

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 388

Introduced by Howard, 9.

Read first time January 17, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to children and families; to amend sections
2 43-292.03, 43-533, 43-1311.01, 43-1312, 43-1312.01, and 43-1313,
3 Reissue Revised Statutes of Nebraska, and sections 43-285,
4 43-292.02, and 43-1318, Revised Statutes Cumulative Supplement,
5 2018; to change provisions relating to placement plans; to provide a
6 duty for the Department of Health and Human Services; to require
7 review of certain determinations relating to parental rights
8 termination proceedings as prescribed; to change provisions relating
9 to family policy; to clarify legislative intent; to change and
10 provide procedures and requirements relating to placement of
11 children in guardianships and termination of guardianships; to
12 harmonize provisions; and to repeal the original sections.
13 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-285, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

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

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

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

27 (c) The department shall include in the plan for a child who is
28 fourteen years of age or older and subject to the legal care and custody
29 of the department a written independent living transition proposal which
30 meets the requirements of section 43-1311.03 and, for eligible children,
31 the Young Adult Bridge to Independence Act. The department juvenile court

1 shall provide a copy of the plan to all interested parties before the
2 hearing and within the time period specified by local court rule. The
3 court may approve the plan, modify the plan, order that an alternative
4 plan be developed, or implement another plan that is in the child's best
5 interests. In its order the court shall include a finding regarding the
6 appropriateness of the programs and services described in the proposal
7 designed to help the child prepare for the transition from foster care to
8 a successful adulthood. The court shall also ask the child, in an age or
9 developmentally appropriate manner, if he or she participated in the
10 development of his or her plan and make a finding regarding the child's
11 participation in the development of his or her plan as provided in the
12 Nebraska Strengthening Families Act. Rules of evidence shall not apply at
13 the dispositional hearing when the court considers the plan that has been
14 presented.

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

1 directed attorney under subsection (1) of section 43-4510 and the
2 benefits and role of such attorney and to request additional permanency
3 review hearings in the bridge to independence program under subsection
4 (5) of section 43-4508 and how to request such a hearing. The court shall
5 also advise the child, if applicable, of the rights he or she is giving
6 up if he or she chooses not to participate in the bridge to independence
7 program and the option to enter such program at any time between nineteen
8 and twenty-one years of age if the child meets the eligibility
9 requirements of section 43-4504. The department shall present information
10 to the court regarding other community resources that may benefit the
11 child, specifically information regarding state programs established
12 pursuant to 42 U.S.C. 677. The court shall also make a finding as to
13 whether the child has received the documents as required by subsection
14 (9) of section 43-1311.03.

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

30 (b) The department, association, or individual shall file a report
31 and notice of placement change with the court and shall send copies of

1 the notice to all interested parties, including all of the child's
2 siblings that are known to the department, at least seven days before the
3 placement of the juvenile is changed from what the court originally
4 considered to be a suitable family home or institution to some other
5 custodial situation in order to effectuate the purposes of subdivision
6 (1) of section 43-246. The department, association, or individual shall
7 afford a parent or an adult sibling the option of refusing to receive
8 such notifications. The court, on its own motion or upon the filing of an
9 objection to the change by an interested party, may order a hearing to
10 review such a change in placement and may order that the change be stayed
11 until the completion of the hearing. Nothing in this section shall
12 prevent the court on an ex parte basis from approving an immediate change
13 in placement upon good cause shown. The department may make an immediate
14 change in placement without court approval only if the juvenile is in a
15 harmful or dangerous situation or when the foster parents request that
16 the juvenile be removed from their home. Approval of the court shall be
17 sought within twenty-four hours after making the change in placement or
18 as soon thereafter as possible.

