

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1159**

Introduced by Ashford, 20.

Read first time January 23, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to truancy; to amend sections 43-272.01,  
2 43-1311, 43-1312, 79-209, and 79-210, Reissue Revised  
3 Statutes of Nebraska, sections 43-2404.02, 43-3001, and  
4 79-215, Revised Statutes Cumulative Supplement, 2006, and  
5 sections 42-364, 43-2923, and 43-2929, Revised Statutes  
6 Supplement, 2007; to change provisions relating to  
7 parenting plans and compulsory attendance; to provide  
8 and change penalties; to provide for admissibility  
9 of certified copies of school records as prescribed;  
10 to provide for grants as prescribed; to provide for  
11 mediation; and to repeal the original sections.

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

1           Section 1. Section 42-364, Revised Statutes Supplement,  
2 2007, is amended to read:

3           42-364 (1) In an action under Chapter 42 involving  
4 child support, child custody, parenting time, visitation, or other  
5 access, the parties and their counsel, if represented, shall  
6 develop a parenting plan as provided in the Parenting Act. If  
7 the parties and counsel do not develop a parenting plan, the  
8 complaint shall so indicate as provided in section 42-353 and  
9 before July 1, 2010, the case may be referred to mediation,  
10 specialized alternative dispute resolution, or other alternative  
11 dispute resolution process and on or after such date the case  
12 shall be referred to mediation or specialized alternative dispute  
13 resolution as provided in the Parenting Act. The decree in an  
14 action involving the custody of a minor child shall include the  
15 determination of legal custody and physical custody based upon the  
16 best interests of the child, as defined in the Parenting Act, and  
17 child support. Such determinations shall be made by incorporation  
18 into the decree of (a) a parenting plan developed by the parties,  
19 if approved by the court, or (b) a parenting plan developed by the  
20 court based upon evidence produced after a hearing in open court if  
21 no parenting plan is developed by the parties or the plan developed  
22 by the parties is not approved by the court. The decree shall  
23 conform to the Parenting Act. The social security number of each  
24 parent and the minor child shall be furnished to the clerk of the  
25 district court but shall not be disclosed or considered a public

1 record.

2 (2) In determining legal custody or physical custody,  
3 the court shall not give preference to either parent based on the  
4 sex of the parent and, except as provided in section 43-2933, no  
5 presumption shall exist that either parent is more fit or suitable  
6 than the other. Custody shall be determined on the basis of the  
7 best interests of the child, as defined in the Parenting Act.  
8 Unless parental rights are terminated, both parents shall continue  
9 to have the rights stated in section 42-381.

10 (3) Custody of a minor child may be placed with both  
11 parents on a joint legal custody or joint physical custody basis,  
12 or both, (a) when both parents agree to such an arrangement in the  
13 parenting plan and the court determines that such an arrangement is  
14 in the best interests of the child or (b) if the court specifically  
15 finds, after a hearing in open court, that joint physical custody  
16 or joint legal custody, or both, is in the best interests of the  
17 minor child regardless of any parental agreement or consent.

18 (4) In determining the amount of child support to be  
19 paid by a parent, the court shall consider the child support  
20 calculations included in the separate financial plan submitted  
21 with the parenting plan, the earning capacity of each parent, and  
22 the guidelines provided by the Supreme Court pursuant to section  
23 42-364.16 for the establishment of child support obligations. Upon  
24 application, hearing, and presentation of evidence of an abusive  
25 disregard of the use of child support money paid by one party

1 to the other, the court may require the party receiving such  
2 payment to file a verified report with the court, as often as  
3 the court requires, stating the manner in which such money is  
4 used. Child support paid to the party having custody of the minor  
5 child shall be the property of such party except as provided in  
6 section 43-512.07. The clerk of the district court shall maintain  
7 a record, separate from all other judgment dockets, of all decrees  
8 and orders in which the payment of child support or spousal  
9 support has been ordered, whether ordered by a district court,  
10 county court, separate juvenile court, or county court sitting as a  
11 juvenile court. Orders for child support in cases in which a party  
12 has applied for services under Title IV-D of the federal Social  
13 Security Act, as amended, shall be reviewed as provided in sections  
14 43-512.12 to 43-512.18.

