

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 15

Introduced by Krist, 10.

Read first time January 08, 2015

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to juveniles; to amend section 43-272.01,
- 2 Revised Statutes Cumulative Supplement, 2014; to provide additional
- 3 powers and duties for guardians ad litem; to define terms; to
- 4 harmonize provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-272.01, Revised Statutes Cumulative
2 Supplement, 2014, is amended to read:

3 43-272.01 (1) A guardian ad litem as provided for in subsections (2)
4 and (3) of section 43-272 shall be appointed when a child is removed from
5 his or her surroundings pursuant to subdivision (2) or (3) of section
6 43-248, subsection (2) of section 43-250, or section 43-251. If removal
7 has not occurred, a guardian ad litem shall be appointed at the
8 commencement of all cases brought under subdivision (3)(a) or (7) of
9 section 43-247 and section 28-707.

10 ~~(2) In the course of discharging duties as guardian ad litem, the~~
11 ~~person so appointed shall consider, but not be limited to, the criteria~~
12 ~~provided in this subsection.~~ The guardian ad litem:

13 (a) Shall fulfill training requirements as prescribed by Supreme
14 Court rule;

15 (b a) Is appointed to stand in lieu of a parent for a protected
16 juvenile who is the subject of a juvenile court petition, shall be
17 present at all hearings before the court in such matter unless expressly
18 excused by the court, and may enter into such stipulations and agreements
19 concerning adjudication and disposition deemed by him or her to be in the
20 juvenile's best interests;

21 (c b) Is not appointed to defend the parents or other custodian of
22 the protected juvenile but shall defend the legal and social interests of
23 such juvenile. Social interests shall be defined generally as the usual
24 and reasonable expectations of society for the appropriate parental
25 custody and protection and quality of life for juveniles without regard
26 to the socioeconomic status of the parents or other custodians of the
27 juvenile;

28 (d) Is entitled to receive all pleadings, notices, including timely
29 notices of change of placement, and orders of the court filed in the
30 proceeding and should make reasonable efforts to obtain complete copies
31 of such pleadings, notices, and orders;

1 (e) Is entitled to receive copies of all case plans and court
2 reports prepared by the Department of Health and Human Services, the
3 Office of Probation Administration, the Foster Care Review Office, any
4 court appointed special advocate, or any subcontractor thereof, as well
5 as reports, summaries, evaluations, records, letters, and documents
6 prepared by any other provider which the guardian ad litem deems relevant
7 to the best interests or legal rights of any juvenile represented by the
8 guardian ad litem. If these plans and reports are not provided as a
9 matter of course to the guardian ad litem they shall be provided upon
10 request of the guardian ad litem;

11 (f) Shall have the same right as the juvenile's legal guardian to
12 (i) obtain information from all professionals and service providers,
13 including, but not limited to, verbal communications, written reports,
14 summaries, opinions, and evaluations, and any other information regarding
15 the juvenile's placement and (ii) receive notice of and participate in
16 all conferences, staffings or team meetings, and hearings relating to the
17 juvenile's health, education, placement, or any other matter which, in
18 the opinion of the guardian ad litem, is relevant to or affects the best
19 interests or legal rights of the juvenile;

20 (g) Is authorized to communicate with and respond to inquiries for
21 information regarding the juvenile made by the Foster Care Review Office,
22 the Office of Probation Administration, a Department of Health and Human
23 Services case manager, or any court appointed special advocate;

24 (h) Is authorized to make announced or unannounced visits to the
25 juvenile at his or her home or placement or at any location at which the
26 juvenile may be present;

27 (i e) May at any time after the filing of the petition move the
28 court of jurisdiction to provide medical or psychological treatment or
29 evaluation as set out in section 43-258. The guardian ad litem shall have
30 access to all reports resulting from any examination ordered under
31 section 43-258, and such reports shall be used for evaluating the status

1 of the protected juvenile;

