

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 566

Introduced by Coash, 27; Crawford, 45; Davis, 43; Lindstrom, 18; Scheer,
19.

Read first time January 21, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to Indian child welfare; to amend sections
2 43-512.04, 43-1406, 43-1501, 43-1502, 43-1504, 43-1505, 43-1506,
3 43-1507, 43-1508, 43-1509, and 43-1514, Reissue Revised Statutes of
4 Nebraska, and sections 43-279.01 and 43-1503, Revised Statutes
5 Cumulative Supplement, 2014; to require inquiry by juvenile courts
6 regarding Indian children; to provide for recognition of tribal law
7 in paternity determinations; to change provisions of the Nebraska
8 Indian Child Welfare Act; to provide requirements for voluntary and
9 involuntary proceedings under the act; to define and redefine terms;
10 to provide powers and duties for the Department of Health and Human
11 Services; to harmonize provisions; and to repeal the original
12 sections.
13 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-279.01, Revised Statutes Cumulative
2 Supplement, 2014, is amended to read:

3 43-279.01 (1) When the petition alleges the juvenile to be within
4 the provisions of subdivision (3)(a) of section 43-247 or when
5 termination of parental rights is sought pursuant to subdivision (6) of
6 section 43-247 and the parent, custodian, or guardian appears with or
7 without counsel, the court shall inform the parties of the:

8 (a) Nature of the proceedings and the possible consequences or
9 dispositions pursuant to sections 43-284, 43-285, and 43-288 to 43-295;

10 (b) Right of the parent to engage counsel of his or her choice at
11 his or her own expense or to have counsel appointed if the parent is
12 unable to afford to hire a lawyer;

13 (c) Right of a stepparent, custodian, or guardian to engage counsel
14 of his or her choice and, if there are allegations against the
15 stepparent, custodian, or guardian or when the petition is amended to
16 include such allegations, to have counsel appointed if the stepparent,
17 custodian, or guardian is unable to afford to hire a lawyer;

18 (d) Right to remain silent as to any matter of inquiry if the
19 testimony sought to be elicited might tend to prove the party guilty of
20 any crime;

21 (e) Right to confront and cross-examine witnesses;

22 (f) Right to testify and to compel other witnesses to attend and
23 testify;

24 (g) Right to a speedy adjudication hearing; and

25 (h) Right to appeal and have a transcript or record of the
26 proceedings for such purpose.

27 (2) The court shall have the discretion as to whether or not to
28 appoint counsel for a person who is not a party to the proceeding. If
29 counsel is appointed, failure of the party to maintain contact with his
30 or her court-appointed counsel or to keep such counsel advised of the
31 party's current address may result in the counsel being discharged by the

1 court.

2 (3) After giving the parties the information prescribed in
3 subsection (1) of this section, the court may accept an in-court
4 admission, an answer of no contest, or a denial from any parent,
5 custodian, or guardian as to all or any part of the allegations in the
6 petition. The court shall ascertain a factual basis for an admission or
7 an answer of no contest.

8 (4) In the case of a denial, the court shall allow a reasonable time
9 for preparation if needed and then proceed to determine the question of
10 whether the juvenile falls under the provisions of section 43-247 as
11 alleged. After hearing the evidence, the court shall make a finding and
12 adjudication to be entered on the records of the court as to whether the
13 allegations in the petition have been proven by a preponderance of the
14 evidence in cases under subdivision (3)(a) of section 43-247 or by clear
15 and convincing evidence in proceedings to terminate parental rights. The
16 court shall inquire as to whether any party believes an Indian child is
17 involved in the proceedings prior to the advisement of rights pursuant to
18 subsection (1) of this section. If an Indian child is involved, the
19 standard of proof shall be in compliance with the Nebraska Indian Child
20 Welfare Act, if applicable.

21 (5) If the court shall find that the allegations of the petition or
22 motion have not been proven by the requisite standard of proof, it shall
23 dismiss the case or motion. If the court sustains the petition or motion,
24 it shall allow a reasonable time for preparation if needed and then
25 proceed to inquire into the matter of the proper disposition to be made
26 of the juvenile.

27 Sec. 2. Section 43-512.04, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 43-512.04 (1) An action for child support or medical support may be
30 brought separate and apart from any action for dissolution of marriage.
31 The complaint initiating the action shall be filed with the clerk of the

1 district court and may be heard by the county court or the district court
2 as provided in section 25-2740. Such action for support may be filed on
3 behalf of a child:

4 (a) Whose paternity has been established (i) by prior judicial order
5 in this state, (ii) by a prior determination of paternity made by any
6 other state or by an Indian tribe as described in subsection (1) of
7 section 43-1406, or (iii) by the marriage of his or her parents as
8 described in section 42-377 or subsection (2) of section 43-1406; or

9 (b) Whose paternity is presumed as described in section 43-1409 or
10 subsection (2) of section 43-1415.

