

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 231

Introduced by Pansing Brooks, 28.

Read first time January 14, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to juveniles; to amend sections 29-2709,
2 43-272, and 43-3102, Reissue Revised Statutes of Nebraska; to create
3 a fund; to provide for grants to offset the cost to counties of
4 providing legal counsel for indigent juveniles; to require reports;
5 to require a juvenile indigent defense filing fee; to change
6 provisions relating to appointment of counsel for juveniles and
7 standards for guardians ad litem and attorneys in juvenile court; to
8 provide for rescission of a waiver of counsel by a juvenile; to
9 harmonize provisions; to provide an operative date; and to repeal
10 the original sections.

11 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Juvenile Indigent Defense Fund is created. The fund
2 shall be administered by the Commission on Public Advocacy and shall only
3 be used to provide legal services to juveniles in juvenile court, provide
4 resources to assist counties in fulfilling their obligation to provide
5 for effective assistance of legal counsel for indigent juveniles, and pay
6 the costs of administering the Juvenile Indigent Defense Grant Program.
7 The commission shall distribute money in the fund periodically in the
8 form of grants to counties under such program as provided by the
9 commission's rules and regulations. Any money in the fund available for
10 investment shall be invested by the state investment officer pursuant to
11 the Nebraska Capital Expansion Act and the Nebraska State Funds
12 Investment Act. Interest earned shall be credited back to the fund.

13 Sec. 2. (1) There is created a separate and distinct budgetary
14 program within the Commission on Public Advocacy to be known as the
15 Juvenile Indigent Defense Grant Program. Funds from the Juvenile Indigent
16 Defense Fund shall be used to provide grants to counties to help offset
17 the cost of providing legal counsel for indigent juveniles and for the
18 administrative costs of the commission.

19 (2)(a) A county may apply for a grant under the program beginning
20 October 15, 2020.

21 (b) To be eligible for a grant under the program, a county shall
22 demonstrate to the commission that, after the operative date of this act,
23 the county's per capita juvenile court costs have increased during the
24 past fiscal year, as compared to such county's per capita juvenile court
25 costs for the preceding three fiscal years. The county shall provide the
26 commission with data showing that such increase in costs was due to the
27 implementation of this legislative bill and pinpointing the factors
28 contributing to such increase.

29 (c) Funds provided to counties under the program shall be used
30 exclusively to provide legal counsel for indigent juveniles.

31 (3) Any county receiving a grant under the program shall annually

1 submit information electronically to the commission as required by the
2 commission's rules and regulations. Such information shall include, but
3 not be limited to, the number of juveniles that received legal
4 representation as a result of this legislative bill.

5 (4) On or before November 1, 2021, and each November 1 thereafter,
6 the commission shall electronically submit a report to the Legislature
7 concerning the distribution and use of funds from grants provided under
8 the program. The report shall include, but not be limited to, the
9 information described in subsection (3) of this section.

10 (5) The commission shall adopt and promulgate rules and regulations
11 as necessary to implement this section and section 1 of this act.

12 Sec. 3. Section 29-2709, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 29-2709 When any costs in misdemeanor, traffic, felony preliminary,
15 or juvenile cases in county court, except for those costs provided for in
16 subsection (3) of section 24-703, two dollars of the fee provided in
17 section 33-107.01, the court automation fee provided in section
18 33-107.03, the juvenile indigent defense fee provided in section 4 of
19 this act, and the uniform data analysis fee provided in section 47-633,
20 are found by a county judge to be uncollectible for any reason, including
21 the dismissal of the case, such costs shall be deemed waived unless the
22 judge, in his or her discretion, enters an order assessing such portion
23 of the costs as by law would be paid over by the court to the State
24 Treasurer as follows:

25 (1) In all cases brought by or with the consent of the county
26 attorney, all such uncollectible costs shall be certified by the clerk of
27 the court to the county clerk who shall present the bills therefor to the
28 county board. The county board shall pay from the county general fund all
29 such bills found by the board to be lawful; and

30 (2) In all cases brought under city or village ordinance, all such
31 uncollectible costs shall be certified to the appropriate city or village

1 officer authorized to receive claims who shall present the bills therefor
2 to the governing body of the city or village in the same manner as other
3 claims. Such governing body shall pay from the general fund of the city
4 or village all such bills as are found to be lawful.

5 Sec. 4. In addition to all other court costs assessed according to
6 law, a juvenile indigent defense fee of one dollar shall be assessed as
7 costs for each case filed in each county court, separate juvenile court,
8 and district court, including appeals to such courts, and for each appeal
9 and original action filed in the Court of Appeals and the Supreme Court.
10 The fees shall be remitted to the State Treasurer on forms prescribed by
11 the State Treasurer within ten days after the end of each month. The
12 State Treasurer shall credit the fees to the Juvenile Indigent Defense
13 Fund.

