

LEGISLATIVE BILL 447

Approved by the Governor May 24, 1985

Introduced by Hoagland, 6

AN ACT relating to children and other persons in need of protection; to amend sections 43-245 to 43-247, 43-250, 43-251, 43-254, 43-258, 43-261, 43-262, 43-264, 43-272.01, 43-279, 43-282, 43-285, 43-289, 43-295, 43-296, 43-298, 43-299, 43-2,107, 43-2,109, 43-2,113, 43-2,128, 43-2,129, and 43-1301, Reissue Revised Statutes of Nebraska, 1943, and sections 28-710, 71-1903, and 71-1912, Revised Statutes Supplement, 1984; to state intent; to define and redefine terms; to provide the Department of Social Services with certain powers and duties relating to adoption, medical assistance, and child care; to establish procedures and provide for the placement of certain juveniles as prescribed; to authorize continuing jurisdiction of the court as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. The Legislature finds that:

(1) Finding adoptive families for children for whom state assistance is provided pursuant to sections 43-117 and 43-118 and assuring the protection of the interests of the children affected during the entire assistance period require special measures when the adoptive parents move to other states or are residents of another state; and

(2) Providing medical and other necessary services for children, with state assistance, is more difficult when the services are provided in other states.

Sec. 2. The purposes of sections 1 to 8 of this act are to:

(1) Authorize the department to enter into interstate agreements with agencies of other states for the protection of children on whose behalf adoption assistance is being provided by the department; and

(2) Provide procedures for interstate children's adoption assistance payments, including medical payments.

Sec. 3. As used in sections 1 to 8 of this act, unless the context otherwise requires:

(1) Adoption assistance state shall mean the state that is signatory to an adoption assistance agreement in a particular case;

(2) Department shall mean the Department of Social Services; and

(3) State shall mean a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

Sec. 4. The department may develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in sections 1 to 8 of this act. When entered into and for so long as it shall remain in force, such a compact shall have the force and effect of law.

Sec. 5. A compact entered into pursuant to sections 1 to 8 of this act shall include:

(1) A provision making it available for joinder by all states;

(2) A provision for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal;

(3) A requirement that the protection afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are residents and have their principal place of abode;

(4) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state which undertakes to provide the adoption assistance and that any such agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance; and

(5) Such other provisions as may be appropriate to implement the proper administration of the compact.

Sec. 6. A compact entered into pursuant to sections 1 to 8 of this act may contain provisions in addition to those required pursuant to section 5 of this act, including:

(1) Provisions establishing procedures and entitlements to medical, developmental, child care, or other social services for the child in accordance with applicable laws even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs thereof; and

(2) Such other provisions as may be appropriate or incidental to the proper administration of the compact.

Sec. 7. (1) A child with special needs residing in this state who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance identification from this state upon the filing with the department of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with rules and regulations of the department, the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

(2) The department shall consider the holder of a medical assistance identification pursuant to this section the same as any other holder of a medical assistance identification under the laws of this state and shall process and make payment on claims on account of such holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

(3) Any person who by means of a willfully false statement or representation or by impersonation or other device obtains or attempts to obtain or who aids or abets any other person in obtaining assistance under sections 1 to 8 of this act shall, upon conviction thereof, be punished pursuant to section 68-1017.

(4) This section shall apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this state. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this state shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

Sec. 8. Consistent with federal law, the department, in connection with the administration of sections 1 to 8 of this act and any compact entered into pursuant to such sections, shall include in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272, Titles IV (e) and XIX of the Social Security Act, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The department shall apply for and administer all relevant federal aid in accordance with law.

Sec. 9. Any juvenile adjudged to be under subdivision (8) of section 43-247 shall remain in the custody of the Department of Social Services or the licensed child placement agency to whom the child has been relinquished unless the court finds by clear and convincing evidence that the best interests of the child require that an alternative disposition be made. If the

court makes such finding, then alternative disposition may be made as provided under section 43-284. Such alternative disposition shall relieve the Department of Social Services or licensed child placement agency of all responsibility with regard to such child. The Department of Social Services shall have the authority to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each child relinquished to it.

Sec. 10. That section 28-710, Revised Statutes Supplement, 1984, be amended to read as follows:

28-710. As used in sections 28-710 to 28-727, unless the context otherwise requires:

(1) Department shall mean the Department of Social Services;

(2) Law enforcement agency shall mean the police department or town marshal in incorporated municipalities and the office of the sheriff in unincorporated areas; and

(3) Abuse or neglect shall mean knowingly, intentionally, or negligently causing or permitting a minor child or an incompetent or disabled person to be: (a) Placed in a situation that endangers his or her life or physical or mental health; (b) cruelly confined or cruelly punished; (c) deprived of necessary food, clothing, shelter, or care; (d) left unattended in a motor vehicle, if such minor child is six years of age or younger; ~~or~~ (e) sexually abused; or (f) sexually exploited by allowing, encouraging, or forcing such person to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions.