11 (2) The father, not having entered into a judicially approved
12 settlement or being in default in the performance of the same, may be
13 made a respondent in such action. The mother of the child may also be
14 made a respondent in such an action. Such action shall be commenced by a
15 complaint of the mother of the child, the father of the child whose
16 paternity has been established, the guardian or next friend of the child,
17 the county attorney, or an authorized attorney.

18 (3) The complaint shall set forth the basis on which paternity was
19 previously established or presumed, if the respondent is the father, and
20 the fact of nonsupport and shall ask that the father, the mother, or both
21 parents be ordered to provide for the support of the child. Summons shall
22 issue against the father, the mother, or both parents and be served as in
23 other civil proceedings, except that such summons may be directed to the
24 sheriff of any county in the state and may be served in any county. The
25 method of trial shall be the same as in actions formerly cognizable in
26 equity, and jurisdiction to hear and determine such actions for support
27 is hereby vested in the district court of the district or the county
28 court of the county where the child is domiciled or found or, for cases
29 under the Uniform Interstate Family Support Act if the child is not
30 domiciled or found in Nebraska, where the parent of the child is
31 domiciled.

1 (4) In such proceeding, if the defendant is the presumed father as
2 described in subdivision (1)(b) of this section, the court shall make a
3 finding whether or not the presumption of paternity has been rebutted.
4 The presumption of paternity created by acknowledgment as described in
5 section 43-1409 may be rebutted as part of an equitable proceeding to
6 establish support by genetic testing results which exclude the alleged
7 father as being the biological father of the child. A court in such a
8 proceeding may order genetic testing as provided in sections 43-1414 to
9 43-1418.

10 (5) If the court finds that the father, the mother, or both parents
11 have failed adequately to support the child, the court shall issue a
12 decree directing him, her, or them to do so, specifying the amount of
13 such support, the manner in which it shall be furnished, and the amount,
14 if any, of any court costs and attorney's fees to be paid by the father,
15 the mother, or both parents. Income withholding shall be ordered pursuant
16 to the Income Withholding for Child Support Act. The court may require
17 the furnishing of bond to insure the performance of the decree in the
18 same manner as is provided for in section 42-358.05 or 43-1405. Failure
19 on the part of the defendant to perform the terms of such decree shall
20 constitute contempt of court and may be dealt with in the same manner as
21 other contempts. The court may also order medical support and the payment
22 of expenses as described in section 43-1407.

23 Sec. 3. Section 43-1406, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 43-1406 (1) A determination of paternity made by any other state or
26 by an Indian tribe as defined in section 43-1503, whether established
27 through voluntary acknowledgment, genetic testing, tribal law, or
28 administrative or judicial processes, shall be given full faith and
29 credit by this state.

30 (2) A child whose parents marry is legitimate.

31 Sec. 4. Section 43-1501, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 43-1501 Sections 43-1501 to 43-1516 and sections 8, 9, and 14 of
3 this act shall be known and may be cited as the Nebraska Indian Child
4 Welfare Act.

5 Sec. 5. Section 43-1502, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 43-1502 The purpose of the Nebraska Indian Child Welfare Act is to
8 clarify state policies and procedures regarding the implementation by the
9 State of Nebraska of the federal Indian Child Welfare Act, ~~25 U.S.C. 1901~~
10 ~~et seq.~~ It shall be the policy of the state to cooperate fully with
11 Indian tribes in Nebraska in order to ensure that the intent and
12 provisions of the federal Indian Child Welfare Act are enforced. This
13 cooperation includes recognition by the state that Indian tribes have a
14 continuing and compelling governmental interest in an Indian child
15 whether or not the Indian child is in the physical or legal custody of a
16 parent, an Indian custodian, or an Indian extended family member at the
17 commencement of an Indian child custody proceeding or the Indian child
18 has resided or is domiciled on an Indian reservation. The state is
19 committed to protecting the essential tribal relations and best interests
20 of an Indian child by promoting practices consistent with the federal
21 Indian Child Welfare Act and other applicable law designed to prevent the
22 Indian child's voluntary or involuntary out-of-home placement.

