

LEGISLATIVE BILL 22

Approved by the Acting Governor January 27, 1989

Introduced by Labeledz, 5, Chairperson, Executive Board

AN ACT relating to children; to amend sections 42-103, 43-105, 43-279.01, 43-508, 43-702, 43-707, and 48-124, Reissue Revised Statutes of Nebraska, 1943; to change references to defective and illegitimate children to harmonize with Laws 1986, LB 1177, and Laws 1941, chapter 81, section 14; to change who can consent to adoption of a minor child; to provide for the standard of proof in certain cases involving Indian children to harmonize with Laws 1985, LB 255, section 34; to correct a reference to who can remove a child from certain custody; to combine related sections; to eliminate an obsolete reference to county boards of public welfare; and to repeal the original sections, and also section 43-703, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 42-103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-103. Marriages are void (1) when either party has a husband or wife living at the time of the marriage, (2) when either party, at the time of marriage, is mentally incompetent to enter into the marriage relation, and (3) when the parties stand in relation to each other of parents and children; grandparents and grandchildren are related to each other as parent and child, grandparent and grandchild, brother and sister of half as well as whole blood, first cousins when of whole blood, uncle and niece, and aunt and nephew. This subdivision extends to illegitimate as well as legitimate children and relatives born out of wedlock as well as those born in wedlock.

Sec. 2. That section 43-105, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-105. If consent is not required of both parents, if living, or the surviving parent of a child born in lawful wedlock or the mother of a child born out of wedlock, because of the provisions of subdivision (3)

of section 43-104, substitute consents shall be filed as follows: (1) Consent to the adoption of a minor child, who has been committed to the Nebraska Center for Children and Youth or the Department of Social Services, may be given by the Department of Social Services department or its duly authorized agent in accordance with section 43-906; (2) when a parent has relinquished a minor child for adoption to any child placement agency licensed or approved by the Department of Social Services of the State of Nebraska department or its duly authorized agent, consent to the adoption of such child may be given by such agency; and (3) in all other cases when consent cannot be given as provided in subsection subdivision (3) of section 43-104, consent shall be given by the guardian or guardian ad litem of such minor child appointed in accordance with sections 30-2605 to 30-2616, 43-111-01, or 43-272 to 43-273 or any similar prior law by a court, which consent shall be authorized by the court having jurisdiction of such guardianship guardian or guardian ad litem.

Sec. 3. That section 43-279.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

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

(b) Right to engage counsel of their choice at their own expense or to have counsel appointed if unable to afford to hire a lawyer;

(c) Right to remain silent as to any matter of inquiry if the testimony sought to be elicited might tend to prove the parent or custodian guilty of any crime;

(d) Right to confront and cross-examine witnesses;

(e) Right to testify and to compel other witnesses to attend and testify;

(f) Right to a speedy adjudication hearing;

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

(2) After giving the parties the information

prescribed in subsection (1) of this section, the court may accept an in-court admission, an answer of no contest, or a denial from any parent or custodian as to all or any part of the allegations in the petition. The court shall ascertain a factual basis for an admission or an answer of no contest.

(3) In the case of a denial, the court shall allow a reasonable time for preparation if needed and then proceed to determine the question of whether the juvenile falls under the provisions of section 43-247 as alleged. After hearing the evidence, the court shall make a finding and adjudication to be entered on the records of the court as to whether the allegations in the petition have been proven by a preponderance of the evidence in cases under subdivision (3)(a) of section 43-247 or by clear and convincing evidence in proceedings to terminate parental rights. If an Indian child is involved, the standard of proof shall be in compliance with the Nebraska Indian Child Welfare Act, if applicable.

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

Sec. 4. That section 43-508, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-508. The Director of Social Services shall cooperate with the state institutions for delinquent, ~~defective~~ and mentally and physically handicapped children to ascertain the conditions of the home and the character and habits of the parents of a child, before his or her discharge from a state institution, and make recommendations as to the advisability of returning ~~said~~ the child to his or her home. In case the director ~~shall deem~~ deems it unwise to have any such child returned to his or her former home, such state institution may, with the consent of the director, place such child into the care of ~~said the~~ the director.