Sec. 11. That section 43-245, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-245. As used in ~~sections 43-245 to 43-2-129~~ the Nebraska Juvenile Code, unless the context otherwise requires:

~~(1) This act shall mean sections 43-245 to 43-2-129;~~

~~(2) Parent shall mean one or both parents;~~

~~(3) (2) Parties shall mean the juvenile as described in section 43-247, and his or her parent, guardian, or custodian;~~

~~(4) (3) Juvenile court shall mean the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,129; and the county court sitting as a juvenile court in all other counties. Nothing in sections 43-245 to 43-2-129 the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common law, or chancery jurisdiction or jurisdiction acquired in an action for divorce, legal separation, or annulment;~~

~~(5) (4) Traffic offense shall mean any nonfelonious act in violation of a law or ordinance regulating vehicular or pedestrian travel, whether~~

designated a misdemeanor or a traffic infraction;

~~(6)~~ (5) Juvenile shall mean any person under the age of eighteen; and

~~(7)~~ (6) Age of majority shall mean nineteen years of age.

Sec. 12. That section 43-246, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-246. Acknowledging the responsibility of the juvenile court to act to preserve the public peace and security, ~~sections 43-245 to 43-2,129~~ the Nebraska Juvenile Code shall be construed to effectuate the following:

(1) To assure the rights of all juveniles to care and protection and a stable living environment and to development of their capacities for a healthy personality, physical well-being, and useful citizenship and to protect the public interest;

(2) To provide for the intervention of the juvenile court in the interest of any juvenile who is within the provisions of ~~sections 43-245 to 43-2,129~~ the Nebraska Juvenile Code, with due regard to parental rights and capacities and the availability of nonjudicial resources;

(3) To remove juveniles who are within ~~sections 43-245 to 43-2,129~~ the Nebraska Juvenile Code from the criminal justice system whenever possible and to reduce the possibility of their committing future law violations through the provision of social and rehabilitative services to such juveniles and their families;

(4) To achieve the foregoing purposes in the juvenile's own home whenever possible, separating the juvenile from his or her parent only when necessary for his or her welfare or in the interest of public safety and, when temporary separation is necessary, to consider the developmental needs of the individual juvenile in all placements and to assure every reasonable effort possible to reunite the juvenile and his or her family; and

(5) To provide a judicial procedure through which these purposes and goals are accomplished and enforced in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced.

Sec. 13. That section 43-247, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-247. The juvenile court shall have exclusive original jurisdiction as to any juvenile defined in subdivision (1) of this section who is under the age of sixteen, as to any juvenile defined in subdivision (3) of this section, and as to the parties and proceedings provided in subdivisions (5), and (6), and (8) of this section. As used in this section, all references to the juvenile's age shall be the age at the time the act which occasioned the juvenile court action occurred. The

juvenile court shall have concurrent original jurisdiction with the district court as to any juvenile defined in subdivision (2) of this section. The juvenile court shall have concurrent original jurisdiction with the district court and county court as to any juvenile defined in subdivision (1) of this section who is age sixteen or seventeen and any juvenile defined in subdivision (4) of this section. Notwithstanding any disposition entered by the juvenile court under the provisions of sections 43-245 to 43-2-129 the Nebraska Juvenile Code, the juvenile court's jurisdiction over any individual adjudged to be within the provisions of this section shall continue until the individual reaches the age of majority or the court otherwise discharges the individual from its jurisdiction.

The juvenile court in each county as herein provided shall have jurisdiction of:

(1) Any juvenile who has committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under the laws of this state, or violation of a city or village ordinance;

(2) Any juvenile who has committed an act which would constitute a felony under the laws of this state;

(3) Any juvenile (a) who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian neglects or refuses to provide special care made necessary by the mental condition of the juvenile; or who is in a situation or engages in an occupation dangerous to life or limb or injurious to the health or morals of such juvenile or (b) who, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who departs himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school;

(4) Any juvenile who has committed an act which would constitute a traffic offense as defined in section 43-245;

(5) The parent, guardian, or custodian who has custody of any juvenile described in this section;

(6) The proceedings for termination of parental rights as provided in sections 43-245 to 43-2-129 the Nebraska Juvenile Code; and

(7) The proceedings for termination of parental rights as provided in section 42-364; and

(8) Any juvenile who has been voluntarily

relinquished, pursuant to section 43-106.01, to the Department of Social Services or any child placement agency licensed by the Department of Social Services.