23 Sec. 6. Section 43-1503, Revised Statutes Cumulative Supplement,
24 2014, is amended to read:

25 43-1503 For purposes of the Nebraska Indian Child Welfare Act,
26 except as may be specifically provided otherwise, ~~the term:~~

27 (1) Active efforts shall mean and include, but not be limited to:

28 (a) A concerted level of casework, both prior to and after the
29 removal of an Indian child, exceeding the level that is required under
30 reasonable efforts to preserve and reunify the family described in
31 section 43-283.01 in a manner consistent with the prevailing social and

1 cultural conditions and way of life of the Indian child's tribe or tribes
2 to the extent possible under the circumstances;

3 (b) A request to the Indian child's tribe or tribes and extended
4 family known to the department or the state to convene traditional and
5 customary support and services;

6 (c) Actively engaging, assisting, and monitoring the family's access
7 to and progress in culturally appropriate and available resources of the
8 Indian child's extended family members, tribal service area, Indian tribe
9 or tribes, and individual Indian caregivers;

10 (d) Identification of and provision of information to the Indian
11 child's extended family members known to the department or the state
12 concerning appropriate community, state, and federal resources that may
13 be able to offer housing, financial, and transportation assistance and
14 actively assisting the family in accessing such community, state, and
15 federal resources;

16 (e) Identification of and attempts to engage tribally designated
17 Nebraska Indian Child Welfare Act representatives;

18 (f) Consultation with extended family members known to the
19 department or the state, or a tribally designated Nebraska Indian Child
20 Welfare Act representative if an extended family member cannot be
21 located, to identify family or tribal support services that could be
22 provided by extended family members or other tribal members if extended
23 family members cannot be located;

24 (g) Frequent family time in the Indian child's home and the homes of
25 the Indian child's extended family members known to the department or the
26 state when appropriate and to the extent possible under the
27 circumstances;

28 (h) Exhaustion of all available tribally appropriate family
29 preservation alternatives; and

30 (i) When the department or the state is involved in a proceeding
31 under this act, the department or the state shall provide a written

1 report of their attempts to provide active efforts to the court at every
2 hearing involving an Indian child. This report shall be sent to the
3 Indian child's tribe or tribes within three days after being filed with
4 the court and shall be deemed to be admissible evidence of active efforts
5 in proceedings conducted under this act;

6 (2) Best interests of the Indian child shall include:

7 (a) The Indian child's best interests are served by the use of
8 practices in compliance with the federal Indian Child Welfare Act, the
9 Nebraska Indian Child Welfare Act, and other applicable laws that are
10 designed to prevent the Indian child's voluntary or involuntary out-of-
11 home placement; and

12 (b) Whenever an out-of-home placement is necessary, placing the
13 child, to the greatest extent possible, in a foster home, adoptive
14 placement, or other type of custodial placement that reflects the unique
15 values of the Indian child's tribal culture and is best able to assist
16 the child in establishing, developing, and maintaining a political,
17 cultural, and social relationship with the Indian child's tribe or tribes
18 and tribal community;

19 (3 ~~1~~) Child custody proceeding shall mean and include:

20 (a) Foster care placement which shall mean any action removing an
21 Indian child from his or her parent or Indian custodian for temporary or
22 emergency placement in a foster home or institution or the home of a
23 guardian or conservator where the parent or Indian custodian cannot have
24 the child returned upon demand, but where parental rights have not been
25 terminated;

26 (b) Termination of parental rights which shall mean any action
27 resulting in the termination of the parent-child relationship;

28 (c) Preadoptive placement which shall mean the temporary placement
29 of an Indian child in a foster home or institution after the termination
30 of parental rights, but prior to or in lieu of adoptive placement; ~~and~~

31 (d) Adoptive placement which shall mean the permanent placement of

1 an Indian child for adoption, including any action resulting in a final
2 decree of adoption; and -

3 (e) Voluntary foster care placement which shall mean a non-court
4 involved proceeding in which the department or the state is facilitating
5 a voluntary foster care placement or in-home services to families at risk
6 of entering the foster care system. An Indian child, parent, or tribe
7 involved in a voluntary foster care placement shall only be provided
8 protections as provided in sections 43-1505(4), 43-1506, and 43-1508.

9 Such term or terms shall not include a placement based upon an act
10 which, if committed by an adult, would be deemed a crime or upon an
11 award, in a divorce proceeding, of custody to one of the parents;

12 (4) The department or the state shall mean the applicable state
13 social services entity that is involved with the provision of services to
14 Indian children, specifically the Nebraska Department of Health and Human
15 Services and the Nebraska Office of Probation Administration in certain
16 cases.

