

AMENDMENTS TO LB965

Introduced by Judiciary.

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

3 **Sec. 30.** (1) For purposes of this section, county conflict counsel
4 means an attorney licensed to practice law in this state who is employed
5 by the county or has a contract with the county to provide legal
6 representation to clients who would normally be represented by the public
7 defender, but for whom the public defender is unable to provide such
8 representation due to conflicting interests or due to other good cause as
9 determined by the court.

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

14 (a) Each presiding judge of the county court and district court of
15 such county;

16 (b) Each presiding judge of any separate juvenile court of such
17 county;

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

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

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

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

1 law.

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

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

7 29-3901 For purposes of sections 29-3901 to 29-3908:

8 (1) County conflict counsel has the same meaning as in section 30 of
9 this act;

10 (2) (1) Court means shall mean a district court or a county court;

11 (3) (2) Felony defendant means shall mean a person who is charged by
12 complaint, information, or indictment with or who is under arrest for
13 investigation or on suspicion that he or she may have committed any
14 criminal offense which may be punishable by imprisonment in a Department
15 of Correctional Services adult correctional facility;

16 (4) (3) Indigent means shall mean the inability to retain legal
17 counsel without prejudicing one's financial ability to provide economic
18 necessities for one's self or one's family. Before a felony defendant's
19 initial court appearance, the determination of his or her indigency shall
20 be made by the public defender, but thereafter it shall be made by the
21 court; and

22 (5) (4) Judge means shall mean a judge of the district court, a
23 judge of the county court, or a clerk magistrate.

24 **Sec. 32.** Section 29-3903, Revised Statutes Cumulative Supplement,
25 2024, is amended to read:

26 29-3903 (1) At a felony defendant's first appearance before a judge,
27 the judge shall advise him or her of the right to court-appointed counsel
28 if such person is indigent. If he or she asserts indigency, the court
29 shall make a reasonable inquiry to determine such person's financial
30 condition and shall require him or her to execute an affidavit of
31 indigency for filing with the clerk of the court.

1 (2) If the court determines the defendant to be indigent, it shall
2 formally appoint the public defender or county conflict counsel or, in
3 counties not having a public defender, an attorney or attorneys licensed
4 to practice law in this state, not exceeding two, to represent the
5 indigent felony defendant at all future critical stages of the criminal
6 proceedings against such defendant, consistent with the provisions of
7 section 23-3402. Appointed ~~, but appointed~~ counsel other than the public
8 defender or county conflict counsel must obtain leave of court before
9 being authorized to proceed beyond an initial direct appeal to either the
10 Court of Appeals or the Supreme Court of Nebraska to any further direct,
11 collateral, or postconviction appeals to state or federal courts.

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

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

24 **Sec. 33.** Section 29-3904, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 29-3904 (1) Nothing in sections 23-3402, 29-3902, and 29-3903 shall
27 prevent any judge from:

28 (a) Appointing ~~appointing~~ counsel other than the public defender,
29 the Commission on Public Advocacy, county conflict counsel, or other
30 substitute counsel when the public defender, the commission, county
31 conflict counsel, or counsel initially appointed might otherwise be

1 required to represent conflicting interests or for other good cause
2 shown; ~~τ~~

3 ~~(b) Not from not~~ appointing any counsel for any indigent felony
4 defendant who expressly waives his or her right to such counsel at any
5 stage of felony proceedings; ~~τ~~ or

6 ~~(c) Appointing from appointing~~ the public defender, ~~the Commission~~
7 ~~on Public Advocacy, county conflict counsel,~~ or other counsel as may be
8 required or permitted by other applicable law.

9 ~~(2)(a) This subsection only applies to a county that has county~~
10 ~~conflict counsel.~~

11 ~~(b) In a case in which (i) the public defender is unable to provide~~
12 ~~representation due to conflicting interests or due to other good cause as~~
13 ~~determined by the court and (ii) the Commission on Public Advocacy may be~~
14 ~~appointed, the court may appoint the commission. Otherwise, the court~~
15 ~~shall appoint county conflict counsel, unless such counsel cannot~~
16 ~~represent the defendant due to conflicting interests or for other good~~
17 ~~cause as determined by the court.~~

18 ~~(3) (2)~~ In selecting counsel to represent an indigent felony
19 defendant, the prosecuting attorney shall not have any role whatsoever in
20 the selection or appointment process of the counsel by the court,
21 including, but not limited to, any individual appointment suggestions.