15 (5) Whenever termination of parental rights is placed in  
16 issue:

17 (a) The court shall transfer jurisdiction to a juvenile  
18 court established pursuant to the Nebraska Juvenile Code unless  
19 a showing is made that the county court or district court  
20 is a more appropriate forum. In making such determination, the  
21 court may consider such factors as cost to the parties, undue  
22 delay, congestion of dockets, and relative resources available for  
23 investigative and supervisory assistance. A determination that the  
24 county court or district court is a more appropriate forum shall  
25 not be a final order for the purpose of enabling an appeal. If

1 no such transfer is made, the court shall appoint an attorney as  
2 guardian ad litem to protect the interests of any minor child.  
3 The court may terminate the parental rights of one or both parents  
4 after notice and hearing when the court finds such action to be in  
5 the best interests of the minor child, as defined in the Parenting  
6 Act, and it appears by the evidence that one or more of the grounds  
7 for termination of parental rights stated in section 43-292 exist;  
8 and

9 (b) The court shall inform a parent who does not have  
10 legal counsel of the parent's right to retain counsel and of  
11 the parent's right to retain legal counsel at county expense if  
12 such parent is unable to afford legal counsel. If such parent  
13 is unable to afford legal counsel and requests the court to  
14 appoint legal counsel, the court shall immediately appoint an  
15 attorney to represent the parent in the termination proceedings.  
16 The court shall order the county to pay the attorney's fees and  
17 all reasonable expenses incurred by the attorney in protecting the  
18 rights of the parent. At such hearing, the guardian ad litem shall  
19 take all action necessary to protect the interests of the minor  
20 child. The court shall fix the fees and expenses of the guardian ad  
21 litem and tax the same as costs but may order the county to pay on  
22 finding the responsible party indigent and unable to pay.

23 (6) Modification proceedings relating to support,  
24 custody, parenting time, visitation, other access, or removal of  
25 children from the jurisdiction of the court shall be commenced

1 by filing a complaint to modify. Modification of a parenting  
2 plan is governed by the Parenting Act. Proceedings to modify a  
3 parenting plan shall be commenced by filing a complaint to modify.  
4 Such actions may be referred to mediation, specialized alternative  
5 dispute resolution, or other alternative dispute resolution process  
6 before July 1, 2010, and on and after such date shall be referred  
7 to mediation or specialized alternative dispute resolution as  
8 provided in the Parenting Act. Service of process and other  
9 procedure shall comply with the requirements for a dissolution  
10 action.

11 (7) In any proceeding under this section relating to  
12 custody of a child of school age, certified copies of school  
13 records relating to attendance and academic progress of such child  
14 are admissible in evidence.

15 Sec. 2. Section 43-272.01, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 43-272.01 (1) A guardian ad litem as provided for in  
18 subsections (2) and (3) of section 43-272 shall be appointed  
19 when a child is removed from his or her surroundings pursuant  
20 to subdivision (3) or (4) of section 43-248, subdivision (4) of  
21 section 43-250, or section 43-251. If removal has not occurred, a  
22 guardian ad litem shall be appointed at the commencement of all  
23 cases brought under subdivision (3)(a) or (8) of section 43-247 and  
24 section 28-707.

25 (2) In the course of discharging duties as guardian ad

1 litem, the person so appointed shall consider, but not be limited  
2 to, the criteria provided in this subsection. The guardian ad  
3 litem:

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

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

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

23 (d) Shall make every reasonable effort to become  
24 familiar with the needs of the protected juvenile which (i) shall  
25 include consultation with the juvenile within two weeks after the

1 appointment and once every six months thereafter and inquiry of  
2 the most current caseworker, foster parent, or other custodian  
3 and (ii) may include inquiry of others directly involved with  
4 the juvenile or who may have information or knowledge about the  
5 circumstances which brought the juvenile court action or related  
6 cases and the development of the juvenile, including biological  
7 parents, physicians, psychologists, teachers, and clergy members;

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

13 (f) Shall be responsible for making recommendations to  
14 the court regarding the temporary and permanent placement of the  
15 protected juvenile and shall submit a written report to the court  
16 at every dispositional or review hearing, or in the alternative,  
17 the court may provide the guardian ad litem with a checklist  
18 that shall be completed and presented to the court at every  
19 dispositional or review hearing;

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

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

25 (3) Nothing in this section shall operate to limit the



1 discretion of the juvenile court in protecting the best interests  
2 of a juvenile who is the subject of a juvenile court petition.

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

11 Sec. 3. Section 43-1311, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 43-1311 Except as otherwise provided in the Nebraska  
14 Indian Child Welfare Act, immediately following removal of a child  
15 from his or her home pursuant to section 43-284, the person or  
16 court in charge of the child shall:

17 (1) Conduct or cause to be conducted an investigation  
18 of the child's circumstances designed to establish a safe and  
19 appropriate plan for the rehabilitation of the foster child and  
20 family unit or permanent placement of the child;

21 (2) Require that the child receive a medical examination  
22 within two weeks of his or her removal from his or her home; ~~and~~

23 (3) Subject the child to such further diagnosis and  
24 evaluation as is necessary; and -

25 (4) Require that the child attend the same school as

1 prior to the foster care placement unless the person or court in  
2 charge determines that attending such school would not be in the  
3 best interests of the child.