17 (5 2) Extended family member shall be as defined by the law or
18 custom of the Indian child's primary tribe or, in the absence of such
19 laws or customs of the primary tribe, the law or custom of the Indian
20 child's other tribes or, in the absence of such law or custom ~~tribe or,~~
21 ~~in the absence of such law or custom,~~ shall mean be a person who has
22 reached the age of eighteen and who is the Indian child's parent,
23 grandparent, aunt or uncle, clan member, band member, sibling, brother-
24 in-law or sister-in-law, niece or nephew, cousin, or stepparent;

25 (6) Federal Indian Child Welfare Act shall mean the federal Indian
26 Child Welfare Act of 1978, 25 U.S.C. 1901 et seq.;

27 (7 3) Indian shall mean means any person who is a member of an
28 Indian tribe, or who is an Alaska Native and a member of a regional
29 corporation defined in section 7 of the Alaska Native Claims Settlement
30 Act, 43 U.S.C. 1606;

31 (8 4) Indian child shall mean means any unmarried person who is

1 under age eighteen and is either (a) a member of an Indian tribe or (b)
2 is eligible for membership in an Indian tribe and is the biological child
3 of a member of an Indian tribe;

4 ~~(9 5) Indian child's tribe or tribes shall mean means (a) the Indian~~
5 ~~tribe or tribes in which an Indian child is a member or eligible for~~
6 ~~membership or (b) in the case of an Indian child who is a member of or~~
7 ~~eligible for membership in more than one tribe, the Indian tribe with~~
8 ~~which the Indian child has the more significant contacts;~~

9 (10) Indian child's primary tribe shall mean, in the case of an
10 Indian child that is a member or eligible for membership in multiple
11 tribes, the tribe determined by the procedure enumerated in subsection
12 (4) of section 43-1504;

13 (11 6) Indian custodian shall mean means any Indian person who has
14 legal custody of an Indian child under tribal law or custom or under
15 state law or to whom temporary physical care, custody, and control has
16 been transferred by the parent of such child;

17 (12 7) Indian organization shall mean means any group, association,
18 partnership, limited liability company, corporation, or other legal
19 entity owned or controlled by Indians or a majority of whose members are
20 Indians;

21 (13 8) Indian tribe shall mean means any Indian tribe, band, nation,
22 or other organized group or community of Indians recognized as eligible
23 for the services provided to Indians by the secretary because of their
24 status as Indians, including any Alaska Native village as defined in
25 section 3(c) of the Alaska Native Claims Settlement Act, as amended, 43
26 U.S.C. 1602(c);

27 (14 9) Parent means any biological parent or parents of an Indian
28 child or any Indian person who has lawfully adopted an Indian child,
29 including adoptions under tribal law or custom. It does not include the
30 unwed father when paternity has not been acknowledged or established;

31 (15) Qualified expert witness shall mean one of the following

1 persons, in descending priority order although a court may assess the
2 credibility of individual witnesses:

3 (a) A member of the Indian child's tribe or tribes who is recognized
4 by the tribal community as knowledgeable in tribal customs as they
5 pertain to family and childrearing practices;

6 (b) A lay expert witness that possesses substantial experience in
7 the delivery of child and family services to Indians and extensive
8 knowledge of prevailing social and cultural standards and childrearing
9 practices within the Indian child's tribe or tribes; or

10 (c) A professional person having substantial education in the area
11 of his or her specialty;

12 (16 10) Reservation shall mean means Indian country as defined in 18
13 U.S.C. 1151 and any lands, not covered under such section, title to which
14 is either held by the United States in trust for the benefit of any
15 Indian tribe or individual or held by any Indian tribe or individual
16 subject to a restriction by the United States against alienation or
17 federally designated or established service area which means a geographic
18 area designated by the United States where federal services and benefits
19 furnished to Indians and Indian tribes are provided or which is otherwise
20 designated to constitute an area on or near a reservation;

21 (17 11) Secretary shall mean means the Secretary of the United
22 States Department of the Interior;

23 (18 12) Tribal court shall mean means a court with jurisdiction over
24 child custody proceedings and which is either a Court of Indian Offenses,
25 a court established and operated under the code or custom of an Indian
26 tribe, or any other administrative body of a tribe which is vested with
27 authority over child custody proceedings; and

28 (19 13) Tribal service area shall mean means a geographic area, as
29 defined by the applicable Indian tribe or tribes, in which tribal
30 services and programs are provided to Indians ~~Native American people~~.

31 Sec. 7. Section 43-1504, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 43-1504 (1) An Indian tribe shall have jurisdiction exclusive as to
3 this state over any child custody proceeding involving an Indian child
4 who resides or is domiciled within the reservation of such tribe, except
5 when where such jurisdiction is otherwise vested in the state by existing
6 federal law. When an Indian child is a ward of a tribal court, the Indian
7 tribe shall retain exclusive jurisdiction, notwithstanding the residence
8 or domicile of the child.