Sec. 14. That section 43-250, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-250. An officer who takes a juvenile into temporary custody under section 43-248 shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

- (1) The officer shall release such juvenile;
- (2) The officer shall prepare in triplicate a written notice requiring the juvenile to appear before the juvenile court or probation officer of the county in which such juvenile was taken into custody at a time and place specified in the notice or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, ~~or~~ other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the officer shall immediately release such juvenile. The officer shall, as soon as practicable, file one copy of the notice with the county attorney and, when required by the juvenile court, also file a copy of the notice with the juvenile court, the officer appointed by the court for such purpose, or the probation officer; ~~or~~
- (3) When a juvenile is taken into temporary custody pursuant to subsection (3) of section 43-248, the officer may take such juvenile without unnecessary delay before the juvenile court or probation officer of the county in which such juvenile was taken into custody and deliver the custody of such juvenile to the juvenile court or probation officer; or
- (4) When a juvenile is taken into temporary custody pursuant to subsection (3) of section 43-248, the officer may deliver the custody of such juvenile to the Department of Social Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the officer makes disposition of the juvenile pursuant to this subdivision, the officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court

order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the child shall be returned to the custody of his or her parent, guardian, custodian, or relative.

In determining which disposition of the juvenile he or she will make, the officer shall prefer the alternative which least restricts the juvenile's freedom of movement, if such alternative is compatible with the best interests of the juvenile and the community.

Sec. 15. That section 43-251, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-251. When a juvenile is taken into custody pursuant to sections 43-248 and 43-250, the court or magistrate may take any action for preadjudication placement or detention prescribed in ~~sections 43-245 to 43-249~~ the Nebraska Juvenile Code and, if such juvenile is age thirteen years or under and if the court or magistrate shall place such juvenile in the care of the sheriff, police officer, probation officer, or other suitable person, such person shall keep the juvenile in a suitable place outside the enclosure of any jail or police station. When a juvenile under the age of sixteen years shall be detained in any institution to which adults are sentenced, it shall be unlawful to permit such juvenile to have verbal, visual, or physical contact with such adults at any time.

Sec. 16. That section 43-254, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-254. Pending the adjudication of any case, if it appears that the need for placement or further detention exists, the juvenile may be (1) placed or detained a reasonable period of time on order of the court in the temporary custody of either the person having charge of the juvenile or some other suitable person, (2) kept in some suitable place provided by the city or county authorities, (3) placed in any proper and accredited charitable institution, ~~or~~ (4) placed in a state institution, except any adult penal institution, when proper facilities are available and the only local facility is a city or county jail, at the expense of the committing county on a per diem basis as determined from time to time by the head of the particular institution, or (5) placed in the temporary care and custody of the Department of Social Services when it does not appear that there is any need for detention in a locked facility.

Sec. 17. That section 43-258, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-258. (1) Pending the adjudication of any case under ~~sections 43-245 to 43-249~~ the Nebraska Juvenile Code, the court may order the juvenile examined by a physician, surgeon, psychiatrist, duly authorized community mental health service program, or psychologist

to aid the court in determining (a) a material allegation in the petition relating to the juvenile's physical or mental condition, (b) the juvenile's competence to participate in the proceedings, (c) the juvenile's responsibility for his or her acts, or (d) whether or not to provide emergency medical treatment.

(2) Pending the adjudication of any case under ~~sections 43-245 to 43-27,129~~ the Nebraska Juvenile Code and after a showing of probable cause that the juvenile is within the court's jurisdiction, for the purposes of subsection (1) of this section, the court may order such juvenile to be placed in one of the facilities or institutions of the State of Nebraska. Such juvenile shall not be placed in an adult penal institution, either of the youth development centers, or the Nebraska Center for Children and Youth, except as provided in section 43-913. Any placement for evaluation may be made on an inpatient or outpatient basis for a period not to exceed thirty days. The head of any facility or institution shall make a complete evaluation of the juvenile, including any authorized area of inquiry requested by the court.

(3) Upon the expiration of the commitment period or such additional periods as the court may authorize, which shall not exceed thirty days each, the juvenile shall be returned to the court together with a written report of the results of the evaluation. Such evaluation shall include an assessment of the basic needs of the juvenile and recommendations for continuous and long-term care and shall be made to effectuate the purposes in subdivision (1) of section 43-246.

(4) In order to encourage the use of the procedure provided in this section, all costs incurred during the period the juvenile is being evaluated at a state facility or institution shall be the responsibility of the state. The county in which the case is pending shall be liable only for the cost of delivering the juvenile to the facility or institution and the cost of returning him or her to the court for disposition.

