, among other things: (a) The age, intelligence, and education of
29 the juvenile, (b) the juvenile's emotional stability, and (c) the
30 complexity of the proceedings.

31 (3) The court shall ensure that a juvenile ~~represented by an~~

1 ~~attorney~~ consults with his or her attorney before any waiver of counsel.

2 (4) No parent, guardian, custodian, or other person may waive the
3 juvenile's right to counsel.

4 (5) A juvenile's right to be represented by counsel may not be
5 waived in the following circumstances:

6 (a) If the juvenile is under the age of fourteen;

7 (b) For a detention hearing;

8 (c) For any dispositional hearing where out-of-home placement is
9 sought; or

10 (d) If there is a motion to transfer the juvenile from juvenile
11 court to county court or district court.

12 (6) If a juvenile waives his or her right to counsel, the juvenile
13 may at any time rescind such waiver and the court shall reappoint counsel
14 for the juvenile.

15 Sec. 3. Original sections 43-272 and 43-3102, Reissue Revised
16 Statutes of Nebraska, are repealed.