4           Sec. 4. Section 43-1312, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           43-1312 (1) Following the investigation conducted  
7 pursuant to section 43-1311 and immediately following the initial  
8 placement of the child, the person or court in charge of the child  
9 shall cause to be established a safe and appropriate plan for the  
10 child. The plan shall contain at least the following:

11           (a) The purpose for which the child has been placed in  
12 foster care;

13           (b) The estimated length of time necessary to achieve the  
14 purposes of the foster care placement;

15           (c) A description of the services which are to be  
16 provided in order to accomplish the purposes of the foster care  
17 placement;

18           (d) The person or persons who are directly responsible  
19 for the implementation of such plan; and

20           (e) A complete record of the previous placements of the  
21 foster child; and -

22           (f) The school district the child shall attend with  
23 preference given to the school district that the child attended  
24 prior to the foster care placement unless the person or court in  
25 charge determines that attending such school would not be in the

1 best interests of the child.

2 (2) If the return of the child to his or her parents  
3 is not likely based upon facts developed as a result of the  
4 investigation, the Department of Health and Human Services shall  
5 recommend termination of parental rights and referral for adoption,  
6 guardianship, placement with a relative, or, as a last resort,  
7 another planned permanent living arrangement.

8 (3) Each child in foster care under the supervision of  
9 the state shall have a permanency hearing by a court, no later  
10 than twelve months after the date the child enters foster care  
11 and annually thereafter during the continuation of foster care. The  
12 court's order shall include a finding regarding the appropriateness  
13 of the permanency plan determined for the child and shall include  
14 whether, and if applicable when, the child will be:

15 (a) Returned to the parent;

16 (b) Referred to the state for filing of a petition for  
17 termination of parental rights;

18 (c) Placed for adoption;

19 (d) Referred for guardianship; or

20 (e) In cases where the state agency has documented to the  
21 court a compelling reason for determining that it would not be in  
22 the best interests of the child to return home, (i) referred for  
23 termination of parental rights, (ii) placed for adoption with a fit  
24 and willing relative, or (iii) placed with a guardian.

25 Sec. 5. Section 43-2404.02, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2           43-2404.02 (1) There is created a separate and distinct  
3 budgetary program within the commission to be known as the County  
4 Juvenile Services Aid Program. Funding acquired from participation  
5 in the federal act, state General Funds, and funding acquired  
6 from other sources which may be used for purposes consistent with  
7 the Juvenile Services Act and the federal act shall be used to  
8 aid counties in the establishment and provision of community-based  
9 services for accused and adjudicated juvenile offenders and to  
10 increase capacity for community-based services to juveniles.

11           (2) The annual General Fund appropriation to the County  
12 Juvenile Services Aid Program shall be apportioned to the counties  
13 as aid in accordance with a formula established in rules and  
14 regulations adopted and promulgated by the commission. The formula  
15 shall be based on the total number of residents per county who  
16 are twelve years of age through eighteen years of age and other  
17 relevant factors as determined by the commission. The commission  
18 may require a local match of up to forty percent from counties  
19 receiving aid under such program. Any local expenditures for  
20 community-based programs for juveniles may be applied toward such  
21 match requirement.

22           (3) Funds provided to counties under the County Juvenile  
23 Services Aid Program shall be used exclusively to assist counties  
24 in implementation and operation of programs or services identified  
25 in their comprehensive juvenile services plan, including, but not

1 limited to, programs for assessment and evaluation, prevention of  
2 delinquent behavior, diversion, shelter care, intensive juvenile  
3 probation services, restitution, family support services, and  
4 family group conferencing. No funds appropriated or distributed  
5 under the County Juvenile Services Aid Program shall be used for  
6 construction of secure detention facilities, secure youth treatment  
7 facilities, or secure youth confinement facilities. Aid received  
8 under this section shall not be used for capital construction or  
9 the lease or acquisition of facilities and shall not be used to  
10 replace existing funding for programs or services. Any funds not  
11 distributed to counties under this subsection shall be reallocated  
12 to the learning community coordinating council governing a learning  
13 community certified pursuant to section 79-2102 to be used to  
14 provide grants to nonprofit organizations with programming designed  
15 to ensure school attendance by truant students and prevent future  
16 truancy and other behavioral problems. Such services may include,  
17 but need not be limited to, mentoring and homework assistance,  
18 tutoring to assist with fundamental reading and mathematics skills,  
19 after-school activities, job-skills training, or alternative school  
20 options or other services which will carry out the purposes of the  
21 grants.

22 (4) Any county receiving funding under the County  
23 Juvenile Services Aid Program shall file an annual report as  
24 required by rules and regulations adopted and promulgated by the  
25 commission. The report shall include, but not be limited to,

1 information on the total number of juveniles served, the units of  
2 service provided, a listing of the county's annual juvenile justice  
3 budgeted and actual expenditures, and a listing of expenditures for  
4 detention, residential treatment, and nonresidential treatment.

5 (5) The commission shall report annually to the Governor  
6 and the Legislature on the distribution and use of funds  
7 appropriated under the County Juvenile Services Aid Program.

