

AMENDMENTS TO LB92

Introduced by Wayne, 13.

1           1. Strike the original sections and insert the following new  
2 sections:

3           Section 1. Section 43-256, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           43-256 When the court enters an order continuing placement,  
6 detention, or an alternative to detention infringing upon the juvenile's  
7 liberty interest pursuant to section 43-253, upon request of the  
8 juvenile, or his or her parent, guardian, or attorney, the court shall  
9 hold a hearing within forty-eight hours, at which hearing the burden of  
10 proof shall be upon the state to show probable cause that such juvenile  
11 is within the jurisdiction of the court. The Nebraska Evidence Rules are  
12 not required to be applied ~~Strict rules of evidence shall not apply~~ at  
13 the probable cause hearing. The juvenile shall be released if probable  
14 cause is not shown. At the option of the court, it may hold the  
15 adjudication hearing provided in section 43-279 as soon as possible  
16 instead of the probable cause hearing if held within a reasonable period  
17 of time. This section and section 43-255 shall not apply to a juvenile  
18 (1) who has escaped from a commitment or (2) who has been taken into  
19 custody for his or her own protection as provided in subdivision (2) of  
20 section 43-248 in which case the juvenile shall be held on order of the  
21 court with jurisdiction for a reasonable period of time.

22           Sec. 2. Section 43-279, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24           43-279 (1) The adjudication portion of hearings shall be conducted  
25 before the court without a jury, applying the Nebraska Evidence Rules  
26 ~~customary rules of evidence in use in trials without a jury~~. When the  
27 petition alleges the juvenile to be within the provisions of subdivision

1 (1), (2), (3)(b), or (4) of section 43-247 and the juvenile or his or her  
2 parent, guardian, or custodian appears with or without counsel, the court  
3 shall inform the parties:

4 (a) Of the nature of the proceedings and the possible consequences  
5 or dispositions pursuant to sections 43-284 to 43-286, 43-289, and 43-290  
6 that may apply to the juvenile's case following an adjudication of  
7 jurisdiction;

8 (b) Of such juvenile's right to counsel as provided in sections  
9 43-272 and 43-273;

10 (c) Of the privilege against self-incrimination by advising the  
11 juvenile, parent, guardian, or custodian that the juvenile may remain  
12 silent concerning the charges against the juvenile and that anything said  
13 may be used against the juvenile;

14 (d) Of the right to confront anyone who testifies against the  
15 juvenile and to cross-examine any persons who appear against the  
16 juvenile;

17 (e) Of the right of the juvenile to testify and to compel other  
18 witnesses to attend and testify in his or her own behalf;

19 (f) Of the right of the juvenile to a speedy adjudication hearing;  
20 and

21 (g) Of the right to appeal and have a transcript for such purpose.

22 After giving such warnings and admonitions, the court may accept an  
23 in-court admission by the juvenile of all or any part of the allegations  
24 in the petition if the court has determined from examination of the  
25 juvenile and those present that such admission is intelligently,  
26 voluntarily, and understandingly made and with an affirmative waiver of  
27 rights and that a factual basis for such admission exists. The waiver of  
28 the right to counsel shall satisfy section 43-3102. The court may base  
29 its adjudication provided in subsection (2) of this section on such  
30 admission.

31 (2) If the juvenile denies the petition or stands mute the court

1 shall first allow a reasonable time for preparation if needed and then  
2 consider only the question of whether the juvenile is a person described  
3 by section 43-247. After hearing the evidence on such question, the court  
4 shall make a finding and adjudication, to be entered on the records of  
5 the court, whether or not the juvenile is a person described by  
6 subdivision (1), (2), (3)(b), or (4) of section 43-247 based upon proof  
7 beyond a reasonable doubt. If an Indian child is involved, the standard  
8 of proof shall be in compliance with the Nebraska Indian Child Welfare  
9 Act, if applicable.

10 (3) If the court shall find that the juvenile named in the petition  
11 is not within the provisions of section 43-247, it shall dismiss the  
12 case. If the court finds that the juvenile named in the petition is such  
13 a juvenile, it shall make and enter its findings and adjudication  
14 accordingly, designating which subdivision or subdivisions of section  
15 43-247 such juvenile is within; the court shall allow a reasonable time  
16 for preparation if needed and then proceed to an inquiry into the proper  
17 disposition to be made of such juvenile.