Sec. 18. That section 43-261, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-261. Before the plea is entered, or in case a felony is charged, at any time prior to or at the preliminary hearing, the court shall advise any person who was a juvenile at the time of the commission of the alleged act charged in any court other than a juvenile court, that such juvenile may orally or in writing move the court in which the charge is pending to waive jurisdiction to the juvenile court for further proceedings under ~~sections 43-245 to 43-27,129~~ the Nebraska Juvenile Code. If a felony is charged, such motion shall be filed in the county or district court, and the hearing shall be held before a county or district judge. Such motion may be entered at any time prior to commencement of trial or acceptance of a

plea of guilty or no contest by the court. The court shall schedule a hearing on the motion within fifteen days. The customary rules of evidence shall not be followed at such hearing. The county attorney shall present the evidence and reasons why the case should be retained, and the defendant shall present evidence and reasons why the case should be transferred, and both sides shall consider the criteria set forth in section 43-276. In deciding the motion the court shall, after considering the evidence and the reasons presented by the parties and the matters required to be considered by the county attorney pursuant to section 43-276, transfer the case unless a sound basis exists for retaining jurisdiction.

Nothing in this section shall prohibit the county attorney from waiving any objection to such a transfer even when a complaint is filed. In such cases it shall be sufficient for the court to sustain the motion of the juvenile without entering a finding.

The court shall set forth findings for the reason for its decision, which shall not be a final order for the purpose of enabling an appeal. If the court determines that the juvenile should be transferred to the juvenile court, the complete file in the court shall be transferred to the juvenile court and the complaint may be filed in place of a petition therein. The court making such transfer shall order the juvenile to be taken forthwith to the juvenile court and designate where the juvenile shall be kept pending determination by the juvenile court. The juvenile court shall then proceed as provided in ~~sections 43-245 to 43-249~~ the Nebraska Juvenile Code.

Nothing in this section shall be construed to require more than one transfer proceeding.

Sec. 19. That section 43-262, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-262. No summons or notice shall be required to be served on any person who shall voluntarily appear before the court and whose appearance is noted on the records thereof. In actions involving a juvenile who may invoke the jurisdiction of the court under ~~sections 43-245 to 43-249~~ the Nebraska Juvenile Code, the court, in its discretion, may cause the issuance of a notice in lieu of summons to the juvenile and to the juvenile's parent or the person who has the custody or control of the juvenile. Such notice in lieu of summons may be delivered by mail, shall be accompanied by a copy of the petition in cases when jurisdiction under subdivision (1) or (2) of section 43-247 is alleged, and shall contain a statement that (1) the recipient is entitled by statute to have the summons or notice, as the case may be, served upon him or her by personnel of the sheriff's office or some other person under the direction of the court, (2) service by the sheriff's office has been dispensed with for the

convenience of the recipient, (3) if the recipient appears in court for the hearing fixed in the notice, he or she shall be deemed to have waived issuance and service of a notice and the seventy-two hour waiting period, as the case may be, and (4) if he or she does not appear, a summons or notice, as the case may be, shall be served upon him or her by personnel of the sheriff's office or some other suitable person under the direction of the court.

Sec. 20. That section 43-264, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-264. If the petition filed under section 43-274 alleges that the juvenile is a juvenile as described in subdivision (1), (2), or (3)(b) of section 43-247, a summons with a copy of the petition attached shall be served as provided in section 43-263 on such juvenile, and his or her parent, guardian, or custodian, requiring the juvenile and such parent, guardian, or custodian to appear personally at the time and place stated. When so ordered by the court, personal service shall be obtained upon such juvenile notwithstanding any other provisions of ~~sections 43-245 to 43-272~~ the Nebraska Juvenile Code.

Sec. 21. That section 43-272.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-272.01. (1) A guardian ad litem as provided for in subsections (2) and (3) of section 43-272 shall be appointed at the commencement of all cases brought under subdivision (3)(a) or (8) of section 43-247 and section 28-707.