8 (6) The commission shall adopt and promulgate rules and  
9 regulations to implement this section.

10 Sec. 6. Section 43-2923, Revised Statutes Supplement,  
11 2007, is amended to read:

12 43-2923 (1) The best interests of the child require:

13 (a) A parenting arrangement and parenting plan or other  
14 court-ordered arrangement which provides for a child's safety,  
15 emotional growth, health, stability, and physical care and regular  
16 and continuous school attendance and progress for school-age  
17 children;

18 (b) When a preponderance of the evidence indicates  
19 domestic intimate partner abuse, a parenting and visitation  
20 arrangement that provides for the safety of a victim parent;

21 (c) That the child's families and those serving in  
22 parenting roles remain appropriately active and involved in  
23 parenting with safe, appropriate, continuing quality contact  
24 between children and their families when they have shown the  
25 ability to act in the best interests of the child and have shared

1 in the responsibilities of raising the child;

2 (d) That even when parents have voluntarily negotiated  
3 or mutually mediated and agreed upon a parenting plan, the court  
4 shall determine whether it is in the best interests of the child  
5 for parents to maintain continued communications with each other  
6 and to make joint decisions in performing parenting functions as  
7 are necessary for the care and healthy development of the child. If  
8 the court rejects a parenting plan, the court shall provide written  
9 findings as to why the parenting plan is not in the best interests  
10 of the child; and

11 (e) That certain principles provide a basis upon which  
12 education of parents is delivered and upon which negotiation and  
13 mediation of parenting plans are conducted. Such principles shall  
14 include: To minimize the potentially negative impact of parental  
15 conflict on children; to provide parents the tools they need to  
16 reach parenting decisions that are in the best interests of a  
17 child; to provide alternative dispute resolution or specialized  
18 alternative dispute resolution options that are less adversarial  
19 for the child and the family; to ensure that the child's voice  
20 is heard and considered in parenting decisions; to maximize the  
21 safety of family members through the justice process; and, in  
22 cases of domestic intimate partner abuse or child abuse or neglect,  
23 to incorporate the principles of victim safety and sensitivity,  
24 offender accountability, and community safety in parenting plan  
25 decisions.

1           (2) (a) If a party is absent or relocates from the family  
2 residence, the court shall not consider the absence or relocation  
3 as a factor in determining the best interests of the child if:

4           (i) The absence or relocation is of short duration or  
5 by agreement of the parties and the court finds that, during the  
6 period of absence or relocation, the party has demonstrated an  
7 interest in maintaining custody, parenting time, visitation, or  
8 other access, the party maintains, or makes reasonable efforts to  
9 maintain, regular contact with the child, and the party's behavior  
10 demonstrates no intent to abandon the child;

11           (ii) The party is absent or relocates because of an act  
12 or acts of actual or threatened abuse by the other party; or

13           (iii) The party is absent or relocates because there is  
14 a protection order, restraining order, or criminal no-contact order  
15 issued that excludes the party from the dwelling of the other  
16 party or the child or otherwise enjoins the party from assault or  
17 harassment against the other party or the child.

18           (b) This subsection does not apply to a party who  
19 abandons a child as provided in section 28-705.

20           (3) A party's absence, relocation, or failure to comply  
21 with custody, parenting time, visitation, or other access orders  
22 shall not, by itself, be sufficient to justify a modification of  
23 an order if the reason for the absence, relocation, or failure to  
24 comply is the party's activation to military service and deployment  
25 out of state.



1           Sec. 7. Section 43-2929, Revised Statutes Supplement,  
2 2007, is amended to read:

3           43-2929 (1) In any proceeding in which parenting  
4 functions for a child are at issue under Chapter 42, a parenting  
5 plan shall be developed and shall be approved by the court. Court  
6 rule may provide for the parenting plan to be developed by the  
7 parties or their counsel, a court conciliation program, an approved  
8 mediation center, or a private mediator. When a parenting plan has  
9 not been developed and submitted to the court, the court shall  
10 create the parenting plan in accordance with the Parenting Act. A  
11 parenting plan shall serve the best interests of the child pursuant  
12 to sections 42-364 and 43-2923 and shall:

13           (a) Assist in developing a restructured family that  
14 serves the best interests of the child by accomplishing the  
15 parenting functions; and

16           (b) Include, but not be limited to, determinations of the  
17 following:

18           (i) Legal custody and physical custody of each child;

19           (ii) Apportionment of parenting time, visitation, or  
20 other access for each child, including, but not limited to,  
21 specified religious and secular holidays, birthdays, Mother's Day,  
22 Father's Day, school and family vacations, and other special  
23 occasions, specifying dates and times for the same, or a formula  
24 or method for determining such a schedule in sufficient detail  
25 that, if necessary, the schedule can be enforced in subsequent

