

LEGISLATIVE BILL 177

Approved by the Governor May 4, 2011

Introduced by Campbell, 25; Hansen, 42; Pirsch, 4.

FOR AN ACT relating to health and human services; to amend sections 43-905, 43-1301, 43-1311, 43-1312, 43-1318, 68-1202, and 68-1204, Reissue Revised Statutes of Nebraska, and section 43-285, Revised Statutes Cumulative Supplement, 2010; to provide for a written independent living transition proposal for children in foster care; to provide for notification of relatives when a child is removed from his or her home; to require reasonable efforts for joint-sibling placement or sibling visitation or ongoing interactions; to change provisions relating to placement of children and the purchase and provision of social services; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 43-285, Revised Statutes Cumulative Supplement, 2010, is amended to read:

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

(2) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family. The health and safety of the juvenile shall be the paramount concern in the proposed plan. The department shall include in the plan for a juvenile who is sixteen years of age or older and subject to the guardianship of the department a written ~~proposal describing programs and services designed to assist the juvenile in acquiring independent living skills.~~ independent living transition proposal which meets the requirements of section 8 of this act. If any other party, including, but not limited to, the guardian ad litem, parents, county attorney, or custodian, proves by a preponderance of the evidence that the department's plan is not in the juvenile's best interests, the court shall disapprove the department's plan. The court may modify the plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to assist the juvenile in acquiring independent living skills. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented.

(3) Within thirty days after an order awarding a juvenile to the care of the department, an association, or an individual and until the juvenile reaches the age of majority, the department, association, or individual shall file with the court a report stating the location of the juvenile's placement and the needs of the juvenile in order to effectuate the purposes of subdivision (1) of section 43-246. The department, association, or individual shall file a report with the court once every six months or at shorter intervals if ordered by the court or deemed appropriate by the department, association, or individual. The department, association, or individual shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties at least seven days before the placement of the juvenile is changed from what the court originally considered to be a suitable family home or institution to some other custodial situation in order to effectuate the purposes of subdivision (1) of section 43-246. The court, on its own motion or upon the filing of an objection to the change by an interested party, may order a hearing to review such a change in placement and may order that the change be stayed until the completion of the hearing. Nothing in this section shall prevent the court on an ex parte basis from approving an immediate change in placement upon good cause shown. The department may make an immediate change in placement without

court approval only if the juvenile is in a harmful or dangerous situation or when the foster parents request that the juvenile be removed from their home. Approval of the court shall be sought within twenty-four hours after making the change in placement or as soon thereafter as possible. The department shall provide the juvenile's guardian ad litem with a copy of any report filed with the court by the department pursuant to this subsection.

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

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

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

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

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

Sec. 2. Section 43-905, Reissue Revised Statutes of Nebraska, is amended to read:

43-905 (1) The Department of Health and Human Services shall be the legal guardian of all children committed to it. The department shall afford temporary care and shall use special diligence to provide suitable homes for such children. The department shall make reasonable efforts to accomplish joint-sibling placement or sibling visitation or ongoing interaction between siblings as provided in section 7 of this act. The department is authorized to place such children in suitable families for adoption, foster care, or guardianship or, in the discretion of the department, on a written contract.

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

(3) Whenever any child who has been committed to the department becomes self-supporting, the department shall declare that fact and the guardianship of the department shall cease. Thereafter the child shall be entitled to his or her own earnings. Guardianship of and services by the department shall never extend beyond the age of majority, except that services by the department to a child shall continue until the child reaches the age of twenty-one if the child is a student regularly attending a school, college, or university or regularly attending a course of vocational or technical training designed to prepare such child for gainful employment.

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

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

Sec. 3. Section 43-1301, Reissue Revised Statutes of Nebraska, is amended to read:

43-1301 For purposes of the Foster Care Review Act, unless the context otherwise requires:

(1) Local board shall mean a local foster care review board created pursuant to section 43-1304;

(2) State board shall mean the State Foster Care Review Board created pursuant to section 43-1302;

(3) Foster care facility shall mean any foster home, group home, child care facility, public agency, private agency, or any other person or

entity receiving and caring for foster children;

(4) Foster care placements shall mean all placements of juveniles as described in subdivision (3)(b) of section 43-247, placements of neglected, dependent, or delinquent children, including those made directly by parents or by third parties, and placements of children who have been voluntarily relinquished pursuant to section 43-106.01 to the Department of Health and Human Services or any child placement agency licensed by the Department of Health and Human Services;

(5) Person or court in charge of the child shall mean (a) the Department of Health and Human Services, an association, or an individual who has been made the guardian of a neglected, dependent, or delinquent child by the court and has the responsibility of the care of the child and has the authority by and with the assent of the court to place such a child in a suitable family home or institution or has been entrusted with the care of the child by a voluntary placement made by a parent or legal guardian, (b) the court which has jurisdiction over the child, or (c) the entity having jurisdiction over the child pursuant to the Nebraska Indian Child Welfare Act;

