

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1099

Introduced by Council, 11; Cook, 13; Mello, 5.

Read first time January 19, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Nebraska Juvenile Code; to amend sections
2 43-272, 43-273, 43-284, 43-290, 43-292.01, and 43-2,101,
3 Reissue Revised Statutes of Nebraska, section 43-272.01,
4 Revised Statutes Cumulative Supplement, 2010, and section
5 43-286, Revised Statutes Supplement, 2011; to change
6 provisions relating payment of juvenile support,
7 transportation, and counsel expenses; to provide an
8 operative date; to harmonize provisions; and to repeal
9 the original sections.
10 Be it enacted by the people of the State of Nebraska,

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

3 43-272 (1) When any juvenile shall be brought without
4 counsel before a juvenile court, the court shall advise such juvenile
5 and his or her parent or guardian of their right to retain counsel
6 and shall inquire of such juvenile and his or her parent or guardian
7 as to whether they desire to retain counsel. The court shall inform
8 such juvenile and his or her parent or guardian of such juvenile's
9 right to counsel at ~~county~~state expense if none of them is able to
10 afford counsel. If the juvenile or his or her parent or guardian
11 desires to have counsel appointed for such juvenile, or the parent or
12 guardian of such juvenile cannot be located, and the court ascertains
13 that none of such persons are able to afford an attorney, the court
14 shall forthwith appoint an attorney to represent such juvenile for
15 all proceedings before the juvenile court, except that if an attorney
16 is appointed to represent such juvenile and the court later
17 determines that a parent of such juvenile is able to afford an
18 attorney, the court shall order such parent or juvenile to pay for
19 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
21 any such sum, the court may commit him or her for contempt, and
22 execution may issue at the request of the appointed attorney or the
23 county attorney or by the court without a request.

24 (2) The court, on its own motion or upon application of a
25 party to the proceedings, shall appoint a guardian ad litem for the

1 juvenile: (a) If the juvenile has no parent or guardian of his or her
2 person or if the parent or guardian of the juvenile cannot be located
3 or cannot be brought before the court; (b) if the parent or guardian
4 of the juvenile is excused from participation in all or any part of
5 the proceedings; (c) if the parent is a juvenile or an incompetent;
6 (d) if the parent is indifferent to the interests of the juvenile; or
7 (e) in any proceeding pursuant to the provisions of subdivision (3)
8 (a) of section 43-247.

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

13 (3) The court shall appoint an attorney as guardian ad
14 litem. A guardian ad litem shall act as his or her own counsel and as
15 counsel for the juvenile, unless there are special reasons in a
16 particular case why the guardian ad litem or the juvenile or both
17 should have separate counsel. In such cases the guardian ad litem
18 shall have the right to counsel, except that the guardian ad litem
19 shall be entitled to appointed counsel without regard to his or her
20 financial ability to retain counsel. Whether such appointed counsel
21 shall be provided at the cost of the ~~county~~State of Nebraska shall
22 be determined as provided in subsection (1) of this section.

23 Sec. 2. Section 43-272.01, Revised Statutes Cumulative
24 Supplement, 2010, is amended to read:

25 43-272.01 (1) A guardian ad litem as provided for in

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

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

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

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

23 (c) May at any time after the filing of the petition move
24 the court of jurisdiction to provide medical or psychological
25 treatment or evaluation as set out in section 43-258. The guardian ad

1 litem shall have access to all reports resulting from any examination
2 ordered under section 43-258, and such reports shall be used for
3 evaluating the status of the protected juvenile;

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

14 (e) May present evidence and witnesses and cross-examine
15 witnesses at all evidentiary hearings. In any proceeding under this
16 section relating to a child of school age, certified copies of school
17 records relating to attendance and academic progress of such child
18 are admissible in evidence;

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

1 (g) Shall consider such other information as is warranted
2 by the nature and circumstances of a particular case; and

3 (h) May file a petition in the juvenile court on behalf
4 of the juvenile, including a supplemental petition as provided in
5 section 43-291.

6 (3) Nothing in this section shall operate to limit the
7 discretion of the juvenile court in protecting the best interests of
8 a juvenile who is the subject of a juvenile court petition.

9 (4) For purposes of subdivision (2)(d) of this section,
10 the court may order the expense of such consultation, if any, to be
11 paid by the ~~county in which the juvenile court action is brought~~
12 State of Nebraska or the court may, after notice and hearing, assess
13 the cost of such consultation, if any, in whole or in part to the
14 parents of the juvenile. The ability of the parents to pay and the
15 amount of the payment shall be determined by the court by appropriate
16 examination.

