

LEGISLATIVE BILL 1078

Approved by the Governor April 04, 2018

Introduced by Crawford, 45.

A BILL FOR AN ACT relating to juveniles; to amend sections 43-285 and 43-1311.02, Reissue Revised Statutes of Nebraska, and sections 43-1303, 43-4318, and 43-4406, Revised Statutes Supplement, 2017; to provide for waiver of notice of placement notifications; to provide for a written sibling placement report and change provisions relating to sibling visitation and placement; to provide for additional information relating to foster care placements as prescribed; to require reporting of allegations of sexual abuse as prescribed; to eliminate obsolete provisions regarding the N-FOCUS system; 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, Reissue Revised Statutes of Nebraska, 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 legal custody and care 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. Any such association and the department shall be responsible for applying for any health insurance available to the juvenile, including, but not limited to, medical assistance under the Medical Assistance Act. Such custody and care shall not include the guardianship of any estate of the juvenile.

(2)(a) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3)(a) or (c) 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.

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

(c) The department shall include in the plan for a child who is fourteen years of age or older and subject to the legal care and custody of the department a written independent living transition proposal which meets the requirements of section 43-1311.03 and, for eligible children, the Young Adult Bridge to Independence Act. The juvenile court shall provide a copy of the plan to all interested parties before the hearing. The court may approve the plan, modify the plan, order that an alternative plan be developed, or implement another plan that is in the child'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 help the child prepare for the transition from foster care to a successful adulthood. The court shall also ask the child, in an age or developmentally appropriate manner, if he or she participated in the development of his or her plan and make a finding regarding the child's participation in the development of his or her plan as provided in the Nebraska Strengthening Families Act. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented.

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

program and the option to enter such program at any time between nineteen and twenty-one years of age if the child meets the eligibility requirements of section 43-4504. The department shall present information to the court regarding other community resources that may benefit the child, specifically information regarding state programs established pursuant to 42 U.S.C. 677. The court shall also make a finding as to whether the child has received the documents as required by subsection (9) of section 43-1311.03.

(3)(a) (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. Every six months, the report shall provide an updated statement regarding the eligibility of the juvenile for health insurance, including, but not limited to, medical assistance under the Medical Assistance Act. The department shall also concurrently file a written sibling placement report as described in subsection (3) of section 43-1311.02 at these times.

(b) 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, including all of the child's siblings that are known to the department, 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 department, association, or individual shall afford a parent or an adult sibling the option of refusing to receive such notifications. 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.

(c) 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 Foster Care Review Office or the designated local 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 Foster Care Review Office or the 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) The executive director and any agent or employee of the Foster Care Review Office 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 43-1303, Revised Statutes Supplement, 2017, is amended to read:

43-1303 (1) The office shall maintain the statewide register of all foster care placements occurring within the state, and there shall be a weekly report made to the registry of all foster care placements by the Department of Health and Human Services, any child-placing agency, or any court in a form as developed by the office in consultation with representatives of entities required to make such reports. For each child entering and leaving foster care, such report shall consist of identifying information, placement information, the plan or permanency plan developed by the person or court in charge of the child pursuant to section 43-1312, and information on whether any such child was a person immune from criminal prosecution under subsection (5) of section 28-801 or was considered a trafficking victim as defined in section 28-830. The department, the Office of Probation Administration, and every court and child-placing agency shall report any foster care placement within three working days. The report shall contain the following information:

(a) Child identification information, including name, date of birth,

gender, race, religion, and ethnicity;

(b) Identification information for parents and stepparents, including name, address, and status of parental rights;

(c) Placement information, including (i) initial placement date, (ii) current placement date, (iii) ~~and~~ the name and address of the foster care placement, (iv) if a relative placement or kinship placement, whether the foster care placement is licensed, and (v) whether the foster care placement has received a waiver pursuant to section 71-1904 and the basis for such waiver;

(d) Court status information, including which court has jurisdiction, initial custody date, court hearing date, and results of the court hearing;

(e) Agency or other entity having custody of the child; and

(f) Case worker, probation officer, or person providing direct case management or supervision functions.

(2)(a) The Foster Care Review Office shall designate a local board to conduct foster care file audit case reviews for each case of children in foster care placement.

