

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB388

Hearing Date: Friday February 08, 2019
Committee On: Judiciary
Introducer: Howard
One Liner: Change provisions relating to termination of parental rights, placement of children, and guardianship

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 6 Senators Brandt, DeBoer, Lathrop, Morfeld, Pansing Brooks, Slama
Nay:
Absent:
Present Not Voting: 2 Senators Chambers, Wayne

Oral Testimony:

Proponents:

Senator Sara Howard
Kim Hawekotte
Juliet Summers

Representing:

Introducer
Foster Care Review Office
Voices for Children in Nebraska

Opponents:

Representing:

Neutral:

Sarah Helvey
Tim Hruza

Representing:

Nebraska Appleseed
Children and Families Coalition of Nebraska

Summary of purpose and/or changes:

Provides for establishment and termination of guardianship for juveniles. Provides for notice, qualifications and responsibilities of agencies and interested parties.

Section 1 Amends section 43-285 to provide that the Department of Health and Human Services provides a copy of the care, placement etc. plan to interested parties prior to a juvenile court hearing. Current law has the court providing the plan.

Section 2 Amends section 43-292.02, regarding a petition to terminate parental rights, current provisions provide that the state is not required to file or be joined if certain conditions exist (including the child is being cared for by a relative, filing a plan is not in the best interest). LB 388 provides that if the court grants an exception, that determination is reviewed at all subsequent review and permanency planning hearings.

Section 3 Amends section 43-292.03, regarding a petition where the child has been in foster care, and the court determines there is an exception for state involvement, LB 388 would require that the exception be reviewed at all subsequent review and permanency planning hearings.

Section 4 Amends section 43-533, which addresses principles to guide agencies, committees and courts in determining assistance and services for families and children in need by adding a new subsection (5) principle that if a child has

been with a non relative foster parent for more than a year (continuous) and bonding has occurred, permanent placement with the foster parent(s) will be a preference.

Section 5 Amends section 43-1311.01, which addresses the notification to non custodial parents, grandparents, adult siblings etc. that a child has been removed from parental custody. LB 388 adds a new subsection (4) that provides that the section is not construed to guarantee that a relative will receive custody and that the standard is the best interest of the child.

Section 6 Amends section 43-1312, to provide a cross reference.

Section 7 Amends section 43-1312.01, addressing the court's ability to place a child in a guardianship with a relative or other individual, by clarifying that the court may do so by either its own motion or a motion by an interested party as defined in subsection (2). LB 388 also adds language regarding the obligations of guardians including training. The bill also adds new language regarding the elements required in the motion including name and address of nominated guardians and provides notice requirements to interested parties. Requires a written consent to the guardianship by the child if 12 years old or older and any objections must be in writing and filed with the court.

Juvenile court holds an evidentiary hearing within 60 days of the motion and requires the child, prospective guardians and interested parties to attend the hearing. If the court grants guardianship, LB388 adds requirements to the order including that the child remain in the guardian's physical care, the guardian file an annual report and continue the child's guardian ad litem. The court retains jurisdiction and allows for modification of the order but requires a review hearing within a year and annually thereafter, but may require more frequent review.

Adds language that a parent's consent to the guardianship does not indicate unfitness or eliminate the right to seek termination of the guardianship.

Section 8 Adds new language establishing a process for the termination of a guardianship. Allows interested parties to establish by clear and convincing evidence to restore custody to the parent(s). Allows the court to consider previous determinations regarding abuse, neglect or abandonment. If such determinations were made, the court should consider an number of factors including whether steps have been taken to identified problems, whether the parent is involved in a criminal prosecution, the parent's current living situation including financial, medical and emotional support provided during the guardianship in addition to other factors. The preference of the child , if 12 years old or older is also considered. Authorizes the court to terminate the guardianship provides for HHS to adopt rules regarding administration of the provisions.

Section 9 Adds new language regarding a disruption in the guardian relationship, the court places the child in temporary custody of HHS. A hearing is held within eight days and if the child is at risk, HHS custody is continued, but may be returned to the parent(s) if the department determines that the child is not at risk.

Section 10 Provides a cross reference.

Section 11 Adds new sections (8 and 9) to the Foster Care Review Act.

Section 12 Repeals original sections.

Explanation of amendments:

The Committee Amendment, AM 803, is a white copy amendment that reflects a combination of LB 388 and LB 389 with some changes listed below. Also below is a section by section description of LB 389.

Changes to the combined bill (page and line references are to LB 803):

On page 7 in lines 20 to 27, the standard for termination of parental rights of "clear and convincing" is clarified for

Native American children by adding language that the standard in the Nebraska Indian Child Welfare Act is applicable in such cases.

On p. 8, lines 2 to 4, the language is a rewrite of the language in LB 389.

On p.8, lines 29-30 Removes language from LB 389 that had this provision apply to those four years old or above and removes a subsection from LB 389 that applied to those younger than four. (page 5, lines 12 through 19 of the LB 389 green copy).

On p. 13, lines 23-31, are moved from being a separate section in LB 388 (creating a preference for foster parents, p.10, lines 3-5 of LB 388 green copy) to an exception to the relative preference where the relationship with foster parents is a consideration instead of a preference. In addition, language is added mentioning the Nebraska Indian Child Welfare Act as an exception.

On p.18 line 8 and p. 19 line 21, raising the age of consent to a guardianship to 14 (from age 12 in the green copy of LB 388)

On p. 22, lines 24-25 Removes DHHS rulemaking as the section is a judicial process.

On p.22, line 26 to p.23, line 5, concerning a motion to terminate a guardianship, the standard for showing that the parent is fit and able is clear and convincing evidence. There is an exception (p. 23, ln 27 to p. 24, ln 4) added that if a parent consented to the establishment of the guardianship and the parent has not been found to be unfit, or parental rights involuntarily terminated, the court may terminate the guardianship without a showing that the parent is fit.

p.23, line 26 the preference of the child in terminating a guardianship is raised to 14 years old (from 12 in the green copy of LB 389)

Section by section of LB 389 -

Section 1 Amends section 43-283.01 regarding efforts to preserve and unify families and the relationship to the permanency plan for juveniles. New language is added regarding reasonable efforts to preserve and unify the family by not requiring consideration if the parent has committed sexual assault of a child, committed labor or sex trafficking among other considerations currently in state.

Section 2 Amends 43-292 to allow the court to terminate parental rights if by clear and convincing evidence that the parent is unable to care for the child for a number of reasons listed in current statute. New items added to the list include termination of rights for another child in the same family and use of alcohol or other drugs that render the parent unable to care for the child. Other additions include sexual assault of minors, and labor or sex trafficking. Also provides a cross reference (43-1301.01) on determining time calculation for out of home placement.

Section 3 Renumbers an internal reference.

Section 4 Amends 43-292.02 to provide cross references and references for determining time calculation for out of home placement.

Section 5 Repeals original section.

Steve Lathrop, Chairperson