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

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

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

30 (6) Whenever a juvenile is in a foster care placement as defined in
31 section 43-1301, the Foster Care Review Office or the designated local

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

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

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

16 Sec. 2. Section 43-292.02, Revised Statutes Cumulative Supplement,
17 2018, is amended to read:

18 43-292.02 (1) Except as provided in subsections (2) and (3) of this
19 section, a A petition shall be filed on behalf of the state to terminate
20 the parental rights of the juvenile's parents or, if such a petition has
21 been filed by another party, the state shall join as a party to the
22 petition, and the state shall concurrently identify, recruit, process,
23 and approve a qualified family for an adoption of the juvenile, if:

24 (a) A juvenile has been in foster care under the responsibility of
25 the state for fifteen or more months of the most recent twenty-two
26 months; or

27 (b) A court of competent jurisdiction has determined the juvenile to
28 be an abandoned infant or has made a determination that the parent has
29 committed murder of another child of the parent, committed voluntary
30 manslaughter of another child of the parent, aided or abetted, attempted,
31 conspired, or solicited to commit murder, or aided or abetted voluntary

1 manslaughter of the juvenile or another child of the parent, or committed
2 a felony assault that has resulted in serious bodily injury to the
3 juvenile or another minor child of the parent. For purposes of this
4 subdivision, infant means a child eighteen months of age or younger.

5 (2) A petition shall not be filed on behalf of the state to
6 terminate the parental rights of the juvenile's parents or, if such a
7 petition has been filed by another party, the state shall not join as a
8 party to the petition if the sole factual basis for the petition is that
9 (a) the parent or parents of the juvenile are financially unable to
10 provide health care for the juvenile or (b) the parent or parents of the
11 juvenile are incarcerated. The fact that a qualified family for an
12 adoption of the juvenile has been identified, recruited, processed, and
13 approved shall have no bearing on whether parental rights shall be
14 terminated.

15 (3) The petition is not required to be filed on behalf of the state
16 or if a petition is filed the state shall not be required to join in a
17 petition to terminate parental rights or to concurrently find a qualified
18 family to adopt the juvenile under this section if:

19 (a) The child is being cared for by a relative;

20 (b) The Department of Health and Human Services has documented in
21 the case plan or permanency plan, which shall be available for court
22 review, a compelling reason for determining that filing such a petition
23 would not be in the best interests of the juvenile; or

24 (c) The family of the juvenile has not had a reasonable opportunity
25 to avail themselves of the services deemed necessary in the case plan or
26 permanency plan approved by the court if reasonable efforts to preserve
27 and reunify the family are required under section 43-283.01.

28 (4) If the court makes a determination that the exception in
29 subsection (3) of this section applies, such determination shall be
30 reviewed at all subsequent review hearings and permanency planning
31 hearings, including hearings under section 43-1313.

1 (5) ~~(4)~~ Except as otherwise provided in the Nebraska Indian Child
2 Welfare Act, if a child is conceived by the victim of a sexual assault, a
3 petition for termination of parental rights of the perpetrator shall be
4 granted if such termination is in the best interests of the child and (a)
5 the perpetrator has been convicted of or pled guilty or nolo contendere
6 to sexual assault of the child's birth parent under section 28-319 or
7 28-320 or a law in another jurisdiction similar to either section 28-319
8 or 28-320 or (b) the perpetrator has fathered the child or given birth to
9 the child as a result of such sexual assault.

10 Sec. 3. Section 43-292.03, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 43-292.03 (1) Within thirty days after the fifteen-month period
13 under subsection (1) of section 43-292.02, the court shall hold a hearing
14 on the record and shall make a determination on the record as to whether
15 there is an exception under subsection (3) of section 43-292.02 in this
16 particular case. If the court determines there is no exception, the state
17 shall proceed as provided in subsection (1) of section 43-292.02. If the
18 court determines that such exception does apply, such determination shall
19 be reviewed at all subsequent review hearings and permanency planning
20 hearings, including hearings under section 43-1313.

21 (2) The Department of Health and Human Services shall submit on a
22 timely basis, to the court in which the petition to place the juvenile in
23 an out-of-home placement was filed and to the county attorney who filed
24 the petition, a list of the name of each juvenile who has been in an out-
25 of-home placement for fifteen or more months of the most recent twenty-
26 two months.