1 proceedings by the court, and set out appropriate times and numbers  
2 for telephone access;

3 (iii) Location of the child during the week, weekend, and  
4 given days during the year;

5 (iv) A transition plan, including the time and places for  
6 transfer of the child, method of communication or amount and type  
7 of contact between the parties during transfers, and duties related  
8 to transportation of the child during transfers;

9 (v) Procedures for making decisions regarding the  
10 day-to-day care and control of the child consistent with the major  
11 decisions made by the person or persons who have legal custody and  
12 responsibility for parenting functions;

13 (vi) Provisions for a remediation process regarding  
14 future modifications to such plan;

15 (vii) Arrangements to maximize the safety of all parties  
16 and the child; and

17 (viii) Provisions to ensure regular and continuous school  
18 attendance and progress for school-age children of the parties; and

19 ~~(viii)~~ (ix) Provisions for safety when a preponderance of  
20 the evidence establishes child abuse or neglect, domestic intimate  
21 partner abuse, unresolved parental conflict, or criminal activity  
22 which is directly harmful to a child.

23 (2) A parenting plan shall require that a party provide  
24 notification if the party plans to change the residence of the  
25 child for more than thirty days and the change would affect

1 any other party's custody, parenting time, visitation, or other  
2 access. The notice shall be given before the contemplated move, by  
3 mail, return receipt requested, postage prepaid, to the last-known  
4 address of the party to be notified; except that the address or  
5 return address shall only include the county and state for a party  
6 who is living or moving to an undisclosed location because of  
7 safety concerns. A copy of the notice shall also be sent to the  
8 affected party's counsel of record. To the extent feasible, the  
9 notice shall be provided within a minimum of forty-five days before  
10 the proposed change of residence so as to allow time for mediation  
11 of a new agreement concerning custody, parenting time, visitation,  
12 or other access.

13 (3) When safe and appropriate for the best interests of  
14 the child, the parenting plan may encourage mutual discussion of  
15 major decisions regarding parenting functions including the child's  
16 education, health care, and spiritual or religious upbringing.  
17 However, when a prior factual determination of child abuse or  
18 neglect, domestic intimate partner abuse, or unresolved parental  
19 conflict has been made, then consideration shall be given to  
20 inclusion of provisions for safety and a transition plan that  
21 restrict communication or the amount and type of contact between  
22 the parties during transfers.

23 (4) Regardless of the custody determinations in the  
24 parenting plan, unless parental rights are terminated, both parents  
25 shall continue to have the rights stated in section 42-381.

1           (5) The parenting plan shall be accompanied by  
2 a financial plan which shall provide for apportionment of  
3 the expenses for medical support, including provisions for  
4 medical, dental, and eye care, medical reimbursements, day care,  
5 extracurricular activity, education, and other extraordinary  
6 expenses of the child and calculation of child support obligations.

7           (6) In the development of a parenting plan, consideration  
8 shall be given to the child's age, the child's developmental needs,  
9 and the child's perspective, as well as consideration of enhancing  
10 healthy relationships between the child and each party.

11           Sec. 8. Section 43-3001, Revised Statutes Cumulative  
12 Supplement, 2006, is amended to read:

13           43-3001 (1) Notwithstanding any other provision of law  
14 regarding the confidentiality of records and when not prohibited by  
15 the federal Privacy Act of 1974, as amended, juvenile court records  
16 and any other pertinent information that may be in the possession  
17 of school districts, county attorneys, the Attorney General, law  
18 enforcement agencies, child advocacy centers, state probation  
19 personnel, state parole personnel, youth detention facilities,  
20 medical personnel, treatment or placement programs, the Department  
21 of Health and Human Services, the Department of Correctional  
22 Services, the State Foster Care Review Board, child abuse and  
23 neglect investigation teams, child abuse and neglect treatment  
24 teams, or other multidisciplinary teams for abuse, neglect, or  
25 delinquency concerning a child who is in the custody of the

1 state may be shared with individuals and agencies who have been  
2 identified in a court order authorized by this section.

3 (2) In any judicial proceeding concerning a child who is  
4 currently, or who may become at the conclusion of the proceeding,  
5 a ward of the court or state or under the supervision of the  
6 court, an order may be issued which identifies individuals and  
7 agencies who shall be allowed to receive otherwise confidential  
8 information concerning the child for legitimate and official  
9 purposes. The individuals and agencies who may be identified in  
10 the court order are the child's attorney or guardian ad litem, the  
11 parents' attorney, foster parents, appropriate school personnel,  
12 county attorneys, the Attorney General, authorized court personnel,  
13 law enforcement agencies, state probation personnel, state parole  
14 personnel, youth detention facilities, medical personnel, treatment  
15 or placement programs, the Department of Health and Human Services,  
16 the Office of Juvenile Services, the Department of Correctional  
17 Services, the State Foster Care Review Board, child abuse and  
18 neglect investigation teams, child abuse and neglect treatment  
19 teams, and other multidisciplinary teams for abuse, neglect, or  
20 delinquency. Unless the order otherwise states, the order shall be  
21 effective until the child leaves the custody of the state or until  
22 a new order is issued.