2 (j d) Shall make every reasonable effort to become familiar with the
3 needs of the protected juvenile which (i) shall include consultation with
4 the juvenile within two weeks after the appointment and once every six
5 months thereafter and inquiry of the most current caseworker, foster
6 parent, or other custodian and (ii) may include inquiry of others
7 directly involved with the juvenile or who may have information or
8 knowledge about the circumstances which brought the juvenile court action
9 or related cases and the development of the juvenile, including
10 biological parents, physicians, psychologists, teachers, and clergy
11 members;

12 (k) Shall, when possible, consult with the juvenile (i) when the
13 juvenile requests that the guardian ad litem meet with him or her, (ii)
14 when the guardian ad litem has received notification of any emergency or
15 other significant event or change in circumstances affecting the
16 juvenile, including a change in the juvenile's placement, and (iii) prior
17 to any hearing at which substantive issues affecting the juvenile's legal
18 or best interests are anticipated to be addressed by the court;

19 (l e) May present evidence and witnesses and cross-examine witnesses
20 at all evidentiary hearings. In any proceeding under this section
21 relating to a child of school age, certified copies of school records
22 relating to attendance and academic progress of such child are admissible
23 in evidence;

24 (m f) Shall be responsible for making recommendations to the court
25 regarding the temporary and permanent placement of the protected juvenile
26 and shall submit a written report to the court at every dispositional or
27 review hearing, or in the alternative, the court may provide the guardian
28 ad litem with a checklist that shall be completed and presented to the
29 court at every dispositional or review hearing;

30 (n) Shall make inquiry of the juvenile's caseworker, foster parent,
31 or legal custodian and any other person directly involved with the

1 juvenile who may have knowledge about the case or the development of the
2 juvenile. The guardian ad litem shall also make inquiry of any other
3 person who has knowledge or information relevant to the juvenile's best
4 interests. The guardian ad litem may obtain such information through the
5 means of direct inquiry, interview, or the discovery process;

6 (o) Shall make written recommendations to the court in the form of a
7 report regarding the temporary and permanent placement of the protected
8 juvenile. The report shall include written recommendations to the court
9 regarding any other matter that affects or would affect the legal and
10 best interests of the juvenile;

11 (p) Shall submit a written report to the court at every
12 dispositional hearing and review hearing unless such written report is
13 waived by the court but only in limited situations and for good cause.
14 The information contained in the report of the guardian ad litem shall
15 include, but not be limited to: (i) Dates and descriptions of the type of
16 contact and communication with the juvenile; (ii) a listing of documents
17 reviewed; (iii) the guardian ad litem's concerns regarding any specific
18 matters or problems which, in the opinion of the guardian ad litem, need
19 special, further, or other attention in order to protect or facilitate
20 the juvenile's legal and best interests; and (iv) the guardian ad litem's
21 assessment of and recommendations regarding the juvenile's placement in
22 light of his or her needs and legal and best interests;

23 (q) Shall consider such other information as is warranted by the
24 nature and circumstances of a particular case; and

25 (r) May file a petition in the juvenile court on behalf of the
26 juvenile, including a supplemental petition as provided in section
27 43-291.

28 (3)(a) The guardian ad litem, when determining what is in the
29 juvenile's best interests, shall make an independent determination by
30 considering all available information and resources and shall take the
31 necessary actions to advocate and protect the best interests of the

1 juvenile. The determination as to best interests is not required to be
2 consistent with any preferences expressed by the juvenile.

3 (b) The guardian ad litem shall assess whether there is a need to
4 request the appointment of a separate attorney to represent the
5 juvenile's legal interests in the proceeding when the juvenile expresses
6 a preference which is inconsistent with the guardian ad litem's
7 determination of what is in the best interests of the juvenile. The
8 guardian ad litem in making such assessment shall consider: (i) The
9 juvenile's age; (ii) the juvenile's capacity; (iii) the juvenile's level
10 of maturity; and (iv) the nature of the inconsistency between the
11 juvenile's expressed preference and the guardian ad litem's determination
12 as to the juvenile's best interests.