9 (2) In any state court proceeding for the foster care placement of,
10 or termination of parental rights to, an Indian child not domiciled or
11 residing within the reservation of the Indian child's tribe, the court,
12 in the absence of good cause to the contrary, shall transfer such
13 proceeding to the jurisdiction of the primary tribe, absent objection by
14 either parent, upon the petition of either parent or the Indian custodian
15 or the Indian child's tribe, except that such transfer shall be subject
16 to declination by the tribal court of such tribe.

17 (3) In any state court proceeding for the foster care placement of,
18 or termination of parental rights to, an Indian child, the Indian
19 custodian of the child and the Indian child's tribe or tribes shall have
20 a right to intervene at any point in the proceeding regardless of whether
21 the intervening party is represented by legal counsel. The Indian child's
22 tribe or tribes and their counsel are not required to associate with
23 local counsel or pay a fee to appear pro hac vice in a child custody
24 proceeding under the Nebraska Indian Child Welfare Act. Representatives
25 from the Indian child's tribe or tribes have the right to fully
26 participate in every court proceeding held under the act.

27 (4) If the Indian child is eligible for membership or enrolled in
28 multiple Indian tribes, and more than one Indian tribe intervenes in a
29 state court proceeding for the foster care placement of, or termination
30 of parental rights to, an Indian child, the Indian child's primary tribe
31 shall be determined in the following manner:

1 (a) A unanimous agreement between the applicable Indian tribes
2 designating which Indian tribe shall be the Indian child's primary tribe
3 in the underlying state court proceeding, within thirty days of
4 intervention by an additional tribe or tribes.

5 (b) The Indian tribes should seek to consult the parents of the
6 Indian child and an Indian child over the age of twelve, when
7 practicable, prior to entering into such an agreement.

8 (c) If a unanimous agreement cannot be reached by the Indian tribes
9 within thirty days, the Indian child's primary tribe shall be determined
10 by the state court based upon which Indian tribe with which the Indian
11 child has more significant contacts.

12 (5 4) The State of Nebraska shall give full faith and credit to the
13 public acts, records, and judicial proceedings of any Indian tribe
14 applicable to Indian child custody proceedings to the same extent that
15 the state gives full faith and credit to the public acts, records, and
16 judicial proceedings of any other entity.

17 Sec. 8. Section 43-1505, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 43-1505 (1) In any involuntary proceeding in a state court, when the
20 court knows or has reason to know that an Indian child is involved, the
21 party seeking the foster care placement of, or termination of parental
22 rights to, an Indian child shall send a notice conforming to the
23 requirements of 25 C.F.R. 23.11 to notify the parents, the parent or
24 Indian custodian, and the Indian child's tribe or tribes, by certified or
25 registered mail with return receipt requested, of the pending proceedings
26 and of their right of intervention. If the identity or location of the
27 parent or Indian custodian and the tribe or tribes cannot be determined,
28 such notice shall be given to the secretary in like manner, who may
29 provide the requisite notice to the parent or Indian custodian and the
30 tribe or tribes. No foster care placement or termination of parental
31 rights proceedings shall be held until at least ten days after receipt of

1 notice by the parent or Indian custodian and the tribe or tribes or the
2 secretary. The parent or Indian custodian or the tribe or tribes shall,
3 upon request, be granted up to twenty additional days to prepare for such
4 proceeding.

5 (2) In any case in which the court determines indigency, the parent
6 or Indian custodian shall have the right to court-appointed counsel in
7 any removal, placement, or termination proceeding. The court may, in its
8 discretion, appoint counsel for the child upon a finding that such
9 appointment is in the best interests ~~interest~~ of the Indian child. When
10 state law makes no provision for appointment of counsel in such
11 proceedings, the court shall promptly notify the secretary upon
12 appointment of counsel and request from the secretary, upon certification
13 of the presiding judge, payment of reasonable attorney's fees and
14 expenses out of funds which may be appropriated.

15 (3) Each party to a foster care placement or termination of parental
16 rights proceeding under state law involving an Indian child shall have
17 the right to examine all reports or other documents filed with the court
18 upon which any decision with respect to such action may be based.

19 (4) Any party seeking to effect a foster care placement of, or
20 termination of parental rights to, an Indian child under state law shall
21 satisfy the court that active efforts have been made to provide remedial
22 services and rehabilitative programs designed to prevent the breakup of
23 the Indian family or unite the parent or Indian custodian with the Indian
24 child and that these efforts have proved unsuccessful. Any written
25 evidence showing that active efforts have been made shall be admissible
26 in a proceeding under the Nebraska Indian Child Welfare Act. Prior to the
27 court ordering placement of the child in foster care or the termination
28 of parental rights, the court shall make a determination that active
29 efforts have been provided or that the party seeking placement or
30 termination has demonstrated that attempts were made to provide active
31 efforts to the extent possible under the circumstances.

