

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1150

Introduced by McGill, 26.

Read first time January 19, 2012

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to foster care; to amend sections 43-285 and
2 43-905, Revised Statutes Supplement, 2011; to adopt the
3 Young Adult Voluntary Foster Care Services Act; to
4 harmonize provisions; to provide an operative date; and
5 to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 17 of this act shall be known
2 and may be cited as the Young Adult Voluntary Foster Care Services
3 Act.

4 Sec. 2. The purpose of the Young Adult Voluntary Foster
5 Care Services Act is to support former state wards in achieving
6 permanency in the transition to adulthood and in becoming independent
7 and self-sufficient in accordance with the federal Fostering
8 Connections to Success and Increasing Adoptions Act of 2008, 42
9 U.S.C. 1305, 42 U.S.C. 673, and 42 U.S.C. 675(8)(B).

10 Sec. 3. For purposes of the Young Adult Voluntary Foster
11 Care Services Act:

12 (1) Department means the Department of Health and Human
13 Services; and

14 (2) Young adult means an individual who is at least
15 nineteen years of age but less than twenty-one years of age.

16 Sec. 4. The department shall provide extended foster care
17 services on a voluntary basis to a young adult:

18 (1) Who was in foster care under the responsibility of
19 the state when the young adult reached nineteen years of age; and

20 (2) Who is:

21 (a) Completing secondary education or a program leading
22 to an equivalent credential;

23 (b) Enrolled in an institution which provides
24 postsecondary or vocational education;

25 (c) Participating in a program or activity designed to

1 promote or remove barriers to employment;

2 (d) Employed for at least eighty hours per month; or

3 (e) Incapable of doing any of the activities described in
4 subdivisions (2)(a) through (e) of this section due to a medical
5 condition, which incapability is supported by regularly updated
6 information in the case plan of the young adult.

7 Sec. 5. (1) If a young adult chooses to participate in
8 extended foster care services and meets the eligibility criteria in
9 section 4 of this act, the department and the young adult shall sign
10 a voluntary foster care agreement that includes, at a minimum,
11 information regarding:

12 (a) The obligation for the young adult to continue to
13 meet the conditions for eligibility described in section 4 of this
14 act for the duration of the voluntary foster care agreement;

15 (b) The voluntary nature of the young adult's
16 participation in receiving extended foster care services under a
17 voluntary foster care agreement; and

18 (c) Termination conditions of a voluntary foster care
19 agreement and program participation as described in section 7 of this
20 act.

21 (2) Within forty-five days after the voluntary foster
22 care agreement is signed, the department shall provide extended
23 foster care services to the young adult in accordance with the Young
24 Adult Voluntary Foster Care Services Act.

25 Sec. 6. The department shall create a clear and

1 developmentally appropriate notice discussing the rights to extended
2 foster care services under the Young Adult Voluntary Foster Care
3 Services Act for young adults who were in foster care at age
4 nineteen. The notice shall include information about the services for
5 which the young adult will be eligible and how such services may be
6 obtained. The department shall disseminate this information to all
7 young adults in foster care at least thirty days or as soon as
8 possible prior to the young adult's last court review before exiting
9 foster care.

10 Sec. 7. (1) A young adult may choose to terminate the
11 voluntary foster care agreement and stop receiving extended foster
12 care services at any time. If a young adult chooses to terminate the
13 voluntary foster care agreement, the department shall provide the
14 young adult with clear and developmentally appropriate notice
15 informing the young adult of the potential negative effects of
16 terminating the voluntary foster care agreement early, the option to
17 re-enter into a voluntary foster care agreement before reaching
18 twenty-one years of age, and the procedures for re-entering into a
19 voluntary foster care agreement.

20 (2) If the department determines that the young adult is
21 not in compliance with the eligibility requirements for the voluntary
22 foster care agreement as provided in section 4 of this act, the
23 department may terminate the voluntary foster care agreement with the
24 young adult and stop providing extended foster care services to the
25 young adult. The department shall provide a clear and developmentally

1 appropriate notice to the young adult regarding termination of the
2 voluntary foster care agreement and the young adult's participation
3 in the program, including a clear and developmentally appropriate
4 explanation of the basis for the termination at least thirty days
5 prior to termination of foster care services. The young adult may
6 appeal the termination of the voluntary foster care agreement in
7 accordance with the Administrative Procedure Act. The written
8 termination notice shall also provide information about the process
9 for appealing the termination. The written termination notice shall
10 also provide information about the process for appealing the
11 termination, the option to re-enter into a voluntary foster care
12 agreement once the young adult reestablishes eligibility under
13 section 4 of this act, and information connecting the young adult to
14 community resources specifically including information regarding
15 state programs established pursuant to 42 U.S.C. 677.