17 Sec. 3. Section 43-273, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 43-273 Counsel and guardians ad litem appointed as
20 provided in section 43-272 shall apply to the court before which the
21 proceedings were had for fees for services performed. The court upon
22 hearing the application shall fix reasonable fees. The ~~county board~~
23 ~~of the county wherein the proceedings were had~~ State of Nebraska
24 shall allow the account, bill, or claim presented by any attorney or
25 guardian ad litem for services performed under section 43-272 in the

1 amount determined by the court. No such account, bill, or claim shall
2 be allowed ~~by the county board~~ until the amount thereof shall have
3 been determined by the court.

4 Sec. 4. Section 43-284, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 43-284 When any juvenile is adjudged to be under
7 subdivision (3), (4), or (9) of section 43-247, the court may permit
8 such juvenile to remain in his or her own home subject to supervision
9 or may make an order committing the juvenile to (1) the care of some
10 suitable institution, (2) inpatient or outpatient treatment at a
11 mental health facility or mental health program, (3) the care of some
12 reputable citizen of good moral character, (4) the care of some
13 association willing to receive the juvenile embracing in its objects
14 the purpose of caring for or obtaining homes for such juveniles,
15 which association shall have been accredited as provided in section
16 43-296, (5) the care of a suitable family, or (6) the care and
17 custody of the Department of Health and Human Services.

18 Under subdivision (1), (2), (3), (4), or (5) of this
19 section, upon a determination by the court that there are no
20 parental, private, or other public funds available for the care,
21 custody, education, and maintenance of a juvenile, the court may
22 order a reasonable sum for the care, custody, education, and
23 maintenance of the juvenile to be paid ~~out of a fund which shall be~~
24 ~~appropriated annually by the county where the petition is filed by~~
25 the State of Nebraska until suitable provisions may be made for the

1 juvenile without such payment.

2 The amount to be paid by ~~a county~~ the state for education
3 pursuant to this section shall not exceed the average cost for
4 education of a public school student in the county in which the
5 juvenile is placed and shall be paid only for education in
6 kindergarten through grade twelve.

7 The court may enter a dispositional order removing a
8 juvenile from his or her home upon a written determination that
9 continuation in the home would be contrary to the health, safety, or
10 welfare of such juvenile and that reasonable efforts to preserve and
11 reunify the family have been made if required under section
12 43-283.01.

13 Sec. 5. Section 43-286, Revised Statutes Supplement,
14 2011, is amended to read:

15 43-286 (1) When any juvenile is adjudicated to be a
16 juvenile described in subdivision (1), (2), or (4) of section 43-247:

17 (a) The court may continue the dispositional portion of
18 the hearing, from time to time upon such terms and conditions as the
19 court may prescribe, including an order of restitution of any
20 property stolen or damaged or an order requiring the juvenile to
21 participate in community service programs, if such order is in the
22 interest of the juvenile's reformation or rehabilitation, and,
23 subject to the further order of the court, may:

24 (i) Place the juvenile on probation subject to the
25 supervision of a probation officer;

1 (ii) Permit the juvenile to remain in his or her own home
2 or be placed in a suitable family home, subject to the supervision of
3 the probation officer; or

4 (iii) Cause the juvenile to be placed in a suitable
5 family home or institution, subject to the supervision of the
6 probation officer. If the court has committed the juvenile to the
7 care and custody of the Department of Health and Human Services, the
8 department shall pay the costs of the suitable family home or
9 institution which are not otherwise paid by the juvenile's parents.

10 Under subdivision (1)(a) of this section, upon a
11 determination by the court that there are no parental, private, or
12 other public funds available for the care, custody, and maintenance
13 of a juvenile, the court may order a reasonable sum for the care,
14 custody, and maintenance of the juvenile to be paid ~~out of a fund~~
15 ~~which shall be appropriated annually by the county where the petition~~
16 ~~is filed by the State of Nebraska~~ until a suitable provision may be
17 made for the juvenile without such payment; or

18 (b) The court may commit such juvenile to the Office of
19 Juvenile Services, but a juvenile under the age of twelve years shall
20 not be placed at the Youth Rehabilitation and Treatment Center-Geneva
21 or the Youth Rehabilitation and Treatment Center-Kearney unless he or
22 she has violated the terms of probation or has committed an
23 additional offense and the court finds that the interests of the
24 juvenile and the welfare of the community demand his or her
25 commitment. This minimum age provision shall not apply if the act in

1 question is murder or manslaughter.