(6) Voluntary placement shall mean the placement by a parent or legal guardian who relinquishes the possession and care of a child to a third party, individual, or agency;

(7) Family unit shall mean the social unit consisting of the foster child and the parent or parents or any person in the relationship of a parent, including a grandparent, and any siblings with whom the foster child legally resided prior to placement in foster care, except that for purposes of potential sibling placement, the child's family unit shall also include the child's siblings even if the child has not resided with such siblings prior to placement in foster care;

(8) Child-caring agency shall have the definition found in section 71-1902; ~~and~~

(9) Child-placing agency shall have the definition found in section 71-1902; ~~and-~~

(10) Siblings means biological siblings and legal siblings, including, but not limited to, half-siblings and stepsiblings.

Sec. 4. Section 43-1311, Reissue Revised Statutes of Nebraska, is amended to read:

43-1311 Except as otherwise provided in the Nebraska Indian Child Welfare Act, immediately following removal of a child from his or her home pursuant to section 43-284, the person or court in charge of the child shall:

(1) Conduct or cause to be conducted an investigation of the child's circumstances designed to establish a safe and appropriate plan for the rehabilitation of the foster child and family unit or permanent placement of the child;

(2) Require that the child receive a medical examination within two weeks of his or her removal from his or her home;

(3) Subject the child to such further diagnosis and evaluation as is necessary; ~~and~~

(4) Require that the child attend the same school as prior to the foster care placement unless the person or court in charge determines that attending such school would not be in the best interests of the child; ~~and-~~

(5) Notify the Department of Health and Human Services to identify, locate, and provide written notification to adult relatives of the child as provided in section 6 of this act.

Sec. 5. Section 43-1312, Reissue Revised Statutes of Nebraska, is amended to read:

43-1312 (1) Following the investigation conducted pursuant to section 43-1311 and immediately following the initial placement of the child, the person or court in charge of the child shall cause to be established a safe and appropriate plan for the child. The plan shall contain at least the following:

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

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

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

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

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

(f) The name of the school the child shall attend as provided in section 43-1311.

(2) If the return of the child to his or her parents is not likely based upon facts developed as a result of the investigation, the Department

of Health and Human Services shall recommend termination of parental rights and referral for adoption, guardianship, placement with a relative, or, as a last resort, another planned permanent living arrangement. If the child is removed from his or her home, the department shall make reasonable efforts to accomplish joint-sibling placement or sibling visitation or ongoing interaction between the siblings as provided in section 7 of this act.

(3) Each child in foster care under the supervision of the state shall have a permanency hearing by a court, no later than twelve months after the date the child enters foster care and annually thereafter during the continuation of foster care. The court's order shall include a finding regarding the appropriateness of the permanency plan determined for the child and shall include whether, and if applicable when, the child will be:

- (a) Returned to the parent;
- (b) Referred to the state for filing of a petition for termination of parental rights;
- (c) Placed for adoption;
- (d) Referred for guardianship; or
- (e) In cases where the state agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, (i) referred for termination of parental rights, (ii) placed for adoption with a fit and willing relative, or (iii) placed with a guardian.

Sec. 6. (1) When notified pursuant to section 43-1311 or upon voluntary placement of a child, the Department of Health and Human Services shall, as provided in this section, identify, locate, and provide written notification of the removal of the child from his or her home, within thirty days after removal, to any noncustodial parent and to all grandparents, adult siblings, adult aunts, adult uncles, adult cousins, and adult relatives suggested by the child or the child's parents, except when that relative's history of family or domestic violence makes notification inappropriate. If the child is an Indian child as defined in section 43-1503, the child's extended family members as defined in such section shall be notified. Such notification shall include all of the following information:

- (a) The child has been or is being removed from the custody of the parent or parents of the child;
- (b) An explanation of the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;
- (c) A description of the requirements for the relative to serve as a foster care provider or other type of care provider for the child and the additional services, training, and other support available for children receiving such care; and
- (d) Information concerning the option to apply for guardianship assistance payments.

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

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

Sec. 7. (1) (a) Reasonable efforts shall be made to place a child and the child's siblings in the same foster care placement or adoptive placement, unless such placement is contrary to the safety or well-being of any of the siblings. This requirement applies even if the custody orders of the siblings are made at separate times.

(b) If the siblings are not placed together in a joint-sibling placement, the Department of Health and Human Services shall provide the siblings and the court with the reasons why a joint-sibling placement would be contrary to the safety or well-being of any of the siblings.

(2) When siblings are not placed together in a joint-sibling placement, the department shall make a reasonable effort to provide for frequent sibling visitation or ongoing interaction between the child and the child's siblings unless the department provides the siblings and the court with reasons why such sibling visitation or ongoing interaction would be contrary to the safety or well-being of any of the siblings. The court shall determine the type and frequency of sibling visitation or ongoing interaction to be implemented by the department.