16 Sec. 8. For the purposes of the Young Adult Voluntary
17 Foster Care Services Act, extended foster care foster care services
18 includes, but is not limited to:

19 (1) Medical assistance or medicaid;

20 (2) Placement in a foster family home, an institution, or
21 an independent living setting;

22 (3) Aid for postsecondary educational or vocational
23 programs, including room and board; and

24 (4) Case management provided by the department, including
25 a written description of additional programs and services that will

1 help the young adult in achieving permanency and preparing for the
2 transition to adulthood and independent living. Case management shall
3 be a continuation of the independent living transition proposal
4 provided in section 43-1311.03. Case management may include, but is
5 not limited to, documentation that assistance has been offered and
6 provided, if appropriate, and if the young adult is eligible and
7 consents to receive such services, to:

8 (a) Obtain employment or other financial support;

9 (b) Obtain a government-issued identification card;

10 (c) Open and maintain a bank account;

11 (d) Obtain appropriate community services and programs,
12 including health, mental health, developmental disability, and other
13 disability services and supports;

14 (e) When appropriate, satisfy any juvenile justice system
15 requirements and assist with expunging the young adult's juvenile's
16 record;

17 (f) Complete secondary education;

18 (g) Apply for admission and aid for postsecondary
19 educational or vocational programs;

20 (h) Obtain the necessary state court findings and then
21 apply for special immigrant juvenile status as defined in 8 U.S.C.
22 1101(a)(27)(J) or apply for other immigration relief that the young
23 adult may be eligible for, including achievement of citizenship
24 status;

25 (i) Create a health care power of attorney as required by

1 the federal Patient Protection and Affordable Care Act, Public Law
2 111-148;

3 (j) Provide a copy of health and education records of the
4 young adult;

5 (k) Apply for any public benefits or benefits that he or
6 she may be eligible for or may be due through his or her parents or
7 relatives, including, but not limited to, aid to dependent children,
8 supplemental security income, social security disability insurance,
9 social security survivor benefits, the Special Supplemental Nutrition
10 Program for Women, Infants and Children, the Supplemental Nutrition
11 Assistance Program, and low-income home energy assistance program;

12 (l) Maintain relationships with individuals who are
13 important to the young adult, including searching for individuals
14 with whom the young adult has lost contact; and

15 (m) Access information about maternal and paternal
16 relatives, including any siblings, unless contrary to the safety and
17 well-being of the young adult.

18 Sec. 9. (1) Within forty-five days after the voluntary
19 foster care agreement is signed, the department shall file with the
20 juvenile court a written report that shall contain:

21 (a) The young adult's name, date of birth, race, gender,
22 and current address;

23 (b) A statement of facts that support the voluntary
24 foster care agreement and includes:

25 (i) The reasonable efforts made to achieve permanency for

1 the young adult; and

2 (ii) The reasons why it is in the young adult's best
3 interests to continue in voluntary foster care;

4 (c) A copy of the signed voluntary foster care agreement;

5 (d) A copy of a case plan, developed jointly with the
6 young adult, that includes a description of the identified placement
7 or living arrangement and the services and programs to assist the
8 young adult in the transition from voluntary foster care to
9 independence. The case plan shall incorporate the independent living
10 transition proposal in section 43-1311.03, if applicable; and

11 (e) Any other information the department or the young
12 adult wants the court to consider.

13 (2) The court has the jurisdiction to review the
14 voluntary foster care agreement signed by the department and the
15 young adult under section 5 of this act. Upon the filing of a report
16 under subsection (1) of this section, the court shall open a young
17 adult voluntary foster care case for the purpose of determining
18 whether continuing in voluntary foster care is in the young adult's
19 best interests and for the purpose of conducting permanency reviews
20 as described in subsection (4) of this section.

21 (3) The court shall make the best interests determination
22 as described in subsection (2) of this section not later than sixty
23 days after the date the report was filed under subsection (1) of this
24 section.

25 (4) The court shall conduct a permanency review hearing

1 regarding the voluntary foster care agreement at least once per year
2 and at additional times at the request of the young adult or the
3 department or any other party to the case.