(b) The office may adopt and promulgate rules and regulations for the following:

(i) Establishment of training programs for local board members which shall include an initial training program and periodic inservice training programs;

(ii) Development of procedures for local boards;

(iii) Establishment of a central record-keeping facility for all local board files, including foster care file audit case reviews;

(iv) Accumulation of data and the making of annual reports on children in foster care placements. Such reports shall include, but not be limited to, (A) personal data on length of time in foster care, (B) number of placements, (C) frequency and results of foster care file audit case reviews and court review hearings, (D) number of children supervised by the foster care programs in the state annually, (E) trend data impacting foster care, services, and placements, (F) analysis of the data, and (G) recommendations for improving the foster care system in Nebraska;

(v) Accumulation of data and the making of quarterly reports regarding the children in foster care placements;

(vi) To the extent not prohibited by section 43-1310, evaluation of the judicial and administrative data collected on foster care and the dissemination of such data to the judiciary, public and private agencies, the department, and members of the public; and

(vii) Manner in which the office shall determine the appropriateness of requesting a court review hearing as provided for in section 43-1313.

(3) A local board shall send a written report to the office for each foster care file audit case review conducted by the local board. A court shall send a written report to the office for each foster care review hearing conducted by the court.

(4) The office shall report and make recommendations to the Legislature, the department, the Office of Probation Administration, the courts, local boards, and county welfare offices. Such reports and recommendations shall include, but not be limited to, the annual judicial and administrative data collected on foster care pursuant to subsections (2) and (3) of this section and the annual evaluation of such data. The report and recommendations submitted to the Legislature shall be submitted electronically. In addition, the Foster Care Review Office shall provide copies of such reports and recommendations to each court having the authority to make foster care placements. The executive director of the office shall also provide, at a time specified by the Health and Human Services Committee of the Legislature, regular electronic updates regarding child welfare data and information at least quarterly, and a fourth-quarter report which shall be the annual report. The executive director shall include issues, policy concerns, and problems which have come to the office and the executive director from analysis of the data. The executive director shall recommend alternatives to the identified problems and related needs of the office and the foster care system to the committee. The Health and Human Services Committee shall coordinate and prioritize data and information requests submitted to the office by members of the Legislature. The annual report of the office shall be completed by December 1 each year and shall be submitted electronically to the committee.

(5) The executive director of the office or his or her designees from the office may visit and observe foster care facilities in order to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met.

(6) At the request of any state agency, the executive director of the office or his or her designees from the office may conduct a case file review process and data analysis regarding any state ward or ward of the court whether placed in-home or out-of-home at the time of the case file review.

Sec. 3. Section 43-1311.02, Reissue Revised Statutes of Nebraska, is amended to read:

43-1311.02 (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 and even if the children have no preexisting relationship.

(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. The court shall make a determination as to whether reasonable efforts have been made by the department to facilitate sibling placement and sibling visitation or other ongoing interaction and whether such placement and visitation or other ongoing interaction is contrary to the safety or well-being of any of the siblings.

(3) The department shall file a written sibling placement report as required by subsection (3) of section 43-285. Such a report shall include the reasonable efforts of the department to locate the child's siblings and, if a joint-sibling placement is made, whether such placement continues to be consistent with the safety and well-being of the children. If joint-sibling placement is not possible, the report shall include the reasons why a joint-sibling placement is and continues to be contrary to the safety or well-being of any of the siblings, the department's continuing reasonable efforts to place a child with a sibling in the same foster care or adoptive placement, and the department's continuing reasonable efforts to facilitate sibling visitation.

(4) Parties to the case, including a child's sibling, may file a motion for joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(5) ~~(4)~~ The court shall periodically review and evaluate the effectiveness and appropriateness of the joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(6) ~~(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.

(7) ~~(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.

(8) ~~(7)~~ For purposes relative to the administration of the federal foster care program and the state plans pursuant to Title IV-B and Title IV-E of the federal Social Security Act, as such act existed on January 1, 2015, the term sibling means an individual considered to be a sibling under Nebraska law or an individual who would have been considered a sibling but for a termination of parental rights or other disruption of parental rights such as death of a parent.

(9) A sibling of a child under the jurisdiction of the court shall have the right to intervene at any point in the proceedings for the limited purpose of seeking joint-sibling placement, sibling visitation, or ongoing interaction with their sibling.

(10) This section shall not be construed to subordinate the rights of foster or adoptive parents of a child to the rights of the parents of a sibling of that child or to subordinate the rights of an adoptive, foster, or biological parent to the rights of a child seeking sibling placement or visitation.