18 Sec. 3. Section 43-283, Reissue Revised Statutes of Nebraska, is  
19 amended to read:

20 43-283 The Nebraska Evidence Rules shall apply to all adjudication  
21 hearings and any hearing on a motion or petition seeking termination of  
22 parental rights. The Nebraska Evidence Rules are not required to be  
23 applied at any other hearing under the Nebraska Juvenile Code, including,  
24 but not limited to, dispositional, review, permanency planning, or  
25 detention or protective custody hearings. Strict rules of evidence shall  
26 not be applied at any dispositional hearing.

27 Sec. 4. Section 43-285, Revised Statutes Cumulative Supplement,  
28 2018, is amended to read:

29 43-285 (1) When the court awards a juvenile to the care of the  
30 Department of Health and Human Services, an association, or an individual  
31 in accordance with the Nebraska Juvenile Code, the juvenile shall, unless

1 otherwise ordered, become a ward and be subject to the legal custody and  
2 care of the department, association, or individual to whose care he or  
3 she is committed. Any such association and the department shall have  
4 authority, by and with the assent of the court, to determine the care,  
5 placement, medical services, psychiatric services, training, and  
6 expenditures on behalf of each juvenile committed to it. Any such  
7 association and the department shall be responsible for applying for any  
8 health insurance available to the juvenile, including, but not limited  
9 to, medical assistance under the Medical Assistance Act. Such custody and  
10 care shall not include the guardianship of any estate of the juvenile.

11 (2)(a) Following an adjudication hearing at which a juvenile is  
12 adjudged to be under subdivision (3)(a) or (c) of section 43-247, the  
13 court may order the department to prepare and file with the court a  
14 proposed plan for the care, placement, services, and permanency which are  
15 to be provided to such juvenile and his or her family. The health and  
16 safety of the juvenile shall be the paramount concern in the proposed  
17 plan.

18 (b) The department shall provide opportunities for the child, in an  
19 age or developmentally appropriate manner, to be consulted in the  
20 development of his or her plan as provided in the Nebraska Strengthening  
21 Families Act.

22 (c) The department shall include in the plan for a child who is  
23 fourteen years of age or older and subject to the legal care and custody  
24 of the department a written independent living transition proposal which  
25 meets the requirements of section 43-1311.03 and, for eligible children,  
26 the Young Adult Bridge to Independence Act. The juvenile court shall  
27 provide a copy of the plan to all interested parties before the hearing.  
28 The court may approve the plan, modify the plan, order that an  
29 alternative plan be developed, or implement another plan that is in the  
30 child's best interests. In its order the court shall include a finding  
31 regarding the appropriateness of the programs and services described in

1 the proposal designed to help the child prepare for the transition from  
2 foster care to a successful adulthood. The court shall also ask the  
3 child, in an age or developmentally appropriate manner, if he or she  
4 participated in the development of his or her plan and make a finding  
5 regarding the child's participation in the development of his or her plan  
6 as provided in the Nebraska Strengthening Families Act. The Nebraska  
7 Evidence Rules are not required to be applied ~~Rules of evidence shall not~~  
8 ~~apply~~ at the dispositional hearing when the court considers the plan that  
9 has been presented.

10 (d) The last court hearing before jurisdiction pursuant to  
11 subdivision (3)(a) of section 43-247 is terminated for a child who is  
12 sixteen years of age or older shall be called the independence hearing.  
13 In addition to other matters and requirements to be addressed at this  
14 hearing, the independence hearing shall address the child's future goals  
15 and plans and access to services and support for the transition from  
16 foster care to adulthood consistent with section 43-1311.03 and the Young  
17 Adult Bridge to Independence Act. The child shall not be required to  
18 attend the independence hearing, but efforts shall be made to encourage  
19 and enable the child's attendance if the child wishes to attend,  
20 including scheduling the hearing at a time that permits the child's  
21 attendance. An independence coordinator as provided in section 43-4506  
22 shall attend the hearing if reasonably practicable, but the department is  
23 not required to have legal counsel present. At the independence hearing,  
24 the court shall advise the child about the bridge to independence  
25 program, including, if applicable, the right of young adults in the  
26 bridge to independence program to request a court-appointed, client-  
27 directed attorney under subsection (1) of section 43-4510 and the  
28 benefits and role of such attorney and to request additional permanency  
29 review hearings in the bridge to independence program under subsection  
30 (5) of section 43-4508 and how to request such a hearing. The court shall  
31 also advise the child, if applicable, of the rights he or she is giving

