

LEGISLATURE OF NEBRASKA
 ONE HUNDRED SECOND LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 177

Final Reading

Introduced by Campbell, 25; Hansen, 42; Pirsch, 4.

Read first time January 07, 2011

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to health and human services; to amend sections
 2 43-905, 43-1301, 43-1311, 43-1312, 43-1318, 68-1202, and
 3 68-1204, Reissue Revised Statutes of Nebraska, and
 4 section 43-285, Revised Statutes Cumulative Supplement,
 5 2010; to provide for a written independent living
 6 transition proposal for children in foster care; to
 7 provide for notification of relatives when a child is
 8 removed from his or her home; to require reasonable
 9 efforts for joint-sibling placement or sibling visitation
 10 or ongoing interactions; to change provisions relating to
 11 placement of children and the purchase and provision of
 12 social services; to harmonize provisions; and to repeal
 13 the original sections.

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

1 Section 1. Section 43-285, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 43-285 (1) When the court awards a juvenile to the care
4 of the Department of Health and Human Services, an association, or an
5 individual in accordance with the Nebraska Juvenile Code, the
6 juvenile shall, unless otherwise ordered, become a ward and be
7 subject to the guardianship of the department, association, or
8 individual to whose care he or she is committed. Any such association
9 and the department shall have authority, by and with the assent of
10 the court, to determine the care, placement, medical services,
11 psychiatric services, training, and expenditures on behalf of each
12 juvenile committed to it. Such guardianship shall not include the
13 guardianship of any estate of the juvenile.

14 (2) Following an adjudication hearing at which a juvenile
15 is adjudged to be under subdivision (3) of section 43-247, the court
16 may order the department to prepare and file with the court a
17 proposed plan for the care, placement, services, and permanency which
18 are to be provided to such juvenile and his or her family. The health
19 and safety of the juvenile shall be the paramount concern in the
20 proposed plan. The department shall include in the plan for a
21 juvenile who is sixteen years of age or older and subject to the
22 guardianship of the department a written ~~proposal describing programs~~
23 ~~and services designed to assist the juvenile in acquiring independent~~
24 ~~living skills.~~ independent living transition proposal which meets the
25 requirements of section 8 of this act. If any other party, including,

1 but not limited to, the guardian ad litem, parents, county attorney,
2 or custodian, proves by a preponderance of the evidence that the
3 department's plan is not in the juvenile's best interests, the court
4 shall disapprove the department's plan. The court may modify the
5 plan, order that an alternative plan be developed, or implement
6 another plan that is in the juvenile's best interests. In its order
7 the court shall include a finding regarding the appropriateness of
8 the programs and services described in the proposal designed to
9 assist the juvenile in acquiring independent living skills. Rules of
10 evidence shall not apply at the dispositional hearing when the court
11 considers the plan that has been presented.

12 (3) Within thirty days after an order awarding a juvenile
13 to the care of the department, an association, or an individual and
14 until the juvenile reaches the age of majority, the department,
15 association, or individual shall file with the court a report stating
16 the location of the juvenile's placement and the needs of the
17 juvenile in order to effectuate the purposes of subdivision (1) of
18 section 43-246. The department, association, or individual shall file
19 a report with the court once every six months or at shorter intervals
20 if ordered by the court or deemed appropriate by the department,
21 association, or individual. The department, association, or
22 individual shall file a report and notice of placement change with
23 the court and shall send copies of the notice to all interested
24 parties at least seven days before the placement of the juvenile is
25 changed from what the court originally considered to be a suitable

1 family home or institution to some other custodial situation in order
2 to effectuate the purposes of subdivision (1) of section 43-246. The
3 court, on its own motion or upon the filing of an objection to the
4 change by an interested party, may order a hearing to review such a
5 change in placement and may order that the change be stayed until the
6 completion of the hearing. Nothing in this section shall prevent the
7 court on an ex parte basis from approving an immediate change in
8 placement upon good cause shown. The department may make an immediate
9 change in placement without court approval only if the juvenile is in
10 a harmful or dangerous situation or when the foster parents request
11 that the juvenile be removed from their home. Approval of the court
12 shall be sought within twenty-four hours after making the change in
13 placement or as soon thereafter as possible. The department shall
14 provide the juvenile's guardian ad litem with a copy of any report
15 filed with the court by the department pursuant to this subsection.