23 (3) All information acquired by an individual or agency  
24 pursuant to this section shall be confidential and shall not  
25 be disclosed except to other persons who have a legitimate and

1 official interest in the information and are identified in the  
2 court order issued pursuant to this section with respect to the  
3 child in question. A person who receives such information or  
4 who cooperates in good faith with other individuals and agencies  
5 identified in the appropriate court order by providing information  
6 or records about a child shall be immune from any civil or criminal  
7 liability. The provisions of this section granting immunity from  
8 liability shall not be extended to any person alleged to have  
9 committed an act of child abuse or neglect.

10 (4) Any In any proceeding under this section relating to  
11 a child of school age, certified copies of school records relating  
12 to attendance and academic progress of such child are admissible in  
13 evidence.

14 (5) Except as provided in subsection (4) of this section,  
15 any person who publicly discloses information received pursuant to  
16 this section shall be guilty of a Class III misdemeanor.

17 Sec. 9. Section 79-209, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 79-209 In all school districts in this state, any  
20 superintendent, principal, teacher, or member of the school board  
21 who knows of any violation of section 79-201 on the part of any  
22 child of school age, his or her parent, the person in actual or  
23 legal control of such child, or any other person shall within  
24 three days report such violation to the attendance officer of  
25 the school, who shall investigate the case. When of his or her

1 personal knowledge, by report or complaint from any resident of the  
2 district, or by report or complaint as provided in this section,  
3 the attendance officer believes that any child is unlawfully absent  
4 from school, the attendance officer shall immediately investigate.

5 All school districts shall have a written policy on  
6 excessive absenteeism. The policy shall state the number of  
7 absences or the hourly equivalent upon the occurrence of which  
8 the school shall render all services in its power to compel  
9 such child to attend some public, private, denominational, or  
10 parochial school, which the person having control of the child  
11 shall designate, in an attempt to remediate the child's truant  
12 behavior. The number of absences in the policy shall not exceed  
13 five days per quarter or the hourly equivalent. ~~School districts~~  
14 ~~may use excused and unexcused absences for purposes of the policy.~~  
15 Such services shall include, but need not be limited to:

16 (1) One or more meetings between a school attendance  
17 officer, school social worker or other person designated by the  
18 school administration if such school does not have a school  
19 social worker, the child's parent or guardian, and the child, if  
20 necessary, to report and to attempt to solve the truancy problem;  
21  ~~unless the officer or worker has documented the refusal of the~~  
22  ~~parent or guardian to participate in such meetings;~~

23 (2) Educational counseling to determine whether  
24 curriculum changes, including, but not limited to, enrolling the  
25 child in an alternative education program that meets the specific

1 educational and behavioral needs of the child, would help solve  
2 the truancy problem;

3 (3) Educational evaluation, which may include a  
4 psychological evaluation, to assist in determining the specific  
5 condition, if any, contributing to the truancy problem,  
6 supplemented by specific efforts by the school to help remedy any  
7 condition diagnosed; ~~and~~

8 (4) Investigation of the truancy problem by the school  
9 social worker, or if such school does not have a school social  
10 worker, by another person designated by the administration, to  
11 identify conditions which may be contributing to the truancy  
12 problem. If services for the child and his or her family are  
13 determined to be needed, the school social worker or other person  
14 performing the investigation shall meet with the parent or guardian  
15 and the child to discuss any referral to appropriate community  
16 agencies for economic services, family or individual counseling,  
17 or other services required to remedy the conditions that are  
18 contributing to the truancy problem; and -

19 (5) Mediation pursuant to section 12 of this act.

20 If the child continues to be or becomes habitually  
21 truant, the attendance officer shall serve a written notice to  
22 the person violating section 79-201, warning him or her to comply  
23 with its provisions. If within one week after the time such  
24 notice is given such person is still violating the section, the  
25 attendance officer shall file a report with the county attorney



1 of the county in which such person resides. All school districts  
2 shall have a written policy describing notification of habitual  
3 truancy to the county attorney. The number of absences in the  
4 policy shall not exceed twenty days cumulative per year or the  
5 hourly equivalent. ~~School districts may use excused and unexcused~~  
6 ~~absences for purposes of the policy.~~ The county attorney may file  
7 a complaint against such person before the judge of the county  
8 court of the county in which such person resides charging such  
9 person with violation of section 79-201. If after such notice has  
10 been sent to any person violating such section such person again  
11 violates the same section, no written notice shall be required but  
12 a complaint may be filed at once.