13 (c) The guardian ad litem, after making such assessment, shall
14 request the court to make a determination whether special reasons exist
15 for the court to appoint a separate attorney to represent the legal
16 interests of the juvenile when the guardian ad litem determines all of
17 the following: (i) That the juvenile's expressed preference represents a
18 communication that is made by a juvenile of sufficient age, capacity, and
19 maturity; (ii) that the juvenile's expressed preference is of
20 significance to other matters or issues in the case affecting the
21 juvenile and is within the bounds of law and reality; and (iii) that the
22 guardian ad litem believes that it would be a conflict of interest or
23 unreasonably burdensome for the guardian ad litem to continue to act as
24 attorney for the juvenile in light of the preference expressed by the
25 juvenile.

26 (4) Notwithstanding subsection (3) of section 43-272, in cases in
27 which an attorney has already been appointed to represent the legal
28 interests of the juvenile, another attorney appointed to serve as a
29 guardian ad litem for such juvenile shall function only in the role as
30 guardian ad litem for the juvenile concerning the juvenile's best
31 interests and shall be bound by all of the duties and shall have all of

1 the authority of a guardian ad litem, with the exception of acting as
2 legal counsel for the juvenile.

3 (5) In any situation in which the guardian ad litem has been
4 appointed to represent more than one juvenile within the same case, the
5 guardian ad litem shall ascertain throughout the case whether the
6 guardian ad litem's advocacy of the legal and best interests of any one
7 juvenile would be adverse to or conflict with the legal or best interests
8 of any other juvenile represented by the same guardian ad litem. When the
9 guardian ad litem reasonably believes that to continue as guardian ad
10 litem for all of the juveniles would be problematic in this specific
11 regard, the guardian ad litem shall apply to the court for the
12 appointment of a separate guardian ad litem or attorney for the affected
13 juvenile or juveniles. When any juvenile has expressed a preference or
14 position regarding a certain matter or issue, the guardian ad litem shall
15 utilize the standards set forth in subdivision (3)(c) of this section.

16 (6) The guardian ad litem shall make every effort to see the
17 juvenile in his or her placement at least once with respect to each
18 placement.

19 (7) The guardian ad litem shall, if possible, when an unreasonable
20 geographical distance is involved between the location of the juvenile
21 and the guardian ad litem:

22 (a) Obtain from the court an advance determination that the court
23 will arrange for the payment or reimbursement of the guardian ad litem's
24 reasonable expenses incurred in connection with the travel to meet with
25 the juvenile; or

26 (b) Utilize electronic means or technology to communicate with the
27 juvenile.

28 (8) The authority of the guardian ad litem shall commence upon
29 appointment by the court and shall continue in that case until such time
30 as the court terminates its jurisdiction.

31 (9) The guardian ad litem may voluntarily withdraw from

1 representation in any case in which the guardian ad litem files a motion
2 to withdraw and the court, in its discretion, enters a corresponding
3 order granting such withdrawal.

4 (10) The guardian ad litem shall read and comprehend the court
5 reports prepared by the Department of Health and Human Services, the
6 Foster Care Review Office, the Office of Probation Administration, the
7 court appointed special advocate, and all other persons or providers
8 assigned to the case who prepare such reports to the court;

9 (11) The guardian ad litem shall attend all hearings unless
10 expressly excused by the court.

11 (12) The guardian ad litem may testify only to the extent allowed by
12 the Nebraska Rules of Professional Conduct.

13 (13) The guardian ad litem shall advocate for the juvenile to be
14 present at all court hearings as appropriate and take steps when
15 necessary to ensure such attendance on the part of the juvenile.

16 (14) The guardian ad litem shall provide quality representation and
17 advocacy for the juveniles he or she is appointed to represent throughout
18 the entirety of the case.