27 Sec. 4. Section 43-533, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 43-533 The following principles shall guide the actions of state
30 government and departments, agencies, institutions, committees, courts,
31 and commissions which become involved with families and children in need

1 of assistance or services:

2 (1) Prevention, early identification of problems, and early
3 intervention shall be guiding philosophies when the state or a
4 department, agency, institution, committee, court, or commission plans or
5 implements services for families or children when such services are in
6 the best interests of the child;

7 (2) When families or children request assistance, state and local
8 government resources shall be utilized to complement community efforts to
9 help meet the needs of such families or the needs and the safety and best
10 interests of such children. The state shall encourage community
11 involvement in the provision of services to families and children,
12 including as an integral part, local government and public and private
13 group participation, in order to encourage and provide innovative
14 strategies in the development of services for families and children;

15 (3) To maximize resources the state shall develop methods to
16 coordinate services and resources for families and children. Every child-
17 serving department, agency, institution, committee, court, or commission
18 shall recognize that the jurisdiction of such department, agency,
19 institution, committee, court, or commission in serving multiple-need
20 children is not mutually exclusive;

21 (4) When children are removed from their home, permanency planning
22 shall be the guiding philosophy. It shall be the policy of the state (a)
23 to make reasonable efforts to reunite the child with his or her family in
24 a timeframe appropriate to the age and developmental needs of the child
25 so long as the best interests of the child, the health and safety of the
26 child being of paramount concern, and the needs of the child have been
27 given primary consideration in making a determination whether or not
28 reunification is possible, (b) when a child cannot remain with parents,
29 to give preference to relatives as a placement resource, except as
30 provided in subdivision (5) of this section, and (c) to minimize the
31 number of placement changes for children in out-of-home care so long as

1 the needs, health, safety, and best interests of the child in care are
2 considered; ~~and~~

3 (5) If the child has been cared for by a non-relative foster parent
4 or parents for a continuous period of twelve months or more and bonding
5 has occurred, as evidenced by the positive emotional and physical
6 interaction between the foster parent or parents and child, preference
7 shall be given to permanent placement with such foster parent or parents
8 unless declined by them; and

9 (6) ~~(5)~~ When families cannot be reunited and when active parental
10 involvement is absent, adoption shall be aggressively pursued. Absent the
11 possibility of adoption other permanent settings shall be pursued. In
12 either situation, the health, safety, and best interests of the child
13 shall be the overriding concern. Within that context, preference shall be
14 given to relatives for the permanent placement of the child.

15 Sec. 5. Section 43-1311.01, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 43-1311.01 (1) When notified pursuant to section 43-1311 or upon
18 voluntary placement of a child, the Department of Health and Human
19 Services shall, as provided in this section, identify, locate, and
20 provide written notification of the removal of the child from his or her
21 home, within thirty days after removal, to any noncustodial parent and to
22 all grandparents, all parents who have legal custody of a sibling of the
23 child, and all adult siblings, adult aunts, adult uncles, adult cousins,
24 and adult relatives suggested by the child or the child's parents, except
25 when that relative's history of family or domestic violence makes
26 notification inappropriate. For purposes of this section, sibling means
27 an individual who is considered by Nebraska law to be a sibling or who
28 would have been considered a sibling under Nebraska law but for a
29 termination of parental rights or other disruption in parental rights
30 such as the death of a parent. If the child is an Indian child as defined
31 in section 43-1503, the child's extended family members as defined in

1 such section shall be notified. Such notification shall include all of
2 the following information:

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

5 (b) An explanation of the options the relative has under federal,
6 state, and local law to participate in the care and placement of the
7 child, including as provided in section 43-533 and including any options
8 that may be lost by failing to respond to the notice;

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

13 (d) Information concerning the option to apply for guardianship
14 assistance payments.

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

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

23 (4) This section shall not be construed to guarantee that a relative
24 identified pursuant to this section will receive custody of the child, as
25 all such determinations are based upon the individual child's best
26 interests.