13           Sec. 10. Section 79-210, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           79-210 Any person violating the provisions of sections  
16 79-201 to 79-209:

17           (1) For a first offense, shall be guilty of an  
18 infraction, shall receive a citation, and shall be fined fifty  
19 dollars, which fine may be waived if he or she participates in  
20 mediation pursuant to section 12 of this act;

21           (2) For a second offense, shall be guilty of an  
22 infraction, shall receive a citation, and shall be fined one  
23 hundred dollars, which fine may be waived if he or she participates  
24 in mediation pursuant to section 12 of this act; and

25           (3) For a third or subsequent offense, shall be guilty of

1 a Class III misdemeanor.

2 Citations under this section shall be issued as provided  
3 in section 12 of this act and shall contain notice of the waiver  
4 provisions of subdivisions (1) and (2) of this section.

5 Sec. 11. Section 79-215, Revised Statutes Cumulative  
6 Supplement, 2006, is amended to read:

7 79-215 (1) Except as otherwise provided in this section,  
8 a student is a resident of the school district where he or she  
9 resides or any school district where at least one of his or her  
10 parents reside and shall be admitted to any such school district  
11 upon request without charge.

12 (2) A school board shall admit any homeless student that  
13 requests admission without charge.

14 (3) A school board may allow a student whose residency  
15 in the district ceases during a school year to continue attending  
16 school in such district for the remainder of that school year.

17 (4) A school board may admit nonresident students to the  
18 school district pursuant to a contract with the district where the  
19 student is a resident and shall collect tuition pursuant to the  
20 contract.

21 (5) A school board may admit nonresident students to  
22 the school district pursuant to the enrollment option program as  
23 authorized by sections 79-232 to 79-246, and such admission shall  
24 be without charge.

25 (6) A school board may admit a student who is a resident

1 of another state to the school district and collect tuition in  
2 advance at a rate determined by the school board.

3 (7) When a student as a ward of the state or as a ward  
4 of any court (a) has been placed in a school district other than  
5 the district in which he or she resided at the time he or she  
6 became a ward and such ward does not reside in a foster family home  
7 licensed or approved by the Department of Health and Human Services  
8 or a foster home maintained or used pursuant to section 83-108.04  
9 or (b) has been placed in any institution which maintains a special  
10 education program which has been approved by the State Department  
11 of Education and such institution is not owned or operated by  
12 the district in which he or she resided at the time he or she  
13 became a ward, the cost of his or her education and the required  
14 transportation costs associated with the student's education shall  
15 be paid by the state, but not in advance, to the receiving  
16 school district or approved institution under rules and regulations  
17 prescribed by the Department of Health and Human Services and the  
18 student shall remain a resident of the district in which he or  
19 she resided at the time he or she became a ward. Any student who  
20 is a ward of the state or a ward of any court who resides in a  
21 foster family home licensed or approved by the Department of Health  
22 and Human Services or a foster home maintained or used pursuant  
23 to section 83-108.04 shall be deemed a resident of the district  
24 in which he or she resided at the time he or she became a foster  
25 child, unless it is determined under section 43-1311 or 43-1312

1 that he or she will not attend such district in which case he or  
2 she shall be deemed a resident of the district in which the foster  
3 family home or foster home is located.

4           (8) When a student is not a ward of the state or  
5 a ward of any court and is residing in a residential setting  
6 located in Nebraska for reasons other than to receive an education  
7 and the residential setting is operated by a service provider  
8 which is certified or licensed by the Department of Health and  
9 Human Services or is enrolled in the medical assistance program  
10 established pursuant to the Medical Assistance Act and Title XIX  
11 or XXI of the federal Social Security Act, as amended, the student  
12 shall remain a resident of the district in which he or she  
13 resided immediately prior to residing in such residential setting.  
14 Upon request by a parent or legal guardian, the resident school  
15 district shall contract with the district in which such residential  
16 setting is located for the provision of all educational services,  
17 including all special education services. If the parent or legal  
18 guardian has requested that the resident school district contract  
19 with the district in which such residential setting is located,  
20 the district in which such residential setting is located shall  
21 contract with the resident district and provide all educational  
22 services, including all special education services, to the student.  
23 If the two districts cannot agree on the amount of the contract,  
24 the State Department of Education shall determine the amount  
25 to be paid by the resident district to the district in which

1 such residential setting is located based on the needs of the  
2 student, approved special education rates, the department's general  
3 experience with special education budgets, and the cost per student  
4 in the district in which such residential setting is located. Once  
5 the contract has been entered into, all legal responsibility for  
6 special education and related services shall be transferred to the  
7 school district in which the residential setting is located. The  
8 resident district for a student who is not a ward of the state or a  
9 ward of any court does not change when the student moves from one  
10 residential setting to another.

