

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 859

Introduced by Bostar, 29.

Read first time January 08, 2026

Committee: Judiciary

1 A BILL FOR AN ACT relating to courts; to amend sections 29-3901, 29-3904,
2 29-3905, 29-3918, 43-273, 71-946, 71-947, and 71-948, Reissue
3 Revised Statutes of Nebraska, and sections 29-3903, 29-3922, and
4 43-272, Revised Statutes Cumulative Supplement, 2024; to require
5 courts to appoint county conflict counsel when the public defender
6 is unavailable as prescribed; to define terms; to change provisions
7 relating to allowance of fees for counsel; to harmonize provisions;
8 and to repeal the original sections.

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

1 **Section 1.** (1) For purposes of this section, county conflict
2 counsel means an attorney licensed to practice law in this state who is
3 employed by the county or has a contract with the county to provide legal
4 representation to clients who would normally be represented by the public
5 defender, but for whom the public defender is unable to provide such
6 representation due to conflicting interests or due to other good cause as
7 determined by the court.

8 (2) In any county with a public defender, the county may employ or
9 contract for one or more county conflict counsel. When a county first
10 employs or contracts for county conflict counsel, the county board shall
11 immediately provide written notice of such employment or contract to:

12 (a) Each presiding judge of the county court and district court of
13 such county;

14 (b) Each presiding judge of any separate juvenile court of such
15 county;

16 (c) Each child support referee appointed in such county; and

17 (d) The clerk of the district court on behalf of the mental health
18 board with jurisdiction within such county.

19 (3) It shall be the duty of county conflict counsel to provide
20 representation to indigent individuals in the same manner as the public
21 defender.

22 (4) In a county with a population of more than one hundred seventy
23 thousand inhabitants, any county conflict counsel shall devote his or her
24 full time to the legal work of representing indigent individuals as
25 provided in this section and shall not engage in the private practice of
26 law.

27 (5) No county conflict counsel shall solicit or accept any fee,
28 other than compensation from the county, for representing an indigent
29 individual that such counsel has been appointed to represent.

30 **Sec. 2.** Section 29-3901, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 29-3901 For purposes of sections 29-3901 to 29-3908:

2 (1) County conflict counsel has the same meaning as in section 1 of
3 this act;

4 (2) (1) Court means shall mean a district court or a county court;

5 (3) (2) Felony defendant means shall mean a person who is charged by
6 complaint, information, or indictment with or who is under arrest for
7 investigation or on suspicion that he or she may have committed any
8 criminal offense which may be punishable by imprisonment in a Department
9 of Correctional Services adult correctional facility;

10 (4) (3) Indigent means shall mean the inability to retain legal
11 counsel without prejudicing one's financial ability to provide economic
12 necessities for one's self or one's family. Before a felony defendant's
13 initial court appearance, the determination of his or her indigency shall
14 be made by the public defender, but thereafter it shall be made by the
15 court; and

16 (5) (4) Judge means shall mean a judge of the district court, a
17 judge of the county court, or a clerk magistrate.

18 **Sec. 3.** Section 29-3903, Revised Statutes Cumulative Supplement,
19 2024, is amended to read:

20 29-3903 (1) At a felony defendant's first appearance before a judge,
21 the judge shall advise him or her of the right to court-appointed counsel
22 if such person is indigent. If he or she asserts indigency, the court
23 shall make a reasonable inquiry to determine such person's financial
24 condition and shall require him or her to execute an affidavit of
25 indigency for filing with the clerk of the court.

26 (2) If the court determines the defendant to be indigent, it shall
27 formally appoint the public defender or, in counties not having a public
28 defender, an attorney or attorneys licensed to practice law in this
29 state, not exceeding two, to represent the indigent felony defendant at
30 all future critical stages of the criminal proceedings against such
31 defendant, consistent with the provisions of section 23-3402. Appointed —

1 ~~but appointed~~ counsel other than the public defender or ~~county conflict~~
2 ~~counsel~~ must obtain leave of court before being authorized to proceed
3 beyond an initial direct appeal to either the Court of Appeals or the
4 Supreme Court of Nebraska to any further direct, collateral, or
5 postconviction appeals to state or federal courts.

6 (3) A felony defendant who is not indigent at the time of his or her
7 first appearance before a judge may nevertheless assert his or her
8 indigency at any subsequent stage of felony proceedings, at which time
9 the judge shall consider appointing counsel as otherwise provided in this
10 section.

11 (4) The judge, upon filing such order for appointment, shall note
12 all appearances of appointed counsel upon the record. If at the time of
13 appointment of counsel the indigent felony defendant and appointed
14 counsel have not had a reasonable opportunity to consult concerning the
15 prosecution, the judge shall continue the arraignment, trial, or other
16 next stage of the felony proceedings for a reasonable period of time to
17 allow for such consultation.