1 up if he or she chooses not to participate in the bridge to independence  
2 program and the option to enter such program at any time between nineteen  
3 and twenty-one years of age if the child meets the eligibility  
4 requirements of section 43-4504. The department shall present information  
5 to the court regarding other community resources that may benefit the  
6 child, specifically information regarding state programs established  
7 pursuant to 42 U.S.C. 677. The court shall also make a finding as to  
8 whether the child has received the documents as required by subsection  
9 (9) of section 43-1311.03.

10 (3)(a) Within thirty days after an order awarding a juvenile to the  
11 care of the department, an association, or an individual and until the  
12 juvenile reaches the age of majority, the department, association, or  
13 individual shall file with the court a report stating the location of the  
14 juvenile's placement and the needs of the juvenile in order to effectuate  
15 the purposes of subdivision (1) of section 43-246. The department,  
16 association, or individual shall file a report with the court once every  
17 six months or at shorter intervals if ordered by the court or deemed  
18 appropriate by the department, association, or individual. Every six  
19 months, the report shall provide an updated statement regarding the  
20 eligibility of the juvenile for health insurance, including, but not  
21 limited to, medical assistance under the Medical Assistance Act. The  
22 department shall also concurrently file a written sibling placement  
23 report as described in subsection (3) of section 43-1311.02 at these  
24 times.

25 (b) The department, association, or individual shall file a report  
26 and notice of placement change with the court and shall send copies of  
27 the notice to all interested parties, including all of the child's  
28 siblings that are known to the department, at least seven days before the  
29 placement of the juvenile is changed from what the court originally  
30 considered to be a suitable family home or institution to some other  
31 custodial situation in order to effectuate the purposes of subdivision

1 (1) of section 43-246. The department, association, or individual shall  
2 afford a parent or an adult sibling the option of refusing to receive  
3 such notifications. The court, on its own motion or upon the filing of an  
4 objection to the change by an interested party, may order a hearing to  
5 review such a change in placement and may order that the change be stayed  
6 until the completion of the hearing. Nothing in this section shall  
7 prevent the court on an ex parte basis from approving an immediate change  
8 in placement upon good cause shown. The department may make an immediate  
9 change in placement without court approval only if the juvenile is in a  
10 harmful or dangerous situation or when the foster parents request that  
11 the juvenile be removed from their home. Approval of the court shall be  
12 sought within twenty-four hours after making the change in placement or  
13 as soon thereafter as possible.

14 (c) The department shall provide the juvenile's guardian ad litem  
15 with a copy of any report filed with the court by the department pursuant  
16 to this subsection.

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

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

25 (6) Whenever a juvenile is in a foster care placement as defined in  
26 section 43-1301, the Foster Care Review Office or the designated local  
27 foster care review board may participate in proceedings concerning the  
28 juvenile as provided in section 43-1313 and notice shall be given as  
29 provided in section 43-1314.

30 (7) Any written findings or recommendations of the Foster Care  
31 Review Office or the designated local foster care review board with

1 regard to a juvenile in a foster care placement submitted to a court  
2 having jurisdiction over such juvenile shall be admissible in any  
3 proceeding concerning such juvenile if such findings or recommendations  
4 have been provided to all other parties of record.

5 (8) The executive director and any agent or employee of the Foster  
6 Care Review Office or any member of any local foster care review board  
7 participating in an investigation or making any report pursuant to the  
8 Foster Care Review Act or participating in a judicial proceeding pursuant  
9 to this section shall be immune from any civil liability that would  
10 otherwise be incurred except for false statements negligently made.

11 Sec. 5. Original sections 43-256, 43-279, and 43-283, Reissue  
12 Revised Statutes of Nebraska, and section 43-285, Revised Statutes  
13 Cumulative Supplement, 2018, are repealed.