2 (2) When any juvenile is found by the court to be a
3 juvenile described in subdivision (3)(b) of section 43-247, the court
4 may enter such order as it is empowered to enter under subdivision
5 (1)(a) of this section or enter an order committing or placing the
6 juvenile to the care and custody of the Department of Health and
7 Human Services.

8 (3) When any juvenile is adjudicated to be a juvenile
9 described in subdivision (1), (2), (3)(b), or (4) of section 43-247
10 because of a nonviolent act or acts and the juvenile has not
11 previously been adjudicated to be such a juvenile because of a
12 violent act or acts, the court may, with the agreement of the victim,
13 order the juvenile to attend juvenile offender and victim mediation
14 with a mediator or at an approved center selected from the roster
15 made available pursuant to section 25-2908.

16 (4) When a juvenile is placed on probation and a
17 probation officer has reasonable cause to believe that such juvenile
18 has committed or is about to commit a substance abuse violation, a
19 noncriminal violation, or a violation of a condition of his or her
20 probation, the probation officer shall take appropriate measures as
21 provided in section 43-286.01.

22 (5)(a) When a juvenile is placed on probation or under
23 the supervision of the court and it is alleged that the juvenile is
24 again a juvenile described in subdivision (1), (2), (3)(b), or (4) of
25 section 43-247, a petition may be filed and the same procedure

1 followed and rights given at a hearing on the original petition. If
2 an adjudication is made that the allegations of the petition are
3 true, the court may make any disposition authorized by this section
4 for such adjudications.

5 (b) When a juvenile is placed on probation or under the
6 supervision of the court for conduct under subdivision (1), (2), (3)
7 (b), or (4) of section 43-247 and it is alleged that the juvenile has
8 violated a term of probation or supervision or that the juvenile has
9 violated an order of the court, a motion to revoke probation or
10 supervision or to change the disposition may be filed and proceedings
11 held as follows:

12 (i) The motion shall set forth specific factual
13 allegations of the alleged violations and a copy of such motion shall
14 be served on all persons required to be served by sections 43-262 to
15 43-267;

16 (ii) The juvenile shall be entitled to a hearing before
17 the court to determine the validity of the allegations. At such
18 hearing the juvenile shall be entitled to those rights relating to
19 counsel provided by section 43-272 and those rights relating to
20 detention provided by sections 43-254 to 43-256. The juvenile shall
21 also be entitled to speak and present documents, witnesses, or other
22 evidence on his or her own behalf. He or she may confront persons who
23 have given adverse information concerning the alleged violations, may
24 cross-examine such persons, and may show that he or she did not
25 violate the conditions of his or her probation or supervision or an

1 order of the court or, if he or she did, that mitigating
2 circumstances suggest that the violation does not warrant revocation
3 of probation or supervision or a change of disposition. The hearing
4 shall be held within a reasonable time after the juvenile is taken
5 into custody;

6 (iii) The hearing shall be conducted in an informal
7 manner and shall be flexible enough to consider evidence, including
8 letters, affidavits, and other material, that would not be admissible
9 in an adversarial criminal trial;

10 (iv) The juvenile shall be given a preliminary hearing in
11 all cases when the juvenile is confined, detained, or otherwise
12 significantly deprived of his or her liberty as a result of his or
13 her alleged violation of probation, supervision, or court order. Such
14 preliminary hearing shall be held before an impartial person other
15 than his or her probation officer or any person directly involved
16 with the case. If, as a result of such preliminary hearing, probable
17 cause is found to exist, the juvenile shall be entitled to a hearing
18 before the court in accordance with this subsection;

19 (v) If the juvenile is found by the court to have
20 violated the terms of his or her probation or supervision or an order
21 of the court, the court may modify the terms and conditions of the
22 probation, supervision, or other court order, extend the period of
23 probation, supervision, or other court order, or enter any order of
24 disposition that could have been made at the time the original order
25 was entered; and

1 (vi) In cases when the court revokes probation,
2 supervision, or other court order, it shall enter a written statement
3 as to the evidence relied on and the reasons for revocation.

4 Sec. 6. Section 43-290, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 43-290 It is the purpose of this section to promote
7 parental responsibility and to provide for the most equitable use and
8 availability of public money.