18 **Sec. 4.** Section 29-3904, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 29-3904 (1) Nothing in sections 23-3402, 29-3902, and 29-3903 shall
21 prevent any judge from:

22 (a) Appointing ~~appointing~~ counsel other than the public defender,
23 ~~county conflict~~ counsel, or other substitute counsel when the public
24 defender, ~~county conflict~~ counsel, or counsel initially appointed might
25 otherwise be required to represent conflicting interests or for other
26 good cause shown; ,

27 (b) Not ~~from~~ not appointing any counsel for any indigent felony
28 defendant who expressly waives his or her right to such counsel at any
29 stage of felony proceedings; , or

30 (c) Appointing ~~from~~ appointing the public defender, ~~county conflict~~
31 counsel, or other counsel as may be required or permitted by other

1 applicable law.

2 (2)(a) This subsection only applies to a county that has county
3 conflict counsel.

4 (b) When appointing counsel other than the public defender to
5 represent an indigent defendant, the court shall appoint county conflict
6 counsel, unless such counsel cannot represent the defendant due to
7 conflicting interests or for other good cause shown.

8 (3) (2) In selecting counsel to represent an indigent felony
9 defendant, the prosecuting attorney shall not have any role whatsoever in
10 the selection or appointment process of the counsel by the court,
11 including, but not limited to, any individual appointment suggestions.

12 **Sec. 5.** Section 29-3905, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 29-3905 Appointed counsel for an indigent felony defendant other
15 than the public defender or county conflict counsel shall apply to the
16 district court which appointed him or her for all expenses reasonably
17 necessary to permit him or her to effectively and competently represent
18 his or her client and for fees for services performed pursuant to such
19 appointment, except that if the defendant was not bound over for trial in
20 the district court, the application shall be made in the appointing
21 court. The court, upon hearing the application, shall fix reasonable
22 expenses and fees, and the county board shall allow payment to counsel in
23 the full amount determined by the court.

24 **Sec. 6.** Section 29-3918, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 29-3918 Nothing in sections 29-3910 to 29-3918 shall prevent a court
27 from appointing counsel other than the public defender or county conflict
28 counsel as defined in section 1 of this act to represent indigent
29 defendants or other persons by law entitled to legal representation, but
30 appointments of counsel other than the public defender or county conflict
31 counsel shall be limited to situations in which there are multiple

1 defendants requiring separate representation or when other exigent
2 circumstances are present which in the opinion of the court require
3 appointment of counsel other than the public defender or county conflict
4 counsel. In all such cases of appointments of counsel other than the
5 public defender or county conflict counsel, the procedure shall be in
6 accordance with sections 43-272 and 43-273 and the cost of such
7 appointments shall be paid by the county as provided in such sections.

8 **Sec. 7.** Section 29-3922, Revised Statutes Cumulative Supplement,
9 2024, is amended to read:

10 29-3922 For purposes of the County Revenue Assistance Act:

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

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

14 (3) Commission staff means attorneys, investigators, and support
15 staff who are performing work for the capital litigation division,
16 appellate division, DNA testing division, and major case resource center;

17 (4) Contracting attorney means an attorney contracting to act as a
18 public defender pursuant to sections 23-3404 to 23-3408;

19 (5) Court-appointed attorney means an attorney other than a
20 contracting attorney or a public defender appointed by the court to
21 represent an indigent person;

22 (6) Indigent defense services means legal services provided to
23 indigent persons by an indigent defense system in capital cases, felony
24 cases, misdemeanor cases, juvenile cases, mental health commitment cases,
25 child support enforcement cases, and paternity establishment cases;

26 (7) Indigent defense system means a system of providing services,
27 including any services necessary for litigating a case, by a contracting
28 attorney, court-appointed attorney, or public defender;

29 (8) Indigent person means a person who is indigent and unable to
30 obtain legal counsel as determined pursuant to subdivision (4) (3) of
31 section 29-3901; and

(9) Public defender means an attorney appointed or elected pursuant to sections 23-3401 to 23-3403.

3 **Sec. 8.** Section 43-272, Revised Statutes Cumulative Supplement,
4 2024, is amended to read:

5 43-272 (1)(a) In counties having a population of less than one
6 hundred fifty thousand inhabitants:

15 (b) In counties having a population of one hundred fifty thousand or
16 more inhabitants, when any juvenile court petition is filed alleging
17 jurisdiction of a juvenile pursuant to subdivision (1), (2), (3)(b), or
18 (4) of section 43-247, counsel shall be appointed for such juvenile.

1 such sum, the court may commit him or her for contempt, and execution may
2 issue at the request of the appointed attorney or the county attorney or
3 by the court without a request.

4 (d)(i) For purposes of this subdivision, county conflict counsel has
5 the same meaning as in section 1 of this act.

6 (ii) This subdivision (d) only applies to a county that has county
7 conflict counsel.

8 (iii) When appointing counsel other than the public defender to
9 represent a juvenile, the court shall appoint county conflict counsel,
10 unless such counsel cannot represent the juvenile due to conflicting
11 interests or for other good cause shown.

