

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 999

Introduced by Wayne, 13.

Read first time January 14, 2020

Committee: Urban Affairs

1 A BILL FOR AN ACT relating to criminal procedure; to amend sections
2 23-3402, 23-3404, 29-3906, 29-3911, 29-3918, 43-272, and 43-273,
3 Reissue Revised Statutes of Nebraska, and section 43-253, Revised
4 Statutes Cumulative Supplement, 2018; to require cities and villages
5 to pay for the cost of appointed counsel for indigent defendants and
6 juveniles in prosecutions of and adjudications for violations of
7 city or village ordinances; to harmonize provisions; and to repeal
8 the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 23-3402, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 23-3402 (1) It shall be the duty of the public defender to represent
4 all indigent felony defendants within the county he or she serves. The
5 public defender shall represent indigent felony defendants at all
6 critical stages of felony proceedings against them through the stage of
7 sentencing. Sentencing shall include hearings on charges of violation of
8 felony probation. Following the sentencing of any indigent defendant
9 represented by him or her, the public defender may take any direct,
10 collateral, or postconviction appeals to state or federal courts which he
11 or she considers to be meritorious and in the interest of justice and
12 shall file a notice of appeal and proceed with one direct appeal to
13 either the Court of Appeals or the Supreme Court of Nebraska upon a
14 timely request after sentencing from any such convicted felony defendant,
15 subject to the public defender's right to apply to the court to withdraw
16 from representation in any appeal which he or she deems to be wholly
17 frivolous.

18 (2) It shall be the duty of the public defender to represent all
19 indigent persons against whom a petition has been filed with a mental
20 health board as provided in sections 71-945 to 71-947.

21 (3) It shall be the duty of the public defender to represent all
22 indigent persons charged with misdemeanor offenses punishable by
23 imprisonment when appointed by the court. In a prosecution for a
24 violation of a city or village ordinance, the public defender shall be
25 reimbursed by the city or village as provided in section 6 of this act.

26 (4) Appointment of a public defender shall be by the court in
27 accordance with sections 29-3902 and 29-3903. A public defender shall not
28 represent an indigent person prior to appointment by the court, except
29 that a public defender may represent a person under arrest for
30 investigation or on suspicion. A public defender shall not inquire into a
31 defendant's financial condition for purposes of indigency determination

1 except to make an initial determination of indigency of a person under
2 arrest for investigation or on suspicion. A public defender shall not
3 make a determination of a defendant's indigency, except an initial
4 determination of indigency of a person under arrest for investigation or
5 on suspicion, nor recommend to a court that a defendant be determined or
6 not determined as indigent.

7 (5) For purposes of this section, the definitions found in section
8 29-3901 shall be used.

9 Sec. 2. Section 23-3404, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 23-3404 (1) In a county having a population of less than thirty-five
12 thousand inhabitants which does not have an elected public defender, the
13 county board of such county may appoint a qualified attorney to serve as
14 public defender for such county. In making the appointment and
15 negotiating the contract, the county board shall comply with sections
16 23-3405 to 23-3408.

17 (2) Nothing in sections 23-3401 to 23-3403 or 29-3901 to 29-3908
18 shall be construed to apply to sections 23-3404 to 23-3408.

19 (3) In a prosecution for a violation of a city or village ordinance,
20 the contracting attorney shall be reimbursed by the city or village as
21 provided in section 6 of this act.

22 Sec. 3. Section 29-3906, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 29-3906 In counties not having public defenders, the court may
25 appoint an attorney licensed to practice law in this state to represent
26 any indigent person who is charged with a misdemeanor offense punishable
27 by imprisonment. When such a defendant asserts indigency, the court shall
28 make a reasonable inquiry to determine the defendant's financial
29 condition and may require him or her to execute an affidavit of
30 indigency. Attorneys appointed pursuant to this section shall be
31 compensated in the manner provided by section 29-3905 with application

1 being made to the appointing court, except that in a prosecution for a
2 violation of a city or village ordinance, the attorney shall be
3 reimbursed by the city or village as provided in section 6 of this act.

4 Sec. 4. Section 29-3911, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 29-3911 Within thirty days following receipt of a certification as
7 provided in section 29-3910, the Governor shall authorize the judge or
8 judges to appoint a public defender for the district. The salary and all
9 expenses, including trial expense and expert witness fees, of the
10 judicial district public defender shall be paid out of funds appropriated
11 to the office of Governor for that purpose, except that in a prosecution
12 for a violation of a city or village ordinance, the judicial district
13 public defender shall be reimbursed by the city or village as provided in
14 section 6 of this act.