9 Pursuant to the petition filed by the county attorney in
10 accordance with section 43-274, whenever the care or custody of a
11 juvenile is given by the court to someone other than his or her
12 parent, which shall include placement with a state agency, or when a
13 juvenile is given medical, psychological, or psychiatric study or
14 treatment under order of the court, the court shall make a
15 determination of support to be paid by a parent for the juvenile at
16 the same proceeding at which placement, study, or treatment is
17 determined or at a separate proceeding. Such proceeding, which may
18 occur prior to, at the same time as, or subsequent to adjudication,
19 shall be in the nature of a disposition hearing.

20 At such proceeding, after summons to the parent of the
21 time and place of hearing served as provided in sections 43-262 to
22 43-267, the court may order and decree that the parent shall pay, in
23 such manner as the court may direct, a reasonable sum that will cover
24 in whole or part the support, study, and treatment of the juvenile,
25 which amount ordered paid shall be the extent of the liability of the

1 parent. The court in making such order shall give due regard to the
2 cost of the support, study, and treatment of the juvenile, the
3 ability of the parent to pay, and the availability of money for the
4 support of the juvenile from previous judicial decrees, social
5 security benefits, veterans benefits, or other sources. Support thus
6 received by the court shall be transmitted to the person, agency, or
7 institution having financial responsibility for such support, study,
8 or treatment and, if a state agency or institution, remitted by such
9 state agency or institution quarterly to the Director of
10 Administrative Services for credit to the proper fund.

11 Whenever medical, psychological, or psychiatric study or
12 treatment is ordered by the court, whether or not the juvenile is
13 placed with someone other than his or her parent, or if such study or
14 treatment is otherwise provided as determined necessary by the
15 custodian of the juvenile, the court shall inquire as to the
16 availability of insured or uninsured health care coverage or service
17 plans which include the juvenile. The court may order the parent to
18 pay over any plan benefit sums received on coverage for the juvenile.
19 The payment of any deductible under the health care benefit plan
20 covering the juvenile shall be the responsibility of the parent. If
21 the parent willfully fails or refuses to pay the sum ordered or to
22 pay over any health care plan benefit sums received, the court may
23 proceed against him or her as for contempt, either on the court's own
24 motion or on the motion of the county attorney or authorized attorney
25 as provided in section 43-512, or execution shall issue at the

1 request of any person, agency, or institution treating or maintaining
2 such juvenile. The court may afterwards, because of a change in the
3 circumstances of the parties, revise or alter the order of payment
4 for support, study, or treatment.

5 If the juvenile has been committed to the care and
6 custody of the Department of Health and Human Services, the
7 department shall pay the costs for the support, study, or treatment
8 of the juvenile which are not otherwise paid by the juvenile's
9 parent.

10 If no provision is otherwise made by law for the support
11 or payment for the study or treatment of the juvenile, compensation
12 for the support, study, or treatment shall be paid, when approved by
13 an order of the court, ~~out of a fund which shall be appropriated by~~
14 ~~the county in which the petition is filed.~~ by the State of Nebraska.

15 The juvenile court shall retain jurisdiction over a
16 parent ordered to pay support for the purpose of enforcing such
17 support order for so long as such support remains unpaid but not to
18 exceed ten years from the nineteenth birthday of the youngest child
19 for whom support was ordered.

20 Sec. 7. Section 43-292.01, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 43-292.01 When termination of ~~the parent juvenile~~
23 ~~relationship~~ parental rights is sought under subdivision (5) of
24 section 43-292, the court shall appoint a guardian ad litem for the
25 alleged incompetent parent. The court may, in any other case, appoint

1 a guardian ad litem, as deemed necessary or desirable, for any party.
2 The guardian ad litem shall be paid a reasonable fee set by the court
3 and paid ~~from the general fund of the county.~~ by the State of
4 Nebraska.

5 Sec. 8. Section 43-2,101, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 43-2,101 Unless otherwise ordered by the court pursuant
8 to section 43-290, ~~each county~~ the State of Nebraska shall bear all
9 the expenses incident to the transportation of each juvenile ~~from~~
10 ~~such county~~ to the Department of Health and Human Services, together
11 with such fees and costs as are allowed by law in similar cases. The
12 fees, costs, and expenses shall be ~~paid from the county treasury upon~~
13 ~~itemized vouchers~~ certified by the judge of the juvenile court.

14 Sec. 9. This act becomes operative on January 1, 2013.

15 Sec. 10. Original sections 43-272, 43-273, 43-284,
16 43-290, 43-292.01, and 43-2,101, Reissue Revised Statutes of
17 Nebraska, section 43-272.01, Revised Statutes Cumulative Supplement,
18 2010, and section 43-286, Revised Statutes Supplement, 2011, are
19 repealed.