1 (5) The court shall not order ~~no~~ foster care placement under this
2 section may be ordered in such proceeding in the absence of a
3 determination by the court, supported by clear and convincing evidence,
4 including testimony of qualified expert witnesses, that the continued
5 custody of the child by the parent or Indian custodian is likely to
6 result in serious emotional or physical damage to the child.

7 (6) The court shall not order ~~no~~ termination of parental rights
8 under this section may be ordered in such proceeding in the absence of a
9 determination by the court, supported by evidence beyond a reasonable
10 doubt, including testimony of qualified expert witnesses, that the
11 continued custody of the child by the parent or Indian custodian is
12 likely to result in serious emotional or physical damage to the child.

13 Sec. 9. (1) Notice of an involuntary proceeding in state court
14 involving an Indian child shall conform with the requirements of 25
15 C.F.R. 23.11, and shall contain the following additional information, to
16 the extent it is known, and if this additional information is unknown, a
17 statement indicating what attempts have been made to locate the
18 information:

19 (a) The name and last-known address of the Indian child;

20 (b) The name and address of the Indian child's parents, paternal and
21 maternal grandparents, and Indian custodians, if any;

22 (c) The tribal affiliation of the parents of the Indian child or, if
23 applicable, the Indian custodians;

24 (d) A statement as to whether the Indian child's residence or
25 domicile is on the tribe's reservation;

26 (e) An identification of any tribal court order affecting the
27 custody of the Indian child to which a state court may be required to
28 accord full faith and credit; and

29 (f) A copy of the motion for foster care placement of the Indian
30 child, and any accompanying affidavits in support thereof, if such
31 documents exist.

1 (2) A copy of the notice of an involuntary proceeding in state court
2 involving an Indian child, as described in subsection (1) of this
3 section, shall be filed with the court within three days issuance.

4 Sec. 10. Section 43-1506, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 43-1506 (1) When any parent or Indian custodian voluntarily consents
7 (a) to a foster care placement, relinquishment, or termination, including
8 services offered by the Department of Health and Human Services or the
9 state or its designee, or (b) to termination of parental rights, such
10 consent shall not be valid unless executed in writing and recorded before
11 a judge of a court of competent jurisdiction and accompanied by the
12 presiding judge's certificate that the terms and consequences of the
13 consent were fully explained in detail and were fully understood by the
14 parent or Indian custodian. The court shall also certify that either the
15 parent or Indian custodian fully understood the explanation in English or
16 that it was interpreted into a language that the parent or Indian
17 custodian understood. Any consent given prior to, or within ten days
18 after, birth of the Indian child shall not be valid.

19 (2) When the Department of Health and Human Services or the state
20 offers the parent, Indian child, or Indian custodian services through a
21 voluntary foster care placement or in-home services and the department or
22 the state knows or has reason to know that an Indian child is involved,
23 the department or the state shall notify the parent or Indian custodian
24 and the Indian child's tribe or tribes, by telephone call, fax, email, or
25 registered mail with return receipt requested, of the provision of
26 services and any pending child custody proceeding. If the identity or
27 location of the parent or Indian custodian and the tribe or tribes cannot
28 be determined, such notice shall be given to the secretary and the
29 appropriate area director listed in 25 C.F.R. 23.11 in like manner who
30 may provide the requisite notice to the parent or Indian custodian and
31 the tribe or tribes. Notice shall be provided within five days after the

1 initiation of voluntary services.

2 (3) When the Department of Health and Human Services or the state
3 offers the parent or Indian custodian services through a voluntary foster
4 care placement or in-home services, the Indian custodian of the child and
5 the Indian child's tribe or tribes have a right to participate in,
6 provide, or consult with the department or the state regarding the
7 provision of voluntary services.

8 (4) When the department or the state offers the parent or Indian
9 custodian services through a voluntary foster care placement or in-home
10 services, the department or the state shall provide remedial services and
11 rehabilitative programs designed to prevent the breakup of the Indian
12 family or unite the parent or Indian custodian with the Indian child
13 until these efforts have proved unsuccessful.