16 (4) The court shall also hold a permanency hearing if
17 required under section 43-1312.

18 (5) When the court awards a juvenile to the care of the
19 department, an association, or an individual, then the department,
20 association, or individual shall have standing as a party to file any
21 pleading or motion, to be heard by the court with regard to such
22 filings, and to be granted any review or relief requested in such
23 filings consistent with the Nebraska Juvenile Code.

24 (6) Whenever a juvenile is in a foster care placement as
25 defined in section 43-1301, the State Foster Care Review Board may

1 participate in proceedings concerning the juvenile as provided in
2 section 43-1313 and notice shall be given as provided in section
3 43-1314.

4 (7) Any written findings or recommendations of the State
5 Foster Care Review Board or any designated local foster care review
6 board with regard to a juvenile in a foster care placement submitted
7 to a court having jurisdiction over such juvenile shall be admissible
8 in any proceeding concerning such juvenile if such findings or
9 recommendations have been provided to all other parties of record.

10 (8) Any member of the State Foster Care Review Board, any
11 of its agents or employees, or any member of any local foster care
12 review board participating in an investigation or making any report
13 pursuant to the Foster Care Review Act or participating in a judicial
14 proceeding pursuant to this section shall be immune from any civil
15 liability that would otherwise be incurred except for false
16 statements negligently made.

17 Sec. 2. Section 43-905, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 43-905 (1) The Department of Health and Human Services
20 shall be the legal guardian of all children committed to it. The
21 department shall afford temporary care and shall use special
22 diligence to provide suitable homes for such children. The department
23 shall make reasonable efforts to accomplish joint-sibling placement
24 or sibling visitation or ongoing interaction between siblings as
25 provided in section 7 of this act. The department is authorized to

1 place such children in suitable families for adoption, foster care,
2 or guardianship or, in the discretion of the department, on a written
3 contract.

4 (2) The contract shall provide (a) for the children's
5 education in the public schools or otherwise, (b) for teaching them
6 some useful occupation, and (c) for kind and proper treatment as
7 members of the family in which they are placed.

8 (3) Whenever any child who has been committed to the
9 department becomes self-supporting, the department shall declare that
10 fact and the guardianship of the department shall cease. Thereafter
11 the child shall be entitled to his or her own earnings. Guardianship
12 of and services by the department shall never extend beyond the age
13 of majority, except that services by the department to a child shall
14 continue until the child reaches the age of twenty-one if the child
15 is a student regularly attending a school, college, or university or
16 regularly attending a course of vocational or technical training
17 designed to prepare such child for gainful employment.

18 (4) Whenever the parents of any ward, whose parental
19 rights have not been terminated, have become able to support and
20 educate their child, the department shall restore the child to his or
21 her parents if the home of such parents would be a suitable home. The
22 guardianship of the department shall then cease.

23 (5) Whenever permanent free homes for the children cannot
24 be obtained, the department shall have the authority to provide and
25 pay for the maintenance of the children in private families, in

1 foster care, in guardianship, in boarding homes, or in institutions
2 for care of children.