14 Sec. 5. Section 43-272, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 43-272 ~~(1) When (1)(a) In counties having a population of less than~~
17 ~~one hundred fifty thousand inhabitants, when any juvenile shall be~~
18 ~~brought without counsel before a juvenile court, the court shall advise~~
19 ~~such juvenile and his or her parent or guardian of their right to retain~~
20 ~~counsel and shall inquire of such juvenile and his or her parent or~~
21 ~~guardian as to whether they desire to retain counsel. The court shall~~
22 ~~inform such juvenile and his or her parent or guardian of such juvenile's~~
23 ~~right to counsel at county expense if none of them is able to afford~~
24 ~~counsel. If the juvenile or his or her parent or guardian desires to have~~
25 ~~counsel appointed for such juvenile, or the parent or guardian of such~~
26 ~~juvenile cannot be located, and the court ascertains that none of such~~
27 ~~persons are able to afford an attorney, the court shall forthwith appoint~~
28 ~~an attorney to represent such juvenile for all proceedings before the~~
29 ~~juvenile court, except that if an attorney is appointed to represent such~~
30 ~~juvenile and the court later determines that a parent of such juvenile is~~
31 ~~able to afford an attorney, the court shall order such parent or juvenile~~

1 ~~to pay for services of the attorney to be collected in the same manner as~~
2 ~~provided by section 43-290. If the parent willfully refuses to pay any~~
3 ~~such sum, the court may commit him or her for contempt, and execution may~~
4 ~~issue at the request of the appointed attorney or the county attorney or~~
5 ~~by the court without a request. (b) In counties having a population of~~
6 ~~one hundred fifty thousand or more inhabitants, when any juvenile court~~
7 ~~petition is filed alleging jurisdiction of a juvenile pursuant to~~
8 ~~subdivision (1), (2), (3)(b), or (4) of section 43-247, and the matter~~
9 leading to such filing has not already been resolved through a juvenile
10 pretrial diversion program established pursuant to sections 43-260.02 to
11 43-260.07, counsel shall be appointed for such juvenile. At the first
12 court appearance of such juvenile, the The court shall inform such
13 juvenile and his or her parent or guardian of such juvenile's right to
14 continued representation by counsel at county expense if none of them is
15 able to afford counsel. If the juvenile or his or her parent or guardian
16 desires to have counsel appointed for such juvenile, or the parent or
17 guardian of such juvenile cannot be located, and the court ascertains
18 that the juvenile and his or her parent or guardian none of such persons
19 are unable able to afford an attorney, the court shall continue the
20 appointment of counsel forthwith appoint an attorney to represent such
21 juvenile for all proceedings before the juvenile court unless the
22 juvenile waives counsel in accordance with section 43-3102. If , except
23 ~~that if~~ an attorney is appointed to represent such juvenile and the court
24 later determines that a parent of such juvenile is able to afford an
25 attorney, the court shall order such parent ~~or juvenile~~ to pay for
26 services of the attorney to be collected in the same manner as provided
27 by section 43-290. If the parent willfully refuses to pay any such sum,
28 the court may commit him or her for contempt, and execution may issue at
29 the request of the appointed attorney or the county attorney or by the
30 court without a request. Upon entering an appearance on behalf of a
31 juvenile, any counsel shall continue to represent such juvenile through

1 post-dispositional proceedings unless relieved by the court upon the
2 request of the juvenile, upon the substitution of other counsel, or for
3 cause.

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

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

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

26 (4) By July 1, 2015, the Supreme Court shall provide by court rule
27 standards for guardians ad litem for juveniles in juvenile court
28 proceedings. The Supreme Court shall periodically review and maintain
29 such standards.

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

1 The Supreme Court shall periodically review and maintain such standards.

2 Sec. 6. Section 43-3102, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 43-3102 (1) In any court proceeding, any waiver of the right to
5 counsel by a juvenile shall be made in open court, shall be recorded, and
6 shall be confirmed in a writing signed by the juvenile.

7 (2) A court shall not accept a juvenile's waiver of the right to
8 counsel unless the waiver satisfies subsection (1) of this section and is
9 an affirmative waiver that is made intelligently, voluntarily, and
10 understandingly. In determining whether such waiver was made
11 intelligently, voluntarily, and understandingly, the court shall
12 consider, among other things: (a) The age, intelligence, and education of
13 the juvenile, (b) the juvenile's emotional stability, and (c) the
14 complexity of the proceedings.

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

17 (4) No parent, guardian, custodian, or other person may waive the
18 juvenile's right to counsel.

19 (5) A juvenile's right to be represented by counsel may not be
20 waived in the following circumstances:

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

22 (b) For a detention hearing;

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

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

27 (6) If a juvenile waives his or her right to counsel, the juvenile
28 may at any time rescind such waiver and the court shall reappoint counsel
29 for the juvenile. If a juvenile waives his or her right to counsel, the
30 juvenile court shall at each subsequent hearing inform the juvenile of
31 his or her right to rescind such waiver of counsel and have counsel

1 reappointed.

2 Sec. 7. This act becomes operative on October 15, 2019.

3 Sec. 8. Original sections 29-2709, 43-272, and 43-3102, Reissue

4 Revised Statutes of Nebraska, are repealed.