22 **Sec. 34.** Section 29-3905, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 29-3905 Appointed counsel for an indigent felony defendant other
25 than the public defender or county conflict counsel shall apply to the
26 district court which appointed him or her for all expenses reasonably
27 necessary to permit him or her to effectively and competently represent
28 his or her client and for fees for services performed pursuant to such
29 appointment, except that if the defendant was not bound over for trial in
30 the district court, the application shall be made in the appointing
31 court. The court, upon hearing the application, shall fix reasonable

1 expenses and fees, and the county board shall allow payment to counsel in
2 the full amount determined by the court.

3 **Sec. 35.** Section 29-3918, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 29-3918 Nothing in sections 29-3910 to 29-3918 shall prevent a court
6 from appointing counsel other than the public defender, the Commission on
7 Public Advocacy, or county conflict counsel as defined in section 30 of
8 this act to represent indigent defendants or other persons by law
9 entitled to legal representation, but appointments of counsel other than
10 the public defender, the commission, or county conflict counsel shall be
11 limited to situations in which there are multiple defendants requiring
12 separate representation or when other exigent circumstances are present
13 which in the opinion of the court require appointment of counsel other
14 than the public defender, the commission, or county conflict counsel. In
15 all such cases of appointments of counsel other than the public defender,
16 the commission, or county conflict counsel, the procedure shall be in
17 accordance with sections 43-272 and 43-273 and the cost of such
18 appointments shall be paid by the county as provided in such sections.

19 **Sec. 36.** Section 29-3922, Revised Statutes Cumulative Supplement,
20 2024, is amended to read:

21 29-3922 For purposes of the County Revenue Assistance Act:

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

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

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

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

30 (5) Court-appointed attorney means an attorney other than a
31 contracting attorney or a public defender appointed by the court to

1 represent an indigent person;

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

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

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

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

14 **Sec. 39.** Section 43-272, Revised Statutes Cumulative Supplement,
15 2024, is amended to read:

16 43-272 (1)(a) In counties having a population of less than one
17 hundred fifty thousand inhabitants:

18 (i) When any juvenile court petition is filed alleging jurisdiction
19 of a juvenile pursuant to subdivision (2) of section 43-247, counsel
20 shall be appointed for such juvenile; and

21 (ii) In any other instance in which a juvenile is brought without
22 counsel before a juvenile court, the court shall advise such juvenile and
23 his or her parent or guardian of their right to retain counsel and shall
24 inquire of such juvenile and his or her parent or guardian as to whether
25 they desire to retain counsel.

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

30 (c) The court shall inform any juvenile described in this subsection
31 and his or her parent or guardian of such juvenile's right to counsel at

1 county expense if none of them is able to afford counsel. If the juvenile
2 or his or her parent or guardian desires to have counsel appointed for
3 such juvenile, or the parent or guardian of such juvenile cannot be
4 located, and the court ascertains that none of such persons are able to
5 afford an attorney, the court shall forthwith appoint an attorney to
6 represent such juvenile for all proceedings before the juvenile court,
7 except that if an attorney is appointed to represent such juvenile and
8 the court later determines that a parent of such juvenile is able to
9 afford an attorney, the court shall order such parent or juvenile to pay
10 for services of the attorney to be collected in the same manner as
11 provided by section 43-290. If the parent willfully refuses to pay any
12 such sum, the court may commit him or her for contempt, and execution may
13 issue at the request of the appointed attorney or the county attorney or
14 by the court without a request.

15 (d)(i) For purposes of this subdivision, county conflict counsel has
16 the same meaning as in section 30 of this act.

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

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

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

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

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

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

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

19 **Sec. 40.** Section 43-273, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 43-273 (1) Counsel and guardians ad litem appointed outside of the
22 guardian ad litem division as provided in section 43-272 shall apply to
23 the court before which the proceedings were had for fees for services
24 performed. The court upon hearing the application shall fix reasonable
25 fees. The county board of the county wherein the proceedings were had
26 shall allow the account, bill, or claim presented by any attorney or
27 guardian ad litem for services performed under section 43-272 in the
28 amount determined by the court. No such account, bill, or claim shall be
29 allowed by the county board until the amount thereof shall have been
30 determined by the court.

31 (2) This section does not apply to the public defender or to county

1 conflict counsel as defined in section 30 of this act.