27 Sec. 6. Section 43-1312, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 43-1312 (1) Following the investigation conducted pursuant to
30 section 43-1311 and immediately following the initial placement of the
31 child, the person or court in charge of the child shall cause to be

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

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

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

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

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

10 (e) A complete record of the previous placements of the foster
11 child;

12 (f) The name of the school the child shall attend as provided in
13 section 43-1311; and

14 (g) The efforts made to involve and engage the child in the
15 development of such plan as provided in the Nebraska Strengthening
16 Families Act.

17 (2) If the return of the child to his or her parents is not likely
18 based upon facts developed as a result of the investigation, the
19 Department of Health and Human Services shall recommend termination of
20 parental rights and referral for adoption, guardianship, placement with a
21 relative, or, as a last resort, and only in the case of a child who has
22 attained sixteen years of age, another planned permanent living
23 arrangement. If the child is removed from his or her home, the department
24 shall make reasonable efforts to accomplish joint-sibling placement or
25 sibling visitation or ongoing interaction between the siblings as
26 provided in section 43-1311.02.

27 (3) Each child in foster care under the supervision of the state
28 shall have a permanency hearing by a court, no later than twelve months
29 after the date the child enters foster care and annually thereafter
30 during the continuation of foster care except as provided in subdivision
31 (10) of section 43-1312.01. The court's order shall include the

1 determinations required by section 43-4711 and a finding regarding the
2 appropriateness of the permanency plan determined for the child and shall
3 include whether, and if applicable when, the child will be:

4 (a) Returned to the parent;

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

7 (c) Placed for adoption;

8 (d) Referred for guardianship; or

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

14 (4) As provided in the Nebraska Strengthening Families Act, in the
15 case of any child age sixteen years of age or older for whom another
16 planned permanent living arrangement is the recommended or court-approved
17 permanency plan:

18 (a) The permanency plan shall include the identification of
19 significant, supportive connections with identified adults willing to be
20 consistently involved in the child's life as the child transitions to
21 adulthood;

22 (b) The department shall document the intensive, ongoing, and, as of
23 the date of the hearing, unsuccessful efforts made by the department to
24 return the child home or secure a placement for the child with a fit and
25 willing relative, a legal guardian, or an adoptive parent; and

26 (c) The court shall:

27 (i) Ask the child about the desired permanency outcome for the
28 child;

29 (ii) Make a determination explaining why, as of the date of the
30 hearing, another planned permanent living arrangement is the best
31 permanency plan for the child and the compelling reasons why it continued

1 to not be in the best interests of the child to return home, be placed
2 for adoption, be placed with a legal guardian, or be placed with a fit
3 and willing relative; and

4 (iii) Make a determination that the department has met the
5 requirements in subdivisions (a) and (b) of this subsection before
6 approving a permanency plan of another planned permanent living
7 arrangement for a child sixteen years of age or older.

8 Sec. 7. Section 43-1312.01, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 43-1312.01 (1) If the permanency plan for a child established
11 pursuant to section 43-1312 does not recommend return of the child to his
12 or her parent or that the child be placed for adoption, the juvenile
13 court may, upon the filing of a motion by an interested party as provided
14 in subsection (2) of this section or on its own motion as provided in
15 subsection (3) of this section, place the child in a guardianship in a
16 relative home as defined in section 71-1901, in a kinship home as defined
17 in section 71-1901, or with an individual as provided in section 43-285
18 if:

19 (a) The child is a juvenile who has been adjudicated ~~adjudged~~ to be
20 under subdivision (3)(a) of section 43-247;

21 (b) The child has been in the placement for at least six months;

22 (c) The child consents to the guardianship, if the child is twelve
23 ~~ten~~ years of age or older; ~~and~~

24 (d) Each prospective ~~The~~ guardian:

25 (i) Is suitable and able to provide a safe and permanent home for
26 the child;

27 (ii) Has made a commitment to provide for the financial, medical,
28 physical, and emotional needs of the child until the child reaches the
29 age of majority or until the termination of extended guardianship
30 assistance payments and medical care pursuant to section 43-4511;

31 (iii) Has made a commitment to prepare the child for adulthood and

1 independence;~~and~~

2 (iv) Agrees to give notice of any changes in his or her residential
3 address or the residence of the child by immediately filing a written
4 document in the juvenile court file of the child and providing copies of
5 such document to all interested parties; -

6 (v) Acknowledges that the duties and obligations of the guardianship
7 have been fully explained to and understood by him or her; and

8 (vi) Agrees to complete all required guardianship training prior to
9 the court's entry of an order establishing the guardianship; and

10 (e) The court finds, by clear and convincing evidence, that
11 placement in such guardianship is in the child's best interests.