Sec. 5. That section 43-702, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-702. Persons or courts, charged with the care of dependent and delinquent children, who ~~shall~~ place out or give the care and custody of any child to

any person or association shall keep and preserve such records as may be prescribed by the Department of Social Services. The records shall be reported to the department on the first day of each month and, which shall include the (1) full name and actual or apparent age of such child, (2) names and residence of its the child's parents, so far as known, and (3) name and residence of the person or association with whom such child is placed. If such person or association shall subsequently remove such court subsequently removes the child from the custody of the person or association with whom it the child was placed, the fact of the removal and disposition of the child shall be entered upon such record.

Sec. 6. That section 43-707, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-707. The Department of Social Services shall have power and it shall be its duty:

(1) To promote the enforcement of all laws for the protection and welfare of defective, illegitimate, children born out of wedlock, mentally and physically handicapped children, and dependent, neglected, and delinquent children, except laws the administration of which is expressly vested in some other state department or division hereof, and to take the initiative in all matters involving such children when adequate provision therefor has not already been made;

(2) ~~to~~ To visit and inspect all public and private institutions, agencies, societies, or persons caring for, receiving, placing out, or handling children;

(3) ~~to~~ To issue certificates or licenses as provided by law to such institutions, agencies, societies, or persons and revoke such licenses or certificates for good cause shown. If a license is refused or revoked, the refusal or revocation may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act;

(4) ~~to~~ To exercise general supervision over the administration and enforcement of all laws governing the placing out and adoption of children;

(5) ~~to~~ To advise with judges and probation officers of courts of domestic relations and juvenile courts of the several counties, with a view to encouraging, standardizing, and coordinating the work of such courts and officers throughout the state; and

(6) ~~to cooperate with county boards of public welfare and their executives, in the various counties;~~

in all matters relating to the special classes of children heretofore designated, and in any other matters coming under the jurisdiction of such county boards, and (7) to To prescribe the form of reports required by law to be made to the department by public officers, agencies, and institutions.

Sec. 7. That section 48-124, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-124. The following persons shall be conclusively presumed to be dependent for support upon a deceased employee: (1) A wife upon a husband with whom she is living or upon whom she is actually dependent at the time of his injury or death; (2) a husband upon a wife with whom he is living or upon whom he is actually dependent at the time of her injury or death; and (3) a child or children under the age of eighteen years, or over such age, if physically or mentally incapable of self-support, or any child eighteen years of age or over who is actually dependent, or any child between eighteen and twenty-five years of age who is enrolled as a full-time student in any accredited educational institution.

The term child shall include a posthumous child, a child legally adopted or for whom adoption proceedings are pending at the time of death, an actually dependent child in relation to whom the deceased employee stood in the place of a parent for at least one year prior to the time of death, an actually dependent stepchild, or an actually dependent ~~illegitimate~~ child born out of wedlock. Child shall not include a married child unless receiving substantially entire support from the employee. Grandchild shall mean a child, as above defined, of a child, as above defined, except that as to the latter child, the limitations as to age in the above definition do not apply.

Brother or sister shall mean a brother or sister under eighteen years of age, or eighteen years of age or over and physically or mentally incapable of self-support, or eighteen years of age or over and actually dependent. The terms brother and sister shall include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but shall not include married brothers or married sisters unless receiving substantially entire support from the employee.

Parent shall mean a mother or father, a stepparent, a parent by adoption, a parent-in-law, and any person who for more than one year immediately prior

to the death of the employee stood in the place of a parent to him or her, if actually dependent in each case.

Actually dependent shall mean dependent in fact upon the employee and shall refer only to a person who received more than half of his or her support from the employee and whose dependency is not the result of failure to make reasonable efforts to secure suitable employment. When used as a noun, the word dependent shall mean any person entitled to death benefits. No person shall be considered a dependent, unless he or she be a member of the family of the deceased employee, or bears to him or her the relation of widow, widower, lineal descendant, ancestor, brother, or sister. Questions as to who constitute dependents and the extent of their dependency shall initially be determined as of the date of the accident to the employee, and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto, or their legal guardians or trustees. No dependent of any injured employee shall be deemed, during the life of such employee, a party in interest to any proceeding by him or her for the enforcement or collection of any claim for compensation, nor as respects the compromise thereof by such employee.

Sec. 8. That original sections 42-103, 43-105, 43-279.01, 43-508, 43-702, 43-707, and 48-124, Reissue Revised Statutes of Nebraska, 1943, and also section 43-703, Reissue Revised Statutes of Nebraska, 1943, are repealed.