(3) Parties to the case may file a motion for joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(4) The court shall periodically review and evaluate the

effectiveness and appropriateness of the joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(5) If an order is entered for termination of parental rights of siblings who are subject to this section, unless the court has suspended or terminated joint-sibling placement, sibling visitation, or ongoing interaction between siblings, the department shall make reasonable efforts to make a joint-sibling placement or do all of the following to facilitate frequent sibling visitation or ongoing interaction between the child and the child's siblings when the child is adopted or enters a permanent placement: (a) Include in the training provided to prospective adoptive parents information regarding the importance of sibling relationships to an adopted child and counseling methods for maintaining sibling relationships; (b) provide prospective adoptive parents with information regarding the child's siblings; and (c) encourage prospective adoptive parents to plan for facilitating post-adoption contact between the child and the child's siblings.

(6) Any information regarding court-ordered or authorized joint-sibling placement, sibling visitation, or ongoing interaction between siblings shall be provided by the department to the parent or parents if parental rights have not been terminated unless the court determines that doing so would be contrary to the safety or well-being of the child and to the foster parent, relative caretaker, guardian, prospective adoptive parent, and child as soon as reasonably possible following the entry of the court order or authorization as necessary to facilitate the sibling time.

Sec. 8. (1) When a child placed in foster care turns sixteen years of age or enters foster care and is at least sixteen years of age, a written independent living transition proposal shall be developed by the Department of Health and Human Services at the direction and involvement of the child to prepare for the transition from foster care to adulthood. The transition proposal shall be personalized based on the child's needs. The transition proposal shall include, but not be limited to, the following needs:

(a) Education;
(b) Employment services and other workforce support;
(c) Health and health care coverage;
(d) Financial assistance, including education on credit card financing, banking, and other services;
(e) Housing;
(f) Relationship development; and
(g) Adult services, if the needs assessment indicates that the child is reasonably likely to need or be eligible for services or other support from the adult services system.

(2) The transition proposal shall be developed and frequently reviewed by the department in collaboration with the child's transition team. The transition team shall be comprised of the child, the child's caseworker, the child's guardian ad litem, individuals selected by the child, and individuals who have knowledge of services available to the child.

(3) The transition proposal shall be considered a working document and shall be, at the least, updated for and reviewed at every permanency or review hearing by the court.

(4) The final transition proposal prior to the child's leaving foster care shall specifically identify how the need for housing will be addressed.

(5) If the child is interested in pursuing higher education, the transition proposal shall provide for the process in applying for any applicable state, federal, or private aid.

(6) On or before the date the child reaches nineteen years of age, the department shall provide the child a certified copy of the child's birth certificate and facilitate securing a federal social security card when the child is eligible for such card. All fees associated with securing the certified copy shall be waived by the state.

Sec. 9. Section 43-1318, Reissue Revised Statutes of Nebraska, is amended to read:

43-1318 Sections 43-1301 to 43-1318 and sections 6 to 8 of this act shall be known and may be cited as the Foster Care Review Act.

Sec. 10. Section 68-1202, Reissue Revised Statutes of Nebraska, is amended to read:

68-1202 Social services may be provided on behalf of recipients with payments for such social services made directly to vendors. Social services shall include those mandatory and optional services to former, present, or potential social services recipients provided for under the federal Social Security Act, as such act existed on September 4, 2005, amended, and described by the State of Nebraska in the approved State Plan for Services. Such services may include, but shall not be limited to, foster care for children,

child care, family planning, treatment for alcoholism and drug addiction, treatment for persons with mental retardation, health-related services, protective services for children, homemaker services, employment services, foster care for adults, protective services for adults, transportation services, home management and other functional education services, housing improvement services, legal services, adult day services, home delivered or congregate meals, educational services, and secondary prevention services, including, but not limited to, home visitation, child screening and early intervention, and parenting education programs.

Sec. 11. Section 68-1204, Reissue Revised Statutes of Nebraska, is amended to read:

68-1204 (1) For the purpose of providing or purchasing social services described in section 68-1202, the state hereby accepts and assents to all applicable provisions of the federal Social Security Act, as ~~such act existed on July 1, 2006~~ amended. The Department of Health and Human Services may adopt and promulgate rules and regulations, enter into agreements, and adopt fee schedules with regard to social services described in section 68-1202.

(2) The department shall adopt and promulgate rules and regulations to administer funds under Title XX of the federal Social Security Act, as ~~such title existed on July 1, 2006~~ amended, designated for specialized developmental disability services.

Sec. 12. Original sections 43-905, 43-1301, 43-1311, 43-1312, 43-1318, 68-1202, and 68-1204, Reissue Revised Statutes of Nebraska, and section 43-285, Revised Statutes Cumulative Supplement, 2010, are repealed.