12 (2)(a) The county attorney, a guardian ad litem, or any interested
13 party may request the juvenile court to place a child in a guardianship
14 as described in subsection (1) of this section by filing a motion to
15 establish guardianship. The motion shall be filed in the juvenile court
16 in which the child was adjudicated to be under subdivision (3)(a) of
17 section 43-247. The motion shall be served on all other interested
18 parties.

19 (b) The motion shall allege that each of the requirements in
20 subsection (1) of this section are met. The motion shall also contain:

21 (i) The name of the child;

22 (ii) The name and address of each person nominated to serve as a
23 guardian of the child;

24 (iii) A statement of whether the permanency objective of
25 guardianship has been ordered by the juvenile court, and if so, the date
26 of such order;

27 (iv) The length of time the child has resided with or been placed
28 with the prospective guardian or guardians; and

29 (v) If applicable, a statement describing each parent who is
30 consenting to the guardianship.

31 (3) If the juvenile court seeks to place a child in a guardianship

1 as described in subsection (1) of this section on its own motion, the
2 juvenile court shall provide notice to all interested parties.

3 (4) A written consent to the guardianship shall be executed by each
4 child twelve years of age or older and by any parent who is consenting to
5 the guardianship and shall be filed prior to the hearing under subsection
6 (6) of this section.

7 (5) Any objection to the guardianship shall be in writing and shall
8 be filed with the court and served upon all interested parties within
9 twenty days after receipt of the motion for guardianship or notice by the
10 court under subsection (3) of this section.

11 (6) The juvenile court shall hold an evidentiary hearing to
12 determine if a guardianship should be established within sixty days after
13 the filing of a motion to establish guardianship or notice by the court
14 under subsection (3) of this section, unless good cause is shown for
15 extending the time. In addition to all other interested parties in the
16 juvenile court proceeding, each prospective guardian and the child shall
17 attend the hearing, except that the child need not attend the hearing if
18 good cause is shown prior to the hearing.

19 (7) If the court finds that the requirements of subsection (1) of
20 this section are met, the court may enter an order granting guardianship
21 and appointing the guardian. Upon the entry of such order, the guardian
22 shall file a written acceptance of appointment.

23 (8) ~~(2)~~ In an the order granting guardianship, the juvenile court
24 shall:

25 (a) ~~Grant Shall grant~~ to the guardian such powers, rights, and
26 duties with respect to the care, maintenance, and treatment of the child
27 as the biological or adoptive parent of the child would have;

28 (b) ~~Specify May specify~~ the frequency and nature of family time or
29 contact between the child and his or her parents, if appropriate;

30 (c) ~~Specify May specify~~ the frequency and nature of family time or
31 contact between the child and his or her siblings, if appropriate; ~~and~~

1 (d) Require that the child shall remain in the physical care and
2 custody of the guardian unless the order granting guardianship is
3 modified by the juvenile court;

4 (e) Require the guardian to file with the court and to serve upon
5 all interested parties a written report on the condition of the child at
6 least once each year on a form to be provided by the juvenile court, and
7 specifying the deadline for the filing of the initial report; and

8 (f) Continue the appointment of the child's guardian ad litem
9 throughout the duration of the guardianship. The guardian ad litem shall
10 remain subject to all obligations as required by statute and applicable
11 court rules, except as specifically waived by the juvenile court in its
12 order granting the guardianship.