11 (9) In the case of any individual eighteen years of  
12 age or younger who is a ward of the state or any court and who  
13 is placed in a county detention home established under section  
14 43-2,110, the cost of his or her education shall be paid by the  
15 state, regardless of the district in which he or she resided at  
16 the time he or she became a ward, to the agency or institution  
17 which: (a) Is selected by the county board with jurisdiction over  
18 such detention home; (b) has agreed or contracted with such county  
19 board to provide educational services; and (c) has been approved by  
20 the State Department of Education pursuant to rules and regulations  
21 prescribed by the State Board of Education.

22 (10) No tuition shall be charged for students who may be  
23 by law allowed to attend the school without charge.

24 (11) On a form prescribed by the State Department of  
25 Education, an adult with legal or actual charge or control of a

1 student shall provide the name of the student, the name of the  
2 adult with legal or actual charge or control of the student, the  
3 address where the student is residing, and the telephone number  
4 and address where the adult may generally be reached during the  
5 school day. If the student is homeless or if the adult does not  
6 have a telephone number and address where he or she may generally  
7 be reached during the school day, those parts of the form may be  
8 left blank and a box may be marked acknowledging that these are the  
9 reasons these parts of the form were left blank. The adult with  
10 legal or actual charge or control of the student shall also sign  
11 the form.

12 (12) The department shall adopt and promulgate rules and  
13 regulations to carry out the department's responsibilities under  
14 this section.

15 Sec. 12. (1) If the parent or person who has legal or  
16 actual charge or control of a child who is truant as provided in  
17 sections 79-201 to 79-209 refuses to accept the school's attempt  
18 to assure the child's attendance pursuant to such sections or if  
19 the school's attempt to assure the child's attendance is otherwise  
20 unsuccessful, the school district attendance officer shall refer  
21 the matter to the county attorney. The county attorney shall issue  
22 a citation pursuant to section 79-210 to the parent or person who  
23 has legal or actual charge or control of the child. The citation  
24 shall include statements that (a) the fine imposed pursuant to  
25 such section will be waived if such parent or person chooses to

1 participate in mediation and (b) if such parent or person chooses  
2 to participate in mediation, he or she shall contact the county  
3 court clerk for a list of approved mediators.

4 (2) If a person receiving a citation under section 79-210  
5 chooses to participate in mediation as provided in this section,  
6 he or she shall contact the county court of the county in which  
7 the citation was issued to obtain a list of approved mediators.  
8 Such person and the school attendance officer together shall select  
9 a mediator from such list. Mediation services may be provided by  
10 the Office of Dispute Resolution or by any other mediator on such  
11 list. The mediator selected shall contact the school, the person  
12 receiving the citation, and any other person the mediator deems  
13 appropriate in the matter and arrange meeting dates and times for  
14 discussion of the child's truancy. In a school district within a  
15 learning community encompassing a city of the metropolitan class,  
16 mediation shall take place at an elementary learning center in  
17 the learning community, whether the child is in elementary school,  
18 middle school, or high school. In any other school district,  
19 the mediator shall establish a location for mediation which is  
20 convenient for the parties. The mediator shall attempt to ascertain  
21 the cause of the child's truancy, attempt to cause the parties  
22 to arrive at an agreement relative to the child's attendance, and  
23 initiate referrals to any agencies or counseling that the mediator  
24 believes to be appropriate under the circumstances.

25 (3) If the parties reach an agreement, the agreement

1 shall be reduced to writing and signed by the school attendance  
2 officer, the child's parent or person who has legal or actual  
3 charge or control of the child, and the child. The mediator, the  
4 school attendance officer, and the parent or person who has legal  
5 or actual charge or control of the child shall each receive a copy  
6 of the agreement which shall set forth the settlement of the issues  
7 and future responsibilities of each party.

8 (4) The school district shall be responsible for  
9 monitoring any agreements arrived at through mediation.

10 (5) The parent or person who has legal or actual charge  
11 or control of the child and the school shall pay the cost of  
12 mediation services. If the mediator selected is associated with an  
13 approved mediation center under the Dispute Resolution Act, payment  
14 shall be based on the sliding scale of fees developed pursuant  
15 to section 25-2908. A parent or person who has legal or actual  
16 charge or control of a child shall not be denied the services of a  
17 mediator solely because of inability to pay his or her portion of  
18 the cost of mediation services.

19 (6) If a parent or person who has legal or actual  
20 charge or control of the child initially chooses to participate  
21 in mediation but then fails to carry out the requirements of this  
22 section, he or she shall pay the fine required by section 79-210.

23 Sec. 13. Original sections 43-272.01, 43-1311, 43-1312,  
24 79-209, and 79-210, Reissue Revised Statutes of Nebraska, sections  
25 43-2404.02, 43-3001, and 79-215, Revised Statutes Cumulative



LB 1159

LB 1159

- 1 Supplement, 2006, and sections 42-364, 43-2923, and 43-2929,
- 2 Revised Statutes Supplement, 2007, are repealed.