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

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

25 (3) The court shall appoint an attorney as guardian ad litem. A
26 guardian ad litem shall act as his or her own counsel and as counsel for
27 the juvenile, unless there are special reasons in a particular case why
28 the guardian ad litem or the juvenile or both should have separate
29 counsel. In such cases the guardian ad litem shall have the right to
30 counsel, except that the guardian ad litem shall be entitled to appointed
31 counsel without regard to his or her financial ability to retain counsel.

1 Whether such appointed counsel shall be provided at the cost of the
2 county shall be determined as provided in subsection (1) of this section.

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

6 (5) By July 1, 2017, the Supreme Court shall provide guidelines
7 setting forth standards for all attorneys who practice in juvenile court.

8 **Sec. 9.** Section 43-273, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 43-273 (1) Counsel and guardians ad litem appointed outside of the
11 guardian ad litem division as provided in section 43-272 shall apply to
12 the court before which the proceedings were had for fees for services
13 performed. The court upon hearing the application shall fix reasonable
14 fees. The county board of the county wherein the proceedings were had
15 shall allow the account, bill, or claim presented by any attorney or
16 guardian ad litem for services performed under section 43-272 in the
17 amount determined by the court. No such account, bill, or claim shall be
18 allowed by the county board until the amount thereof shall have been
19 determined by the court.

20 (2) This section does not apply to the public defender or to county
21 conflict counsel as defined in section 1 of this act.

22 **Sec. 10.** Section 71-946, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 71-946 (1) The appointment of counsel under section 71-945 shall be
25 in accordance with this section. the following procedures:

26 (2) In (1) Except in counties not having a public defender, upon the
27 receipt from the mental health board of a certificate for the appointment
28 of counsel, the clerk of the district court shall notify the district
29 judge or the county judge of the county in which the proceedings are
30 pending of the receipt of such certificate. The judge to whom the
31 certificate was issued shall appoint an attorney to represent the person

1 concerning whom an application is filed before the mental health board,
2 whereupon the clerk of the court shall enter upon the certificate the
3 name of the attorney appointed and deliver the certificate of appointment
4 of counsel to the mental health board. The clerk of the district court or
5 the clerk of the county court shall also keep and maintain a record of
6 all appointments which shall be conclusive evidence thereof. All
7 appointments of counsel under the Nebraska Mental Health Commitment Act
8 or the Sex Offender Commitment Act may be made at any time or place in
9 the state. ; and

10 (3) (2) In counties having a public defender, upon receipt from the
11 mental health board of a certificate for the appointment of counsel, the
12 clerk of the district court shall notify the public defender of his or
13 her appointment to represent the person and shall enter upon the
14 certificate the name of the attorney appointed and deliver the
15 certificate of appointment of counsel to the mental health board.

16 (4)(a) For purposes of this section, county conflict counsel has the
17 same meaning as in section 1 of this act.

18 (b) This subsection only applies to a county that has county
19 conflict counsel.

20 (c) When appointing counsel other than the public defender to
21 represent a subject, the court shall appoint county conflict counsel,
22 unless such counsel cannot represent the subject due to conflicting
23 interests or for other good cause shown.

24 **Sec. 11.** Section 71-947, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 71-947 Counsel appointed as provided in subsection (2) subdivision
27 (1) of section 71-946 shall apply to the court in which his or her
28 appointment is recorded for fees for services performed. Such counsel may
29 also apply to the court to secure separate professional examination of
30 the person for whom counsel was appointed and shall be reimbursed for
31 costs incurred in securing such separate examination or examinations or

1 in having other professional persons as witnesses before the mental
2 health board. The court, upon hearing the application, shall fix
3 reasonable fees, including reimbursement of costs incurred. The county
4 board of the county in which the application was filed shall allow the
5 account, bill, or claim presented by the attorney for services performed
6 under the Nebraska Mental Health Commitment Act or the Sex Offender
7 Commitment Act in the amount determined by the court. No such account,
8 bill, or claim shall be allowed by the county board until the amount
9 thereof has been determined by the court.

10 **Sec. 12.** Section 71-948, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 71-948 A subject or the subject's counsel shall have the right to
13 employ mental health professionals of his or her choice to independently
14 evaluate the subject's mental condition and testify for and otherwise
15 assist the subject in proceedings under the Nebraska Mental Health
16 Commitment Act or the Sex Offender Commitment Act. If the subject is
17 indigent, only one such person may be employed except with leave of the
18 mental health board. Any person so employed by a subject determined by
19 the board to be indigent, except a subject represented by the public
20 defender or county conflict counsel as defined in section 1 of this act,
21 shall apply to the board for expenses reasonably necessary to such
22 person's effective assistance of the subject and for reasonable fees for
23 services performed by such person in assisting the subject. The board
24 shall then fix reasonable fees and expenses, and the county board shall
25 allow payment to such person in the full amount fixed by the board.

26 **Sec. 13.** Original sections 29-3901, 29-3904, 29-3905, 29-3918,
27 43-273, 71-946, 71-947, and 71-948, Reissue Revised Statutes of Nebraska,
28 and sections 29-3903, 29-3922, and 43-272, Revised Statutes Cumulative
29 Supplement, 2024, are repealed.