13 ~~(d) Shall require that the guardian not return the child to the~~
14 ~~physical care and custody of the person from whom the child was removed~~
15 ~~without prior approval of the court.~~

16 (9) (3) The juvenile court shall retain jurisdiction over the child
17 for modification or termination of the guardianship order and to monitor
18 the guardianship as needed. Modification of the order may include any
19 matter affecting the guardianship, including, but not limited to: -

20 (a) Family time between the child and his or her parents;

21 (b) Family time between the child and his or her siblings; and

22 (c) Resignation, removal, or replacement of the guardian or
23 guardians.

24 (10) The court shall discontinue regular permanency reviews and case
25 reviews under sections 43-1312 and 43-1313 and shall relieve the
26 Department of Health and Human Services of the responsibility of
27 supervising the placement of the child. The juvenile court shall conduct
28 a guardianship review hearing no later than twelve months after the date
29 of entry of the guardianship order and annually thereafter for the
30 duration of the guardianship. The juvenile court may conduct such a
31 hearing more frequently in its discretion or upon request by an

1 interested party. The juvenile court shall provide notice of any
2 guardianship review hearing to each guardian and all interested parties.

3 (11) Notwithstanding the retention of juvenile court jurisdiction,
4 the guardianship placement shall be considered permanent for the child.

5 ~~(4) The child shall remain in the custody of the guardian unless the~~
6 ~~order creating the guardianship is modified by the court.~~

7 (12) ~~(5)~~ Guardianships established under this section shall
8 terminate;

9 (a) ~~On~~ ~~on~~ the child's nineteenth birthday unless the child is
10 eligible for continued guardianship assistance payments under section
11 43-4511 and an agreement is signed by the Department of Health and Human
12 Services, the guardian, and the young adult, as defined in section
13 43-4503, to continue the guardianship assistance. The guardian shall
14 ensure that any guardianship assistance funds provided by the department
15 and received by the guardian for the purpose of an extended guardianship
16 shall be used for the benefit of the young adult. The department shall
17 adopt and promulgate rules and regulations defining services and supports
18 encompassed by such benefit; or -

19 (b) Upon order of the juvenile court.

20 (13) ~~(6)~~ Upon the child's nineteenth birthday regardless of the
21 existence of an agreement to extend the guardianship until the child's
22 twenty-first birthday, the guardian shall no longer have the legal
23 authority to make decisions on behalf of the child and shall have no more
24 authority over the person or property of the child than a biological or
25 adoptive parent would have over his or her child, absent consent from the
26 child.

27 (14) ~~(7)~~ A guardianship established under this section does not
28 terminate the parent-child relationship, including:

29 (a) The right of the child to inherit from his or her parents;

30 (b) The right of the biological parents to consent to the child's
31 adoption; and

1 (c) The responsibility of the parents to provide financial, medical,
2 or other support as ordered by the court.

3 (15) (8) The Department of Health and Human Services shall adopt and
4 promulgate rules and regulations for the administration of this section.

5 (16) The fact that a parent has consented to the establishment of
6 the guardianship shall not constitute evidence of parental unfitness and
7 shall not forfeit the right of such parent to seek termination of the
8 guardianship and custody of the child.

9 Sec. 8. (1) A parent, a guardian, a guardian ad litem, the county
10 attorney, or any interested party may file a motion to terminate a
11 guardianship established under section 43-1312.01 and restore or grant
12 custody of the child to his or her parent. The party seeking termination
13 shall have the burden of proving, by clear and convincing evidence, that
14 the parent is fit and able to assume the custody of the child. In
15 determining parental fitness, the court may consider evidence of the
16 following:

17 (a) Whether the juvenile court or any court has previously found or
18 determined that the parent requesting termination has subjected the child
19 or his or her siblings to abuse, neglect, abandonment, or to lack of
20 proper parental care regardless of fault on the part of the parent, and
21 if so:

22 (i) When such finding or determination was made;

23 (ii) What, if any, steps the parent has taken or completed to remedy
24 the problems that gave rise to such finding or determination; and

25 (iii) Whether the problems that gave rise to such finding or
26 determination still exist and, if so, to what extent they are likely to
27 impede the parent's ability to care for the child;

28 (b)(i) Whether the parent is presently involved as a defendant in
29 any criminal prosecution, engaging in substance abuse of any kind, or
30 diagnosed with a mental health condition of any kind and (ii) the extent
31 to which any of these impair or are likely to impair the parent's ability

1 to care for the child;

2 (c) The parent's present living situation and financial capacity to
3 care for the child;

4 (d) Financial, social, medical, or emotional support provided by the
5 parent to the child since the establishment of the guardianship;

6 (e) The expressed preference, if any, of the child if he or she is
7 twelve years of age or older; and

8 (f) Any other factor that might affect the parent's ability to
9 assume custody of and care for the child.