19 (15) The guardian ad litem shall not accept workloads or caseloads
20 that, by reason of their excessive size or demands, including, but not
21 limited to, factors such as the number of children represented at any
22 given time, interfere with or lead to the breach of the professional
23 obligations or standards required to be met by a guardian ad litem by law
24 or by court rules.

25 (16) An attorney shall not accept caseloads or appointments to serve
26 as a guardian ad litem or to provide guardian ad litem services that are
27 likely to, in the best professional judgment of the attorney, lead to the
28 provision of representation or service that is ineffective to protect and
29 further the interests of the juvenile, or likely to lead to the breach of
30 professional obligations of the guardian ad litem.

31 (17) The guardian ad litem may be removed from a case by the court

1 for cause if the court finds that (a) the guardian ad litem's performance
2 is inadequate, (b) the guardian ad litem has substantially failed to
3 discharge duties or act to protect the best interests of the juvenile or
4 juveniles for whom the guardian ad litem was appointed, or (c) any other
5 factor or circumstance prevents or substantially impairs the guardian ad
6 litem's ability to fairly and fully discharge his or her duties. In
7 determining whether removal of the guardian ad litem is warranted in a
8 particular case, the court shall assess the guardian ad litem's
9 performance under the requirements and standards of practice imposed upon
10 a guardian ad litem by the Nebraska Juvenile Code as well as any
11 applicable court rules.

12 (18) The duties of a guardian ad litem shall be personal to the
13 appointed individual and shall not be delegated to another person, if
14 feasible.

15 (19 3) Nothing in this section shall operate to limit the discretion
16 of the juvenile court in protecting the best interests of a juvenile who
17 is the subject of a juvenile court petition.

18 (20 4) For purposes of subdivision (2)(j d) of this section, the
19 court may order the expense of such consultation, if any, to be paid by
20 the county in which the juvenile court action is brought or the court
21 may, after notice and hearing, assess the cost of such consultation, if
22 any, in whole or in part to the parents of the juvenile. The ability of
23 the parents to pay and the amount of the payment shall be determined by
24 the court by appropriate examination.

25 (21) The guardian ad litem may be compensated on a per-case
26 appointment system or pursuant to a system of multi-case contracts. All
27 compensation for guardian ad litem services shall be based upon an hourly
28 fee and not a flat-fee scale regardless of whether such services are
29 being rendered pursuant to an individual court appointment or under a
30 contract for such services. Billing hours and expenses for court-
31 appointed guardian ad litem services shall be submitted to the court for

1 approval and shall be recorded on a written, itemized billing statement.
2 Billing hours and expenses for guardian ad litem services rendered under
3 a contract for such services shall be submitted to the entity with whom
4 the guardian ad litem contracts in the form and manner prescribed by such
5 entity for approval.

6 (22) For purposes of subdivision (2)(j) of this section and this
7 subdivision:

8 (a) Consultation with the juvenile means meeting in person with the
9 juvenile unless prohibited or made impracticable by exceptional
10 circumstances; and

11 (b) Exceptional circumstances includes, but is not limited to,
12 situations in which an unreasonable geographical distance is involved
13 between the location of the guardian ad litem and the juvenile. When such
14 exceptional circumstances exist, the guardian ad litem shall attempt
15 consultation with the juvenile by other reasonable means, including, but
16 not limited to, telephonic or other suitable electronic means, assuming
17 that the juvenile is of sufficient age and capacity to participate in
18 such means of communication and there are no other barriers preventing
19 such communication. When consultation by telephonic or other suitable
20 electronic means is not feasible, the guardian ad litem shall seek
21 direction from the court as to any other acceptable method by which to
22 accomplish consultation with the juvenile.

23 Sec. 2. Original section 43-272.01, Revised Statutes Cumulative
24 Supplement, 2014, is repealed.