15 Sec. 5. Section 29-3918, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 29-3918 Nothing in sections 29-3910 to 29-3918 shall prevent a court
18 from appointing counsel other than the public defender to represent
19 indigent defendants or other persons by law entitled to legal
20 representation, but appointments of counsel other than the public
21 defender shall be limited to situations in which there are multiple
22 defendants requiring separate representation or when other exigent
23 circumstances are present which in the opinion of the court require
24 appointment of other than the public defender. In all such cases of
25 appointments of other than the public defender, the procedure shall be in
26 accordance with sections 43-272 and 43-273 and the cost of such
27 appointments shall be paid by the county or the city or village as
28 provided in such sections.

29 Sec. 6. In any prosecution for a violation of a city or village
30 ordinance for which an indigent defendant has the right to appointed
31 counsel, payment for such counsel's services and expenses shall be the

1 responsibility of the city or village and not the county. This includes
2 the proportionate share of the appointed counsel's salary and expenses
3 and trial expenses and expert witness fees.

4 Sec. 7. Section 43-253, Revised Statutes Cumulative Supplement,
5 2018, is amended to read:

6 43-253 (1) Upon delivery to the probation officer of a juvenile who
7 has been taken into temporary custody under section 29-401, 43-248, or
8 43-250, the probation officer shall immediately investigate the situation
9 of the juvenile and the nature and circumstances of the events
10 surrounding his or her being taken into custody. Such investigation may
11 be by informal means when appropriate.

12 (2) The probation officer's decision to release the juvenile from
13 custody or place the juvenile in detention or an alternative to detention
14 shall be based upon the results of the standardized juvenile detention
15 screening instrument described in section 43-260.01.

16 (3) No juvenile who has been taken into temporary custody under
17 subdivision (1)(c) of section 43-250 or subsection (6) of section
18 43-286.01 or pursuant to an alleged violation of an order for conditional
19 release shall be detained in any detention facility or be subject to an
20 alternative to detention infringing upon the juvenile's liberty interest
21 for longer than twenty-four hours, excluding nonjudicial days, after
22 having been taken into custody unless such juvenile has appeared
23 personally before a court of competent jurisdiction for a hearing to
24 determine if continued detention, services, or supervision is necessary.
25 The juvenile shall be represented by counsel at the hearing. Whether such
26 counsel shall be provided at the cost of the county or the city or
27 village shall be determined as provided in subsection (1) of section
28 43-272. If continued secure detention is ordered, such detention shall be
29 in a juvenile detention facility, except that a juvenile charged with a
30 felony as an adult in county or district court may be held in an adult
31 jail as set forth in subdivision (1)(c)(v) of section 43-250. A juvenile

1 placed in an alternative to detention, but not in detention, may waive
2 this hearing through counsel.

3 (4) When the probation officer deems it to be in the best interests
4 of the juvenile, the probation officer shall immediately release such
5 juvenile to the custody of his or her parent. If the juvenile has both a
6 custodial and a noncustodial parent and the probation officer deems that
7 release of the juvenile to the custodial parent is not in the best
8 interests of the juvenile, the probation officer shall, if it is deemed
9 to be in the best interests of the juvenile, attempt to contact the
10 noncustodial parent, if any, of the juvenile and to release the juvenile
11 to such noncustodial parent. If such release is not possible or not
12 deemed to be in the best interests of the juvenile, the probation officer
13 may release the juvenile to the custody of a legal guardian, a
14 responsible relative, or another responsible person.

15 (5) The court may admit such juvenile to bail by bond in such amount
16 and on such conditions and security as the court, in its sole discretion,
17 shall determine, or the court may proceed as provided in section 43-254.
18 In no case shall the court or probation officer release such juvenile if
19 it appears that:

20 (a) Before July 1, 2019, further detention or placement of such
21 juvenile is a matter of immediate and urgent necessity for the protection
22 of such juvenile or the person or property of another or if it appears
23 that such juvenile is likely to flee the jurisdiction of the court; and

24 (b) On or after July 1, 2019, the physical safety of persons in the
25 community would be seriously threatened or that detention is necessary to
26 secure the presence of the juvenile at the next hearing, as evidenced by
27 a demonstrable record of willful failure to appear at a scheduled court
28 hearing within the last twelve months.