Sec. 4. Section 43-4318, Revised Statutes Supplement, 2017, is amended to read:

43-4318 (1) The office shall investigate:

(a) Allegations or incidents of possible misconduct, misfeasance, malfeasance, or violations of statutes or of rules or regulations of:

(i) The department by an employee of or person under contract with the department, a private agency, a licensed child care facility, a foster parent, or any other provider of child welfare services or which may provide a basis for discipline pursuant to the Uniform Credentialing Act;

(ii) Subject to subsection (3) ~~(2)~~ of this section, the juvenile services division by an employee of or person under contract with the juvenile services division, a private agency, a licensed facility, a foster parent, or any other provider of juvenile justice services;

(iii) The commission by an employee of or person under contract with the commission related to programs and services supported by the Nebraska County Juvenile Services Plan Act, the Community-based Juvenile Services Aid Program,

juvenile pretrial diversion programs, or inspections of juvenile facilities; and

(iv) A juvenile detention facility and staff secure juvenile facility by an employee of or person under contract with such facilities;

(b) Death or serious injury in foster homes, private agencies, child care facilities, juvenile detention facilities, staff secure juvenile facilities, and other programs and facilities licensed by or under contract with the department or the juvenile services division when the office, upon review, determines the death or serious injury did not occur by chance; and

(c) Death or serious injury in any case in which services are provided by the department or the juvenile services division to a child or his or her parents or any case involving an investigation under the Child Protection and Family Safety Act, which case has been open for one year or less and upon review determines the death or serious injury did not occur by chance.

(2) The department, the juvenile services division, each juvenile detention facility, and each staff secure juvenile facility shall report to the office (a) all cases of death or serious injury of a child in a foster home, private agency, child care facility or program, or other program or facility licensed by the department or inspected through the commission to the Inspector General as soon as reasonably possible after the department or the Office of Probation Administration learns of such death or serious injury and (b) all allegations of sexual abuse of a state ward, juvenile on probation, juvenile in a detention facility, and juvenile in a residential child-caring agency. For purposes of this subsection, serious injury means an injury or illness caused by suspected abuse, neglect, or maltreatment which leaves a child in critical or serious condition.

(3) ~~(2)~~ With respect to any investigation conducted by the Inspector General pursuant to subdivision (1)(a) of this section that involves possible misconduct by an employee of the juvenile services division, the Inspector General shall immediately notify the probation administrator and provide the information pertaining to potential personnel matters to the Office of Probation Administration.

(4) ~~(3)~~ Any investigation conducted by the Inspector General shall be independent of and separate from an investigation pursuant to the Child Protection and Family Safety Act. The Inspector General and his or her staff are subject to the reporting requirements of the Child Protection and Family Safety Act.

(5) ~~(4)~~ Notwithstanding the fact that a criminal investigation, a criminal prosecution, or both are in progress, all law enforcement agencies and prosecuting attorneys shall cooperate with any investigation conducted by the Inspector General and shall, immediately upon request by the Inspector General, provide the Inspector General with copies of all law enforcement reports which are relevant to the Inspector General's investigation. All law enforcement reports which have been provided to the Inspector General pursuant to this section are not public records for purposes of sections 84-712 to 84-712.09 and shall not be subject to discovery by any other person or entity. Except to the extent that disclosure of information is otherwise provided for in the Office of Inspector General of Nebraska Child Welfare Act, the Inspector General shall maintain the confidentiality of all law enforcement reports received pursuant to its request under this section. Law enforcement agencies and prosecuting attorneys shall, when requested by the Inspector General, collaborate with the Inspector General regarding all other information relevant to the Inspector General's investigation. If the Inspector General in conjunction with the Public Counsel determines it appropriate, the Inspector General may, when requested to do so by a law enforcement agency or prosecuting attorney, suspend an investigation by the office until a criminal investigation or prosecution is completed or has proceeded to a point that, in the judgment of the Inspector General, reinstatement of the Inspector General's investigation will not impede or infringe upon the criminal investigation or prosecution. Under no circumstance shall the Inspector General interview any minor who has already been interviewed by a law enforcement agency, personnel of the Division of Children and Family Services of the department, or staff of a child advocacy center in connection with a relevant ongoing investigation of a law enforcement agency.

