

AMENDMENTS TO LB307

Introduced by Geist, 25.

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

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

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

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

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

1 ~~issue at the request of the appointed attorney or the county attorney or~~
2 ~~by the court without a request.~~

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

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

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

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

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

1 (3) On or before July 1, 2022, the Supreme Court shall provide, by
2 court rule, a process to ensure that juveniles are provided the
3 opportunity to consult with counsel to assist the juvenile in making the
4 decision to waive the right to counsel.

5 ~~(4) (3)~~ The court shall ensure that a juvenile represented by an
6 attorney consults with his or her attorney before any waiver of counsel.

7 ~~(5) (4)~~ No parent, guardian, custodian, or other person may waive
8 the juvenile's right to counsel.

9 ~~(6) (5)~~ A juvenile's right to be represented by counsel may not be
10 waived in the following circumstances:

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

12 (b) For a detention hearing;

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

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

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