

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 673

Introduced by Krist, 10.

Read first time January 06, 2016

Committee:

- 1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend
- 2 section 43-273, Reissue Revised Statutes of Nebraska, and section
- 3 43-272.01, Revised Statutes Supplement, 2015; to change provisions
- 4 relating to guardians ad litem and determination of fees; and to
- 5 repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

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

3 43-272.01 (1) A guardian ad litem as provided for in subsections (2)
4 and (3) of section 43-272 shall be appointed when a child is removed from
5 his or her surroundings pursuant to subdivision (2) or (3) of section
6 43-248, subsection (2) of section 43-250, or section 43-251. If removal
7 has not occurred, a guardian ad litem shall be appointed at the
8 commencement of all cases brought under subdivision (3)(a) or (7) of
9 section 43-247 and section 28-707.

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

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

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

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

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

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

17 (f) Shall be responsible for making written reports and
18 recommendations to the court at every dispositional, review, or
19 permanency planning hearing regarding the temporary and permanent
20 placement of the protected juvenile, the type and number of contacts with
21 the juvenile, the type and number of contacts with other individuals
22 described in subdivision (d) of this subsection, and any further relevant
23 information on a form prepared by the Supreme Court. As an alternative to
24 the written reports and recommendations, the court may provide the
25 guardian ad litem with a checklist that shall be completed and presented
26 to the court at every dispositional or review hearing. A copy of the
27 written reports and recommendations to the court or a copy of the
28 checklist presented to the court shall also be submitted to the Foster
29 Care Review Office for any juvenile in foster care placement as defined
30 in section 43-1301;

31 (g) Shall consider such other information as is warranted by the

1 nature and circumstances of a particular case; and

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

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

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

15 (5) The guardian ad litem may be compensated on a per-case
16 appointment system or pursuant to a system of multi-case contracts. If a
17 county creates a guardian ad litem division, guardian ad litem
18 appointments shall be made first to the guardian ad litem division and if
19 a conflict exists, the court may appoint a guardian ad litem outside of
20 the division. Regardless of the method of compensation, billing hours and
21 expenses for court-appointed guardian ad litem services shall be
22 submitted to the court for approval and shall be recorded on a written,
23 itemized billing statement signed by the attorney responsible for the
24 case. Billing hours and expenses for guardian ad litem services rendered
25 under a contract for such services shall be submitted to the entity with
26 whom the guardian ad litem contracts in the form and manner prescribed by
27 such entity for approval. Case time for guardian ad litem services shall
28 be scrupulously accounted for by the attorney responsible for the case.
29 Additionally, in the case of a multi-lawyer firm or organization retained
30 for guardian ad litem services, the name of the attorney or attorneys
31 assigned to each guardian ad litem case shall be recorded.

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

16 Sec. 2. 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 court upon hearing~~
21 ~~the application~~ shall fix reasonable fees. The county board of the county
22 wherein the proceedings were had shall allow the account, bill, or claim
23 presented by any attorney or guardian ad litem for services performed
24 under section 43-272 in the amount determined by the court. No such
25 account, bill, or claim shall be allowed by the county board until the
26 amount thereof shall have been determined by the court.

27 Sec. 3. Original section 43-273, Reissue Revised Statutes of
28 Nebraska, and section 43-272.01, Revised Statutes Supplement, 2015, are
29 repealed.