14 (5) Prior to any voluntary relinquishment or termination of parental
15 rights proceeding in which the Department of Health and Human Services or
16 the state is a party or was providing assistance to a parent or Indian
17 custodian, the department or the state or its designee shall submit the
18 following information, in writing, to the court if it has not previously
19 been provided:

20 (a) The jurisdictional authority of the court in the proceeding;

21 (b) The date of the Indian child's birth and the date of any
22 voluntary consent to relinquishment or termination;

23 (c) The age of the Indian child at the time voluntary consent was
24 given;

25 (d) The date the parent appeared in court and was informed by the
26 judge of the terms and consequences of any voluntary consent to
27 relinquishment or termination;

28 (e) The parent fully understood the explanation of such terms and
29 consequences in English or, when necessary, the explanation was
30 interpreted into a language that the parent understood and the parent
31 fully understood the explanation of such terms and consequences in the

1 language into which such terms and consequences were translated;

2 (f) The name and address of any prospective adoptive parent whose
3 identity is known to the consenting parent;

4 (g) The promises, if any, made to the parent, as a condition of the
5 parent's consent, including promises regarding the tribal affiliation or
6 health, ethnic, religious, economic, or other personal characteristics of
7 any adoptive family with which the child would be placed; and

8 (h) The details, if any, of an enforceable communication or contact
9 agreement authorized by section 43-162.

10 (6 2) Any parent or Indian custodian may withdraw consent to a
11 foster care or voluntary foster care placement under state law at any
12 time and, upon such withdrawal, the child shall be returned to the parent
13 or Indian custodian.

14 (7 3) In any voluntary proceedings for termination of parental
15 rights to, or adoptive placement of, an Indian child, the consent of the
16 parent may be withdrawn for any reason at any time prior to the entry of
17 a final decree of termination or adoption, as the case may be, and the
18 child shall be returned to the parent.

19 (8 4) After the entry of a final decree of adoption of an Indian
20 child in any state court, the parent may withdraw consent thereto upon
21 the grounds that consent was obtained through fraud or duress and may
22 petition the court to vacate such decree. Upon a finding that such
23 consent was obtained through fraud or duress, the court shall vacate such
24 decree and return the child to the parent. No adoption which has been
25 effective for at least two years may be invalidated under the provisions
26 of this subsection unless otherwise permitted under state law.

27 Sec. 11. Section 43-1507, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 43-1507 Any Indian child who is the subject of any action for foster
30 care placement or termination of parental rights under state law, any
31 parent or Indian custodian from whose custody such child was removed, and

1 the Indian child's primary tribe may petition any court of competent
2 jurisdiction to invalidate such action upon a showing that such action
3 violated any provision of sections 43-1504 to 43-1506 and sections 8 and
4 9 of this act.

5 Sec. 12. Section 43-1508, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 43-1508 (1) In any adoptive placement of an Indian child under state
8 law, a preference shall be given, in the absence of good cause to the
9 contrary, to a placement with the following in descending priority order:

10 (a) A member of the Indian child's extended family;

11 (b) Other members of the Indian child's tribe or tribes; ~~or~~

12 (c) Other Indian families; or ~~or~~

13 (d) A non-Indian family committed to enabling the child to have
14 extended family time and participation in the cultural and ceremonial
15 events of the Indian child's tribe or tribes;

16 (2) Any child accepted for foster care, ~~or~~ preadoptive placement, or
17 a voluntary foster care placement shall be placed in the least
18 restrictive setting which most approximates a family and in which his or
19 her special needs, if any, may be met. The child shall also be placed
20 within reasonable proximity to his or her home, taking into account any
21 special needs of the child. In any foster care or preadoptive placement,
22 a preference shall be given, in the absence of good cause to the
23 contrary, to a placement with one of the following in descending priority
24 order:

25 (a) A member of the Indian child's extended family;

26 (b) Other members of the Indian child's tribe or tribes;

27 (c) A foster home licensed, approved, or specified by the Indian
28 child's tribe or tribes;

29 (d) An Indian foster home licensed or approved by an authorized non-
30 Indian licensing authority;

31 (e) A non-Indian family committed to enabling the child to have

1 extended family time and participation in the cultural and ceremonial
2 events of the Indian child's tribe or tribes;

3 (f) An Indian facility or program for children approved by an Indian
4 tribe or operated by an Indian organization which has a program suitable
5 to meet the Indian child's needs; or

6 (g) A non-Indian facility or program for children approved by an
7 Indian tribe.

8 ~~(b) A foster home licensed, approved, or specified by the Indian~~
9 ~~child's tribe;~~

10 ~~(c) An Indian foster home licensed or approved by an authorized non-~~
11 ~~Indian licensing authority; or~~

12 ~~(d) An institution for children approved by an Indian tribe or~~
13 ~~operated by an Indian organization which has a program suitable to meet~~
14 ~~the Indian child's needs.~~

15 (3) In the case of a placement under subsection (1) or (2) of this
16 section, if the Indian child's primary tribe shall establish a different
17 order of preference by resolution or in the absence thereof the order
18 established by resolution of the Indian child's other tribes, the agency
19 or court effecting the placement shall follow such order so long as the
20 placement is the least restrictive setting appropriate to the particular
21 needs of the child, as provided in subsection (2) of this section. When
22 appropriate, the preference of the Indian child or parent shall be
23 considered, except that, when a consenting parent evidences a desire for
24 anonymity, the court or agency shall give weight to such desire in
25 applying the preferences.