10 (2) Upon the filing of a motion under this section, if, in relation
11 to any guardianship ordered prior to the effective date of this act, the
12 juvenile court has not ordered the continuation of the appointment of the
13 child's guardian ad litem in the initial guardianship order, the court
14 shall appoint a guardian ad litem for each child for whom the termination
15 of the guardianship is sought.

16 (3) The juvenile court may grant the motion and enter an order
17 terminating the guardianship and granting or restoring custody of the
18 child to the parent if the court finds, by clear and convincing evidence,
19 that doing so is in the best interests of the child. If the juvenile
20 court denies the motion, it shall include in its order the specific
21 reasons for denial.

22 (4) The Department of Health and Human Services may adopt and
23 promulgate rules and regulations for the administration of this section.

24 Sec. 9. (1) In the event of the disruption or the termination of
25 the guardianship for a child under the age of nineteen years, or the
26 removal or resignation of the child's guardian, the juvenile court shall
27 immediately place the child in the temporary custody of the Department of
28 Health and Human Services.

29 (2) Within eight days after such placement, the juvenile court shall
30 conduct a protective custody hearing. If the court finds that the child's
31 health, safety, and welfare are at risk of harm, the juvenile court shall

1 continue custody of the child with the department pending further
2 hearing. The court shall provide notice of the hearing to the parents and
3 all interested parties.

4 (3) The county attorney shall file appropriate pleadings to protect
5 the health, safety, and welfare of the child.

6 (4) Nothing in this section shall prevent the department from
7 placing the child with the child's parent or parents if the department
8 determines that the child's health, safety, and welfare are not at risk
9 of harm.

10 (5) The Department of Health and Human Services may adopt and
11 promulgate rules and regulations for the administration of this section.

12 Sec. 10. Section 43-1313, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 43-1313 (1) When a child is in foster care placement, the court
15 having jurisdiction over such child for the purposes of foster care
16 placement shall review the dispositional order for such child at least
17 once every six months, except as provided in subsection (10) of section
18 43-1312.01. The court may reaffirm the order or direct other disposition
19 of the child. Any review hearing by a court having jurisdiction over such
20 child for purposes of foster care placement shall be conducted on the
21 record as provided in sections 43-283 and 43-284, and any recommendations
22 of the office or designated local board concerning such child shall be
23 admissible in such proceedings if such recommendations have been provided
24 to all other parties of record.

25 (2) The court shall review a case on the record more often than
26 every six months and at any time following the original placement of the
27 child if the office or local board requests a hearing in writing
28 specifying the reasons for the review.

29 (3) If the court has previously determined that the exception in
30 subsection (3) of section 43-292.02 applies, such determination shall be
31 reviewed at each hearing conducted under this section.

1 (4) Members of the office or local board or its designated
2 representative may attend and be heard at any hearing conducted under
3 this section and may participate through counsel at the hearing with the
4 right to call and cross-examine witnesses and present arguments to the
5 court.

6 Sec. 11. Section 43-1318, Revised Statutes Cumulative Supplement,
7 2018, is amended to read:

8 43-1318 Sections 43-1301 to 43-1321 and sections 8 and 9 of this act
9 shall be known and may be cited as the Foster Care Review Act.

10 Sec. 12. Original sections 43-292.03, 43-533, 43-1311.01, 43-1312,
11 43-1312.01, and 43-1313, Reissue Revised Statutes of Nebraska, and
12 sections 43-285, 43-292.02, and 43-1318, Revised Statutes Cumulative
13 Supplement, 2018, are repealed.