4 (5) The permanency review shall include:

5 (a) A judicial determination to the effect that
6 continuation in the home from which removed would be contrary to the
7 welfare of the young adult and that reasonable efforts of the type
8 described in section 42 U.S.C. 671(a)(15) and section 43-283.01 have
9 been made;

10 (b) A judicial determination that reasonable efforts have
11 been made to place a child and the child's siblings in the same
12 foster care placement or adoptive placement unless such placement is
13 contrary to the safety or well-being of any of the siblings, and when
14 siblings are not placed together in a joint-sibling placement,
15 whether reasonable efforts have been made to provide for frequent
16 sibling visitation or ongoing interaction between the child and the
17 child's siblings unless such sibling visitation or ongoing
18 interaction would be contrary to the safety or well-being of any of
19 the siblings;

20 (c) The procedural protections described in 42 U.S.C.
21 675(5)(C), including that in all permanency hearings or hearings
22 regarding the transition of the young adult from foster care to
23 independent living, that the court or administrative body consults,
24 in an age-appropriate manner, with the young adult regarding the
25 proposed permanency or transition plan for the young adult; and

1 (d) Any other procedural protections that apply to
2 children under nineteen years of age under state law.

3 (6) The primary focus of the permanency review is to
4 ensure that the young adult is getting the needed support and
5 services to help the young adult move toward permanency and
6 independence. The young adult shall have a clear self-advocacy role
7 in the permanency hearing in accordance with section 10 of this act,
8 and the hearing shall support the active engagement of the young
9 adult in key decisions.

10 (7) The department shall prepare and present to the court
11 a report, developed in collaboration with the young adult, addressing
12 the young adult's progress in meeting the goals in the case plan,
13 including the independent living plan and transition plan, when
14 applicable, and shall propose modifications as necessary to further
15 those goals.

16 (8) The court shall determine whether the department is
17 providing the appropriate services as provided in the case plan. If
18 the court believes that the young adult is entitled to additional
19 services to achieve the goals enumerated in the case plan or under
20 the department's policies or state or federal law, the court may
21 order the department to take action to ensure that the young adult
22 receives the identified services.

23 Sec. 10. (1) All young adults with voluntary foster care
24 agreements shall be appointed an attorney who has received training
25 appropriate to the role. The attorney's representation of the young

1 adult shall be client-directed. The attorney shall protect the young
2 adult's legal rights and vigorously advocate for the young adult's
3 wishes and goals, including assisting the young adult as necessary to
4 ensure that the young adult receives the services required under the
5 Young Adult Voluntary Foster Care Services Act. For young adults who
6 were appointed a guardian ad litem before the age of nineteen years,
7 the guardian ad litem's appointment may be continued but under a
8 client-directed model of representation. If the young adult re-enters
9 care under section 7 of this act and does not have an attorney, the
10 court shall appoint one for the young adult.

11 (2) In addition, the court has discretion to appoint a
12 court appointed special advocate volunteer or continue the
13 appointment of a previously appointed court appointed special
14 advocate volunteer, with the young adult's consent.

15 Sec. 11. The department, in collaboration with the young
16 adult, shall conduct periodic case reviews not less than once every
17 one hundred eighty days to address the status of the young adult's
18 safety, continuing necessity and appropriateness of placement, extent
19 of compliance with the case plan, and projected date by which the
20 young adult may no longer require extended foster care services.

21 Sec. 12. The department shall provide extended
22 guardianship assistance for a young adult if the young adult began
23 receiving guardianship assistance at sixteen years of age or older.

24 Sec. 13. The department shall provide extended
25 guardianship assistance in accordance with the Young Adult Voluntary

1 Foster Care Services Act if the young adult meets at least one of the
2 following conditions for eligibility:

3 (1) The young adult is completing secondary education or
4 a program leading to an equivalent credential;

5 (2) The young adult is enrolled in an institution that
6 provides postsecondary or vocational education;

7 (3) The young adult is participating in a program or
8 activity designed to promote employment or remove barriers to
9 employment;

10 (4) The young adult is employed for at least eighty hours
11 per month; and

12 (5) The young adult is incapable of doing any part of the
13 activities in subdivision (1) through (4) of this section due to a
14 medical condition, which incapacity must be supported by regularly
15 updated information in the case plan of the young adult.