3 Sec. 3. Section 43-1301, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 43-1301 For purposes of the Foster Care Review Act,
6 unless the context otherwise requires:

7 (1) Local board shall mean a local foster care review
8 board created pursuant to section 43-1304;

9 (2) State board shall mean the State Foster Care Review
10 Board created pursuant to section 43-1302;

11 (3) Foster care facility shall mean any foster home,
12 group home, child care facility, public agency, private agency, or
13 any other person or entity receiving and caring for foster children;

14 (4) Foster care placements shall mean all placements of
15 juveniles as described in subdivision (3)(b) of section 43-247,
16 placements of neglected, dependent, or delinquent children, including
17 those made directly by parents or by third parties, and placements of
18 children who have been voluntarily relinquished pursuant to section
19 43-106.01 to the Department of Health and Human Services or any child
20 placement agency licensed by the Department of Health and Human
21 Services;

22 (5) Person or court in charge of the child shall mean (a)
23 the Department of Health and Human Services, an association, or an
24 individual who has been made the guardian of a neglected, dependent,
25 or delinquent child by the court and has the responsibility of the

1 care of the child and has the authority by and with the assent of the
2 court to place such a child in a suitable family home or institution
3 or has been entrusted with the care of the child by a voluntary
4 placement made by a parent or legal guardian, (b) the court which has
5 jurisdiction over the child, or (c) the entity having jurisdiction
6 over the child pursuant to the Nebraska Indian Child Welfare Act;

7 (6) Voluntary placement shall mean the placement by a
8 parent or legal guardian who relinquishes the possession and care of
9 a child to a third party, individual, or agency;

10 (7) Family unit shall mean the social unit consisting of
11 the foster child and the parent or parents or any person in the
12 relationship of a parent, including a grandparent, and any siblings
13 with whom the foster child legally resided prior to placement in
14 foster care, except that for purposes of potential sibling placement,
15 the child's family unit shall also include the child's siblings even
16 if the child has not resided with such siblings prior to placement in
17 foster care;

18 (8) Child-caring agency shall have the definition found
19 in section 71-1902; ~~and~~

20 (9) Child-placing agency shall have the definition found
21 in section 71-1902; and -

22 (10) Siblings means biological siblings and legal
23 siblings, including, but not limited to, half-siblings and
24 stepsiblings.

25 Sec. 4. Section 43-1311, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 43-1311 Except as otherwise provided in the Nebraska
3 Indian Child Welfare Act, immediately following removal of a child
4 from his or her home pursuant to section 43-284, the person or court
5 in charge of the child shall:

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

10 (2) Require that the child receive a medical examination
11 within two weeks of his or her removal from his or her home;

12 (3) Subject the child to such further diagnosis and
13 evaluation as is necessary; ~~and~~

14 (4) Require that the child attend the same school as
15 prior to the foster care placement unless the person or court in
16 charge determines that attending such school would not be in the best
17 interests of the child; and -

18 (5) Notify the Department of Health and Human Services to
19 identify, locate, and provide written notification to adult relatives
20 of the child as provided in section 6 of this act.

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

23 43-1312 (1) Following the investigation conducted
24 pursuant to section 43-1311 and immediately following the initial
25 placement of the child, the person or court in charge of the child

1 shall cause to be established a safe and appropriate plan for the
2 child. The plan shall contain at least the following:

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

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

7 (c) A description of the services which are to be
8 provided in order to accomplish the purposes of the foster care
9 placement;

10 (d) The person or persons who are directly responsible
11 for the implementation of such plan;

12 (e) A complete record of the previous placements of the
13 foster child; and

14 (f) The name of the school the child shall attend as
15 provided in section 43-1311.

16 (2) If the return of the child to his or her parents is
17 not likely based upon facts developed as a result of the
18 investigation, the Department of Health and Human Services shall
19 recommend termination of parental rights and referral for adoption,
20 guardianship, placement with a relative, or, as a last resort,
21 another planned permanent living arrangement. If the child is removed
22 from his or her home, the department shall make reasonable efforts to
23 accomplish joint-sibling placement or sibling visitation or ongoing
24 interaction between the siblings as provided in section 7 of this
25 act.