29 Sec. 8. Section 43-272, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 43-272 (1)(a) In counties having a population of less than one

1 hundred fifty thousand inhabitants, when any juvenile shall be brought
2 without counsel before a juvenile court, the court shall advise such
3 juvenile and his or her parent or guardian of their right to retain
4 counsel and shall inquire of such juvenile and his or her parent or
5 guardian as to whether they desire to retain counsel. The court shall
6 inform such juvenile and his or her parent or guardian of such juvenile's
7 right to counsel at the government's county expense if none of them is
8 able to afford counsel. If the juvenile or his or her parent or guardian
9 desires to have counsel appointed for such juvenile, or the parent or
10 guardian of such juvenile cannot be located, and the court ascertains
11 that none of such persons are able to afford an attorney, the court shall
12 forthwith appoint an attorney to represent such juvenile for all
13 proceedings before the juvenile court, except that if an attorney is
14 appointed to represent such juvenile and the court later determines that
15 a parent of such juvenile is able to afford an attorney, the court shall
16 order such parent or juvenile to pay for services of the attorney to be
17 collected in the same manner as provided by section 43-290. If the parent
18 willfully refuses to pay any such sum, the court may commit him or her
19 for contempt, and execution may issue at the request of the appointed
20 attorney or the county attorney or by the court without a request.

21 (b) In counties having a population of one hundred fifty thousand or
22 more inhabitants, when any juvenile court petition is filed alleging
23 jurisdiction of a juvenile pursuant to subdivision (1), (2), (3)(b), or
24 (4) of section 43-247, counsel shall be appointed for such juvenile. The
25 court shall inform such juvenile and his or her parent or guardian of
26 such juvenile's right to counsel at the government's county expense if
27 none of them is able to afford counsel. If the juvenile or his or her
28 parent or guardian desires to have counsel appointed for such juvenile,
29 or the parent or guardian of such juvenile cannot be located, and the
30 court ascertains that none of such persons are able to afford an
31 attorney, the court shall forthwith appoint an attorney to represent such

1 juvenile for all proceedings before the juvenile court, except that if an
2 attorney is appointed to represent such juvenile and the court later
3 determines that a parent of such juvenile is able to afford an attorney,
4 the court shall order such parent or juvenile to pay for services of the
5 attorney to be collected in the same manner as provided by section
6 43-290. If the parent willfully refuses to pay any such sum, the court
7 may commit him or her for contempt, and execution may issue at the
8 request of the appointed attorney or the county attorney or by the court
9 without a request.

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

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

23 (3) The court shall appoint an attorney as guardian ad litem. A
24 guardian ad litem shall act as his or her own counsel and as counsel for
25 the juvenile, unless there are special reasons in a particular case why
26 the guardian ad litem or the juvenile or both should have separate
27 counsel. In such cases the guardian ad litem shall have the right to
28 counsel, except that the guardian ad litem shall be entitled to appointed
29 counsel without regard to his or her financial ability to retain counsel.
30 Whether such appointed counsel shall be provided at the cost of the
31 government ~~county~~ shall be determined as provided in subsection (1) of

1 this section.

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

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

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

9 43-273 (1) Counsel and guardians ad litem appointed outside of the
10 guardian ad litem division as provided in section 43-272 shall apply to
11 the court before which the proceedings were had for fees for services
12 performed. The court upon hearing the application shall fix reasonable
13 fees.

14 (2) Except as provided in subsection (3) of this section, the The
15 county board of the county wherein the proceedings were had shall allow
16 the account, bill, or claim presented by any attorney or guardian ad
17 litem for services performed under section 43-272 in the amount
18 determined by the court.

19 (3) In an adjudication for a violation of a city or village
20 ordinance, the governing body of such city or village shall allow the
21 account, bill, or claim presented by any attorney or guardian ad litem
22 for services performed under section 43-272 in the amount determined by
23 the court.

24 (4) No such account, bill, or claim shall be allowed by the county
25 board or the governing body of a city or village until the amount thereof
26 shall have been determined by the court.

27 Sec. 10. Original sections 23-3402, 23-3404, 29-3906, 29-3911,
28 29-3918, 43-272, and 43-273, Reissue Revised Statutes of Nebraska, and
29 section 43-253, Revised Statutes Cumulative Supplement, 2018, are
30 repealed.