Sec. 5. Section 43-4406, Revised Statutes Supplement, 2017, is amended to read:

43-4406 On or before ~~September 15, 2012,~~ and each September 15 thereafter, the department shall report electronically to the Health and Human Services Committee of the Legislature the following information regarding child welfare services, with respect to children served by any lead agency or the pilot project and children served by the department:

(1) The percentage of children served and the allocation of the child welfare budget, categorized by service area and by lead agency or the pilot project, including:

(a) The percentage of children served, by service area and the corresponding budget allocation; and

(b) The percentage of children served who are wards of the state and the corresponding budget allocation;

(2) The number of siblings in out-of-home care placed with siblings as of the June 30th immediately preceding the date of the report, categorized by service area and by lead agency or the pilot project;

(3) The number of waivers granted under subsection (2) of section 71-1904;

(4) An update of the information in the report of the Children's

Behavioral Health Task Force pursuant to sections 43-4001 to 43-4003, including:

(a) The number of children receiving mental health and substance abuse services annually by the Division of Behavioral Health of the department;

(b) The number of children receiving behavioral health services annually at the Hastings Regional Center;

(c) The number of state wards receiving behavioral health services as of September 1 immediately preceding the date of the report;

(d) Funding sources for children's behavioral health services for the fiscal year ending on the immediately preceding June 30;

(e) Expenditures in the immediately preceding fiscal year by the division, categorized by category of behavioral health service and by behavioral health region; and

(f) Expenditures in the immediately preceding fiscal year from the medical assistance program and CHIP as defined in section 68-969 for mental health and substance abuse services, for all children and for wards of the state;

(5) The following information as obtained for each service area and lead agency or the pilot project:

(a) Case manager education, including college degree, major, and level of education beyond a baccalaureate degree;

(b) Average caseload per case manager;

(c) Average number of case managers per child during the preceding twelve months;

(d) Average number of case managers per child for children who have been in the child welfare system for three months, for six months, for twelve months, and for eighteen months and the consecutive yearly average for children until the age of majority or permanency is attained;

(e) Monthly case manager turnover;

(f) Monthly face-to-face contacts between each case manager and the children on his or her caseload;

(g) Monthly face-to-face contacts between each case manager and the parent or parents of the children on his or her caseload;

(h) Case documentation of monthly consecutive team meetings per quarter;

(i) Case documentation of monthly consecutive parent contacts per quarter;

(j) Case documentation of monthly consecutive child contacts with case manager per quarter;

(k) Case documentation of monthly consecutive contacts between child welfare service providers and case managers per quarter;

(l) Timeliness of court reports; and

(m) Non-court-involved children, including the number of children served, the types of services requested, the specific services provided, the cost of the services provided, and the funding source;

(6) All placements in residential treatment settings made or paid for by the child welfare system, the Office of Juvenile Services, the State Department of Education or local education agencies, any lead agency or the pilot project through letters of agreement, and the medical assistance program, including, but not limited to:

(a) Child variables;

(b) Reasons for placement;

(c) The percentage of children denied medicaid-reimbursed services and denied the level of placement requested;

(d) With respect to each child in a residential treatment setting:

(i) If there was a denial of initial placement request, the length and level of each placement subsequent to denial of initial placement request and the status of each child before and immediately after, six months after, and twelve months after placement;

(ii) Funds expended and length of placements;

(iii) Number and level of placements;

(iv) Facility variables; and

(v) Identification of specific child welfare services unavailable in the child's community that, if available, could have prevented the need for residential treatment; and

(e) Identification of child welfare services unavailable in the state that, if available, could prevent out-of-state placements;

(7) From any lead agency or the pilot project, the percentage of its accounts payable to subcontracted child welfare service providers that are thirty days overdue, sixty days overdue, and ninety days overdue; ~~and~~

(8) For any individual involved in the child welfare system receiving a service or a placement through the department or its agent for which referral is necessary, the date when such referral was made by the department or its agent and the date and the method by which the individual receiving the services was notified of such referral. To the extent the department becomes aware of the date when the individual receiving the referral began receiving such services, the department or its agent shall document such date; ~~and~~

(9) The number of sexual abuse allegations that occurred for children being served by the Division of Children and Family Services of the Department of Health and Human Services and placed at a residential child-caring agency and the number of corresponding (a) screening decision occurrences by category, (b) open investigations by category, and (c) agency substantiations, court substantiations, and court-pending status cases.

Sec. 6. Original sections 43-285 and 43-1311.02, Reissue Revised Statutes of Nebraska, and sections 43-1303, 43-4318, and 43-4406, Revised Statutes Supplement, 2017, are repealed.