26 (4) The standards to be applied in meeting the preference
27 requirements of this section shall be the prevailing social and cultural
28 standards of the Indian community in which the parent or extended family
29 resides or with which the parent or extended family members maintain
30 social and cultural ties. Good cause to deviate from the placement
31 preferences in subsections (1) through (3) of this section includes: (a)

1 The request of the biological parents or the Indian child when the Indian
2 child is at least twelve years of age; (b) the extraordinary physical or
3 emotional needs of the Indian child as established by testimony of a
4 qualified expert witness; or (c) the unavailability of suitable families
5 for placement after a diligent search has been completed for families
6 meeting the preference criteria. The burden of establishing the existence
7 of good cause to deviate from the placement preferences and order shall
8 be by clear and convincing reference on the party urging that the
9 preferences not be followed.

10 (5) A record of each such placement, under state law, of an Indian
11 child shall be maintained by the state, evidencing the efforts to comply
12 with the order of preference specified in this section. Such record shall
13 be made available at any time upon the request of the secretary or the
14 Indian child's tribe or tribes.

15 Sec. 13. Section 43-1509, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 43-1509 (1) Notwithstanding any other state law to the contrary,
18 whenever a final decree of adoption of an Indian child has been vacated
19 or set aside or the adoptive parents voluntarily consent to the
20 termination of their parental rights to the child, a biological parent or
21 prior Indian custodian may petition for return of custody and the court
22 shall grant such petition unless there is a showing, in a proceeding
23 subject to the provisions of section 43-1505, that such return of custody
24 is not in the best interests of the Indian child.

25 (2) Whenever an Indian child is removed from a foster care home or
26 institution for the purpose of further foster care, preadoptive, or
27 adoptive placement, such placement shall be in accordance with the
28 Nebraska Indian Child Welfare Act, except in the case in which an Indian
29 child is being returned to the parent or Indian custodian from whose
30 custody the child was originally removed.

31 Sec. 14. Section 43-1514, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 43-1514 (1) Nothing in the Nebraska Indian Child Welfare Act shall
3 be construed to prevent the emergency removal of an Indian child who is a
4 resident of or is domiciled on a reservation, but temporarily located off
5 the reservation, from his or her parent or Indian custodian or the
6 emergency placement of such child in a foster home or institution, under
7 applicable state law, in order to prevent imminent physical damage or
8 harm to the child. The state authority, official, or agency involved
9 shall insure that the emergency removal or placement terminates
10 immediately when such removal or placement is no longer necessary to
11 prevent imminent physical damage or harm to the child and shall
12 expeditiously initiate a child custody proceeding subject to the
13 provisions of the Nebraska Indian Child Welfare Act, transfer the child
14 to the jurisdiction of the appropriate Indian tribe or tribes, or restore
15 the child to the parent or Indian custodian, as may be appropriate.

16 (2) During the course of each intake received by the statewide child
17 abuse and neglect hotline provided by the Department of Health and Human
18 Services, the hotline representative shall inquire as to whether the
19 person calling the hotline believes one of the parties involved may be an
20 Indian child or Indian person. If the hotline representative has any
21 reason to believe that an Indian child or Indian person is involved in
22 the intake, the representative shall immediately document the information
23 and inform his or her supervisor.

24 Sec. 15. The Department of Health and Human Services or the state,
25 in consultation with Indian tribes, shall adopt and promulgate rules and
26 regulations to establish standards and procedures for the department's or
27 the state's review of cases subject to the Nebraska Indian Child Welfare
28 Act and methods for monitoring the department's or the state's compliance
29 with the federal Indian Child Welfare Act and the Nebraska Indian Child
30 Welfare Act. The standards and procedures and the monitoring methods
31 shall be integrated into the department's or the state's structure and

1 plan for the federal government's child and family service review process
2 and any program improvement plan resulting from that process.

3 Sec. 16. Original sections 43-512.04, 43-1406, 43-1501, 43-1502,
4 43-1504, 43-1505, 43-1506, 43-1507, 43-1508, 43-1509, and 43-1514,
5 Reissue Revised Statutes of Nebraska, and sections 43-279.01 and 43-1503,
6 Revised Statutes Cumulative Supplement, 2014, are repealed.