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

8 (a) Returned to the parent;

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

11 (c) Placed for adoption;

12 (d) Referred for guardianship; or

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

18 Sec. 6. (1) When notified pursuant to section 43-1311 or
19 upon voluntary placement of a child, the Department of Health and
20 Human Services shall, as provided in this section, identify, locate,
21 and provide written notification of the removal of the child from his
22 or her home, within thirty days after removal, to any noncustodial
23 parent and to all grandparents, adult siblings, adult aunts, adult
24 uncles, adult cousins, and adult relatives suggested by the child or
25 the child's parents, except when that relative's history of family or

1 domestic violence makes notification inappropriate. If the child is
2 an Indian child as defined in section 43-1503, the child's extended
3 family members as defined in such section shall be notified. Such
4 notification shall include all of the following information:

5 (a) The child has been or is being removed from the
6 custody of the parent or parents of the child;

7 (b) An explanation of the options the relative has under
8 federal, state, and local law to participate in the care and
9 placement of the child, including any options that may be lost by
10 failing to respond to the notice;

11 (c) A description of the requirements for the relative to
12 serve as a foster care provider or other type of care provider for
13 the child and the additional services, training, and other support
14 available for children receiving such care; and

15 (d) Information concerning the option to apply for
16 guardianship assistance payments.

17 (2) The department shall investigate the names and
18 locations of the relatives, including, but not limited to, asking the
19 child in an age-appropriate manner about relatives important to the
20 child and obtaining information regarding the location of the
21 relatives.

22 (3) The department shall provide to the court, within
23 thirty calendar days after removal of the child, the names and
24 relationship to the child of all relatives contacted, the method of
25 contact, and the responses received from the relatives.

1 Sec. 7. (1)(a) Reasonable efforts shall be made to place
2 a child and the child's siblings in the same foster care placement or
3 adoptive placement, unless such placement is contrary to the safety
4 or well-being of any of the siblings. This requirement applies even
5 if the custody orders of the siblings are made at separate times.

6 (b) If the siblings are not placed together in a joint-
7 sibling placement, the Department of Health and Human Services shall
8 provide the siblings and the court with the reasons why a joint-
9 sibling placement would be contrary to the safety or well-being of
10 any of the siblings.

11 (2) When siblings are not placed together in a joint-
12 sibling placement, the department shall make a reasonable effort to
13 provide for frequent sibling visitation or ongoing interaction
14 between the child and the child's siblings unless the department
15 provides the siblings and the court with reasons why such sibling
16 visitation or ongoing interaction would be contrary to the safety or
17 well-being of any of the siblings. The court shall determine the type
18 and frequency of sibling visitation or ongoing interaction to be
19 implemented by the department.

20 (3) Parties to the case may file a motion for joint-
21 sibling placement, sibling visitation, or ongoing interaction between
22 siblings.

23 (4) The court shall periodically review and evaluate the
24 effectiveness and appropriateness of the joint-sibling placement,
25 sibling visitation, or ongoing interaction between siblings.

1 (5) If an order is entered for termination of parental
2 rights of siblings who are subject to this section, unless the court
3 has suspended or terminated joint-sibling placement, sibling
4 visitation, or ongoing interaction between siblings, the department
5 shall make reasonable efforts to make a joint-sibling placement or do
6 all of the following to facilitate frequent sibling visitation or
7 ongoing interaction between the child and the child's siblings when
8 the child is adopted or enters a permanent placement: (a) Include in
9 the training provided to prospective adoptive parents information
10 regarding the importance of sibling relationships to an adopted child
11 and counseling methods for maintaining sibling relationships; (b)
12 provide prospective adoptive parents with information regarding the
13 child's siblings; and (c) encourage prospective adoptive parents to
14 plan for facilitating post-adoption contact between the child and the
15 child's siblings.

16 (6) Any information regarding court-ordered or authorized
17 joint-sibling placement, sibling visitation, or ongoing interaction
18 between siblings shall be provided by the department to the parent or
19 parents if parental rights have not been terminated unless the court
20 determines that doing so would be contrary to the safety or well-
21 being of the child and to the foster parent, relative caretaker,
22 guardian, prospective adoptive parent, and child as soon as
23 reasonably possible following the entry of the court order or
24 authorization as necessary to facilitate the sibling time.