16 Sec. 14. The department shall provide extended adoption
17 assistance for an adoptee who is at least nineteen years of age but
18 less than twenty-one years of age if the department determines that
19 the adoptee first received adoption assistance at sixteen years of
20 age or older and one of the following exists:

21 (1) The young adult has a mental or physical disability
22 that warrants continuation of adoption assistance;

23 (2) The young adult is completing secondary education or
24 a program leading to an equivalent credential;

25 (3) The young adult is enrolled in an institution that

1 provides postsecondary or vocational education;

2 (4) The young adult is participating in a program or
3 activity designed to promote employment or remove barriers to
4 employment;

5 (5) The young adult is employed for at least eighty hours
6 per month; and

7 (6) The young adult is incapable of doing any part of the
8 activities in subdivisions (2) through (5) of this section due to a
9 medical condition, which incapacity must be supported by regularly
10 updated information in the case plan of the young adult.

11 Sec. 15. The department shall implement the Young Adult
12 Voluntary Foster Care Services Act in accordance with requirements
13 necessary to obtain federal Title IV-E funding under 42 U.S.C. 672
14 and 42 U.S.C. 673. The department shall implement the act in
15 accordance with the state's approved Title IV-E State Plan and shall
16 submit any necessary amendment to the medicaid state plan in
17 accordance with 42 U.S.C. 671.

18 Sec. 16. The provision of services under the Young Adult
19 Voluntary Foster Care Services Act shall at all times recognize and
20 respect the autonomy of the young adult. Nothing in the act shall be
21 construed to abrogate any other rights that a person who has attained
22 nineteen years of age may have as an adult under state law.

23 Sec. 17. The department shall submit an amendment to the
24 medicaid state plan to the United States Department of Health and
25 Human Services to implement the Young Adult Voluntary Foster Care

1 Services Act by October 1, 2012.

2 Sec. 18. Section 43-285, Revised Statutes Supplement,
3 2011, is amended to read:

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

15 (2) Following an adjudication hearing at which a juvenile
16 is adjudged to be under subdivision (3) of section 43-247, the court
17 may order the department to prepare and file with the court a
18 proposed plan for the care, placement, services, and permanency which
19 are to be provided to such juvenile and his or her family. The health
20 and safety of the juvenile shall be the paramount concern in the
21 proposed plan. The department shall include in the plan for a
22 juvenile who is sixteen years of age or older and subject to the
23 guardianship of the department a written independent living
24 transition proposal which meets the requirements of section
25 43-1311.03 and the Young Adult Voluntary Foster Care Services Act.

1 The court may approve the plan, modify the plan, order that an
2 alternative plan be developed, or implement another plan that is in
3 the juvenile's best interests. In its order the court shall include a
4 finding regarding the appropriateness of the programs and services
5 described in the proposal designed to assist the juvenile in
6 acquiring independent living skills. Rules of evidence shall not
7 apply at the dispositional hearing when the court considers the plan
8 that has been presented.

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

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

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

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

21 (6) Whenever a juvenile is in a foster care placement as
22 defined in section 43-1301, the State Foster Care Review Board may
23 participate in proceedings concerning the juvenile as provided in
24 section 43-1313 and notice shall be given as provided in section
25 43-1314.

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

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

14 Sec. 19. Section 43-905, Revised Statutes Supplement,
15 2011, is amended to read:

16 43-905 (1) The Department of Health and Human Services
17 shall be the legal guardian of all children committed to it. The
18 department shall afford temporary care and shall use special
19 diligence to provide suitable homes for such children. The department
20 shall make reasonable efforts to accomplish joint-sibling placement
21 or sibling visitation or ongoing interaction between siblings as
22 provided in section 43-1311.02. The department is authorized to place
23 such children in suitable families for adoption, foster care, or
24 guardianship or, in the discretion of the department, on a written
25 contract.

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

5 (3) Whenever any child who has been committed to the
6 department becomes self-supporting, the department shall declare that
7 fact and the guardianship of the department shall cease. Thereafter
8 the child shall be entitled to his or her own earnings. Guardianship
9 of and services by the department shall ~~never~~not extend beyond the
10 age of majority, except that services by the department to a child
11 shall continue until the child reaches the age of twenty-one if the
12 child is a student regularly attending a school, college, or
13 university or regularly attending a course of vocational or technical
14 training designed to prepare such child for gainful employment or the
15 child receives services as provided in the Young Adult Voluntary
16 Foster Care Services Act.

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

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

1 for care of children.

2 Sec. 20. This act becomes operative on January 1, 2013.

3 Sec. 21. Original sections 43-285 and 43-905, Revised

4 Statutes Supplement, 2011, are repealed.