

AMENDMENTS TO LB673

Introduced by Judiciary.

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

3 Section 1. Section 43-272.01, Revised Statutes Supplement, 2015, is
4 amended to read:

5 43-272.01 (1) A guardian ad litem as provided for in subsections (2)
6 and (3) of section 43-272 shall be appointed when a child is removed from
7 his or her surroundings pursuant to subdivision (2) or (3) of section
8 43-248, subsection (2) of section 43-250, or section 43-251. If a county
9 has a guardian ad litem division created under section 2 of this act, the
10 court shall appoint the guardian ad litem division unless a conflict of
11 interest exists. If removal has not occurred, a guardian ad litem shall
12 be appointed at the commencement of all cases brought under subdivision
13 (3)(a) or (7) of section 43-247 and section 28-707.

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

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

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

1 to the socioeconomic status of the parents or other custodians of the
2 juvenile;

3 (c) May at any time after the filing of the petition move the court
4 of jurisdiction to provide medical or psychological treatment or
5 evaluation as set out in section 43-258. The guardian ad litem shall have
6 access to all reports resulting from any examination ordered under
7 section 43-258, and such reports shall be used for evaluating the status
8 of the protected juvenile;

9 (d) Shall make every reasonable effort to become familiar with the
10 needs of the protected juvenile which (i) shall include consultation with
11 the juvenile in his or her respective placement within two weeks after
12 the appointment and once every six months thereafter, unless the court
13 approves other methods of consultation as provided in subsection (6) of
14 this section, and inquiry of the most current caseworker, foster parent,
15 or other custodian and (ii) may include inquiry of others directly
16 involved with the juvenile or who may have information or knowledge about
17 the circumstances which brought the juvenile court action or related
18 cases and the development of the juvenile, including biological parents,
19 physicians, psychologists, teachers, and clergy members;

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

25 (f) Shall be responsible for making written reports and
26 recommendations to the court at every dispositional, review, or
27 permanency planning hearing regarding the temporary and permanent
28 placement of the protected juvenile, the type and number of contacts with
29 the juvenile, the type and number of contacts with other individuals
30 described in subdivision (d) of this subsection, and any further relevant
31 information on a form prepared by the Supreme Court. As an alternative to

1 the written reports and recommendations, the court may provide the
2 guardian ad litem with a checklist that shall be completed and presented
3 to the court at every dispositional or review hearing. A copy of the
4 written reports and recommendations to the court or a copy of the
5 checklist presented to the court shall also be submitted to the Foster
6 Care Review Office for any juvenile in foster care placement as defined
7 in section 43-1301;

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

10 (h) May file a petition in the juvenile court on behalf of the
11 juvenile, including a supplemental petition as provided in section
12 43-291.

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

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

23 (5) The guardian ad litem may be compensated on a per-case
24 appointment system or pursuant to a system of multi-case contracts or may
25 be employed by a guardian ad litem division created pursuant to section 2
26 of this act. If a county creates a guardian ad litem division, guardian
27 ad litem appointments shall be made first from the guardian ad litem
28 division and if a conflict exists, the court may appoint a guardian ad
29 litem from outside of the division. Regardless of the method of
30 compensation, billing hours and expenses for court-appointed guardian ad
31 litem services shall be submitted to the court for approval and shall be

1 recorded on a written, itemized billing statement signed by the attorney
2 responsible for the case. Billing hours and expenses for guardian ad
3 litem services rendered under a contract for such services shall be
4 submitted to the entity with whom the guardian ad litem contracts in the
5 form and manner prescribed by such entity for approval. Case time for
6 guardian ad litem services shall be scrupulously accounted for by the
7 attorney responsible for the case. Additionally, in the case of a multi-
8 lawyer firm or organization retained for guardian ad litem services, the
9 name of the attorney or attorneys assigned to each guardian ad litem case
10 shall be recorded.

11 (6) The guardian ad litem shall meet in person with the juvenile for
12 purposes of the consultation required by subdivision (2)(d) of this
13 section unless prohibited or made impracticable by exceptional
14 circumstances, including, but not limited to, situations in which an
15 unreasonable geographical distance is involved between the location of
16 the guardian ad litem and the juvenile. When such exceptional
17 circumstances exist, the guardian ad litem shall attempt such
18 consultation by other reasonable means, including, but not limited to, by
19 telephone or suitable electronic means, if the juvenile is of sufficient
20 age and capacity to participate in such means of communication and there
21 are no other barriers preventing such means of communication. If
22 consultation by telephone or suitable electronic means is not feasible,
23 the guardian ad litem shall seek direction from the court as to any other
24 acceptable method by which to accomplish consultation required by
25 subdivision (2)(d) of this section.

26 Sec. 2. (1) A county board may create a county guardian ad litem
27 division to carry out section 43-272.01.

28 (2) The county board shall appoint a division director for the
29 guardian ad litem division. The division director shall be an attorney
30 admitted to practice law in Nebraska with at least five years of Nebraska
31 juvenile court experience prior to appointment. The division director may

1 appoint assistant guardians ad litem and other employees as are
2 reasonably necessary to permit him or her to effectively and competently
3 fulfill the responsibilities of the division, subject to the approval and
4 consent of the county board. All assistant guardians ad litem shall be
5 attorneys admitted to practice law in Nebraska and shall comply with all
6 requirements of the Supreme Court relating to guardians ad litem.

7 (3) All assistant guardians ad litem employed by the division shall
8 devote their full time to the work of the division and shall not engage
9 in the private practice of law so long as each assistant guardian ad
10 litem receives the same annual salary as each deputy county attorney of
11 comparable ability and experience receives in such counties.

12 (4) The director and any assistant guardian ad litem employed by the
13 division shall not solicit or accept any fee for representing a child in
14 a case in which the director or the assistant guardian ad litem is
15 already acting as the child's court-appointed guardian ad litem.

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

18 43-273 Counsel and guardians ad litem appointed as provided in
19 section 43-272 shall apply to the court before which the proceedings were
20 had for fees for services performed. The county board shall set a
21 reasonable hourly rate for services performed. Upon application and
22 hearing, the court shall review the itemized billing statement submitted
23 by the attorney pursuant to subsection (5) of section 43-272.01 and
24 determine reasonable number of billing hours and amount of expenses ~~The~~
25 ~~court upon hearing the application shall fix reasonable fees.~~ The county
26 board of the county wherein the proceedings were had shall allow the
27 account, bill, or claim presented by any attorney or guardian ad litem
28 for services performed under section 43-272 in the amount determined by
29 the court. No such account, bill, or claim shall be allowed by the county
30 board until the amount thereof shall have been determined by the court.

31 Sec. 4. Original section 43-273, Reissue Revised Statutes of

- 1 Nebraska, and section 43-272.01, Revised Statutes Supplement, 2015, are
- 2 repealed.