25 Sec. 8. (1) When a child placed in foster care turns

1 sixteen years of age or enters foster care and is at least sixteen
2 years of age, a written independent living transition proposal shall
3 be developed by the Department of Health and Human Services at the
4 direction and involvement of the child to prepare for the transition
5 from foster care to adulthood. The transition proposal shall be
6 personalized based on the child's needs. The transition proposal
7 shall include, but not be limited to, the following needs:

8 (a) Education;

9 (b) Employment services and other workforce support;

10 (c) Health and health care coverage;

11 (d) Financial assistance, including education on credit
12 card financing, banking, and other services;

13 (e) Housing;

14 (f) Relationship development; and

15 (g) Adult services, if the needs assessment indicates
16 that the child is reasonably likely to need or be eligible for
17 services or other support from the adult services system.

18 (2) The transition proposal shall be developed and
19 frequently reviewed by the department in collaboration with the
20 child's transition team. The transition team shall be comprised of
21 the child, the child's caseworker, the child's guardian ad litem,
22 individuals selected by the child, and individuals who have knowledge
23 of services available to the child.

24 (3) The transition proposal shall be considered a working
25 document and shall be, at the least, updated for and reviewed at

1 every permanency or review hearing by the court.

2 (4) The final transition proposal prior to the child's
3 leaving foster care shall specifically identify how the need for
4 housing will be addressed.

5 (5) If the child is interested in pursuing higher
6 education, the transition proposal shall provide for the process in
7 applying for any applicable state, federal, or private aid.

8 (6) On or before the date the child reaches nineteen
9 years of age, the department shall provide the child a certified copy
10 of the child's birth certificate and facilitate securing a federal
11 social security card when the child is eligible for such card. All
12 fees associated with securing the certified copy shall be waived by
13 the state.

14 Sec. 9. Section 43-1318, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 43-1318 Sections 43-1301 to 43-1318 and sections 6 to 8
17 of this act shall be known and may be cited as the Foster Care Review
18 Act.

19 Sec. 10. Section 68-1202, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 68-1202 Social services may be provided on behalf of
22 recipients with payments for such social services made directly to
23 vendors. Social services shall include those mandatory and optional
24 services to former, present, or potential social services recipients
25 provided for under the federal Social Security Act, as ~~such act~~

1 ~~existed on September 4, 2005, amended,~~ and described by the State of
2 Nebraska in the approved State Plan for Services. Such services may
3 include, but shall not be limited to, foster care for children, child
4 care, family planning, treatment for alcoholism and drug addiction,
5 treatment for persons with mental retardation, health-related
6 services, protective services for children, homemaker services,
7 employment services, foster care for adults, protective services for
8 adults, transportation services, home management and other functional
9 education services, housing improvement services, legal services,
10 adult day services, home delivered or congregate meals, educational
11 services, and secondary prevention services, including, but not
12 limited to, home visitation, child screening and early intervention,
13 and parenting education programs.

14 Sec. 11. Section 68-1204, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 68-1204 (1) For the purpose of providing or purchasing
17 social services described in section 68-1202, the state hereby
18 accepts and assents to all applicable provisions of the federal
19 Social Security Act, as ~~such act existed on July 1, 2006.~~ amended.
20 The Department of Health and Human Services may adopt and promulgate
21 rules and regulations, enter into agreements, and adopt fee schedules
22 with regard to social services described in section 68-1202.

23 (2) The department shall adopt and promulgate rules and
24 regulations to administer funds under Title XX of the federal Social
25 Security Act, as ~~such title existed on July 1, 2006,~~ amended,

1 designated for specialized developmental disability services.

2 Sec. 12. Original sections 43-905, 43-1301, 43-1311,
3 43-1312, 43-1318, 68-1202, and 68-1204, Reissue Revised Statutes of
4 Nebraska, and section 43-285, Revised Statutes Cumulative Supplement,
5 2010, are repealed.