2 **Sec. 42.** Section 71-946, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 71-946 (1) The appointment of counsel under section 71-945 shall be
5 in accordance with this section. ~~the following procedures:~~

6 (2) ~~In (1) Except in counties not having a public defender,~~ upon the
7 receipt from the mental health board of a certificate for the appointment
8 of counsel, the clerk of the district court shall notify the district
9 judge or the county judge of the county in which the proceedings are
10 pending of the receipt of such certificate. The judge to whom the
11 certificate was issued shall appoint an attorney to represent the person
12 concerning whom an application is filed before the mental health board,
13 whereupon the clerk of the court shall enter upon the certificate the
14 name of the attorney appointed and deliver the certificate of appointment
15 of counsel to the mental health board. The clerk of the district court or
16 the clerk of the county court shall also keep and maintain a record of
17 all appointments which shall be conclusive evidence thereof. All
18 appointments of counsel under the Nebraska Mental Health Commitment Act
19 or the Sex Offender Commitment Act may be made at any time or place in
20 the state. ~~;~~ ~~and~~

21 (3) ~~(2)~~ In counties having a public defender, upon receipt from the
22 mental health board of a certificate for the appointment of counsel, the
23 clerk of the district court shall notify the public defender of his or
24 her appointment to represent the person and shall enter upon the
25 certificate the name of the attorney appointed and deliver the
26 certificate of appointment of counsel to the mental health board.

27 (4)(a) For purposes of this section, county conflict counsel has the
28 same meaning as in section 30 of this act.

29 (b) This subsection only applies to a county that has county
30 conflict counsel.

31 (c) When appointing counsel other than the public defender to

1 represent a subject, the court shall appoint county conflict counsel,
2 unless such counsel cannot represent the subject due to conflicting
3 interests or for other good cause shown.

4 **Sec. 43.** Section 71-947, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 71-947 Counsel appointed as provided in subsection (2) subdivision
7 (1) of section 71-946 shall apply to the court in which his or her
8 appointment is recorded for fees for services performed. Such counsel may
9 also apply to the court to secure separate professional examination of
10 the person for whom counsel was appointed and shall be reimbursed for
11 costs incurred in securing such separate examination or examinations or
12 in having other professional persons as witnesses before the mental
13 health board. The court, upon hearing the application, shall fix
14 reasonable fees, including reimbursement of costs incurred. The county
15 board of the county in which the application was filed shall allow the
16 account, bill, or claim presented by the attorney for services performed
17 under the Nebraska Mental Health Commitment Act or the Sex Offender
18 Commitment Act in the amount determined by the court. No such account,
19 bill, or claim shall be allowed by the county board until the amount
20 thereof has been determined by the court.

21 **Sec. 44.** Section 71-948, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 71-948 A subject or the subject's counsel shall have the right to
24 employ mental health professionals of his or her choice to independently
25 evaluate the subject's mental condition and testify for and otherwise
26 assist the subject in proceedings under the Nebraska Mental Health
27 Commitment Act or the Sex Offender Commitment Act. If the subject is
28 indigent, only one such person may be employed except with leave of the
29 mental health board. Any person so employed by a subject determined by
30 the board to be indigent, except a subject represented by the public
31 defender or county conflict counsel as defined in section 30 of this act,

1 shall apply to the board for expenses reasonably necessary to such
2 person's effective assistance of the subject and for reasonable fees for
3 services performed by such person in assisting the subject. The board
4 shall then fix reasonable fees and expenses, and the county board shall
5 allow payment to such person in the full amount fixed by the board.

6 **Sec. 48.** Sections 17, 20, 22, 23, 24, 25, 26, 27, 28, and 50 of this
7 act become operative on October 1, 2026. The other sections of this act
8 become operative on their effective date.

9 **Sec. 49.** If any section in this act or any part of any section is
10 declared invalid or unconstitutional, the declaration shall not affect
11 the validity or constitutionality of the remaining portions.

12 **Sec. 50.** Original section 28-610, Reissue Revised Statutes of
13 Nebraska, and section 28-1205, Revised Statutes Supplement, 2025, are
14 repealed.

15 **Sec. 51.** Original sections 28-322.02, 28-322.03, 28-323, 28-508,
16 28-703, 29-3901, 29-3904, 29-3905, 29-3918, 43-273, 43-2923, 71-946,
17 71-947, 71-948, 83-4,143, and 84-941.01, Reissue Revised Statutes of
18 Nebraska, sections 27-404, 28-115, 28-310.01, 28-322.01, 29-3903,
19 29-3922, and 43-272, Revised Statutes Cumulative Supplement, 2024, and
20 sections 26-118, 27-413, 28-101, 28-318, 28-322, 28-470, 28-712.01,
21 28-1701, 29-4003, 29-4309, 29-4316, and 81-1850, Revised Statutes
22 Supplement, 2025, are repealed.