(2) In the course of discharging duties as guardian ad litem, the person so appointed shall consider, but not be limited to, the criteria provided in this subsection. The guardian ad litem (a) is appointed to stand in lieu of a parent for a protected juvenile who is the subject of a juvenile court petition and shall be present at all hearings before the court in such matter unless expressly excused by the court, and may enter into such stipulations and agreements concerning adjudication and disposition deemed by him or her to be in the juvenile's best interests, (b) is not appointed to prosecute or defend the parents or other custodian of the protected juvenile but shall defend the legal and social interests of such juvenile. Social interests shall be defined generally as the usual and reasonable expectations of society for the appropriate parental custody and protection and quality of life for juveniles without regard to the socioeconomic status of the parents or other custodians of the juvenile, (c) may at any time after the filing of the petition move the court of jurisdiction to provide medical or psychological treatment or evaluation as set out in section 43-258. The guardian ad litem shall have access to all reports resulting from any examination ordered under section 43-258, and such reports shall be

used for evaluating the status of the protected juvenile, (d) shall make every reasonable effort to become familiar with the needs of the protected juvenile which may include (i) visitation with the juvenile within two weeks after the appointment and once every six months thereafter and (ii) consultation with caseworkers, physicians, psychologists, foster parents or other custodians, teachers, clergy members, and others directly involved with the juvenile or who may have information or knowledge about the circumstances which brought the juvenile court action or related cases, and the development of the juvenile, (e) may present evidence and witnesses and cross-examine witnesses at all evidentiary hearings, (f) shall be responsible for making recommendations to the court regarding the temporary and permanent placement of the protected juvenile, (g) shall consider such other information as is warranted by the nature and circumstances of a particular case, and (h) may file a petition in the juvenile court on behalf of the juvenile.

(3) Nothing in this section shall operate to limit the discretion of the juvenile court in protecting the best interests of a juvenile who is the subject of a juvenile court petition.

(4) For purposes of subdivision (2)(d) of this section, the court may order the expense of such consultation, if any, to be paid by the county in which the juvenile court action is brought or the court may, after notice and hearing, assess the cost of such consultation, if any, in whole or in part to the parents of the juvenile. The parents' ability to pay and the amount of the payment shall be determined by the court by appropriate examination.

Sec. 22. That section 43-279, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-279. (1) The adjudication portion of hearings shall be conducted before the court without a jury, applying the customary rules of evidence in use in trials without a jury. When the petition alleges the juvenile to be within the provisions of subdivision (1), (2), (3)(b), or (4) of section 43-247, and the juvenile or his or her parent, guardian, or custodian appears with or without counsel, the court shall inform the parties:

(a) Of the nature of the proceedings and the possible consequences or dispositions pursuant to sections 43-284 to 43-287, 43-289, and 43-290 that may apply to the juvenile's case following an adjudication of jurisdiction;

(b) Of such juvenile's right to counsel as provided in sections 43-272 and 43-273;

(c) Of the privilege against self-incrimination by advising the juvenile, parent, guardian, or custodian that the juvenile may remain silent concerning the charges against the juvenile and that anything said may be used against the juvenile;

(d) Of the right to confront anyone who testifies against the juvenile and to cross-examine any persons who appear against the juvenile;

(e) Of the right of the juvenile to ~~call witnesses~~ testify and to compel other witnesses to attend and testify in his or her own behalf;

(f) Of the right of the juvenile to a speedy adjudication hearing; and

(g) Of the right to appeal and have a transcript for such purpose.

After giving such warnings and admonitions, the court may accept an in-court admission by the juvenile of all or any part of the allegations in the petition if the court has determined from examination of the juvenile and those present that such admission is intelligently, voluntarily, and understandingly made and with an affirmative waiver of rights and that a factual basis for such admission exists. The court may base its adjudication provided in subsection (2) of this section on such admission.

(2) If the juvenile denies the petition or stands mute the court shall first allow a reasonable time for preparation if needed and then consider only the question of whether the juvenile is a person described by section 43-247. ~~This shall be known as the adjudication.~~ After hearing the evidence on such question, the court shall make a finding and adjudication, to be entered in the minutes, based on proof beyond a reasonable doubt on the records of the court, whether or not the juvenile is a person described by subdivision (1), (2), (3)(b), or (4) of section 43-247, or by a preponderance of the evidence whether or not the juvenile is a person described by subdivision (3)(a) of section 43-247 based upon proof beyond a reasonable doubt.

(3) If the court shall find that the juvenile named in the petition is not within the provisions of section 43-247, it shall dismiss the case. If the court finds that the juvenile named in the petition is such a juvenile, it shall make and enter its findings and adjudication accordingly, designating which subdivision or subdivisions of section 43-247 such juvenile is within; the court shall allow a reasonable time for preparation if needed and then proceed to an inquiry into the proper disposition to be made of such juvenile.

Sec. 23. (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 section 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.

(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. 24. That section 43-282, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-282. If a petition alleging a juvenile to be within the jurisdiction of ~~sections 43-245 to 43-249~~ the Nebraska Juvenile Code is filed in a county other than the county where the juvenile is presently living or domiciled, the court, at any time after adjudication and prior to final termination of jurisdiction, may transfer the proceedings to the county where the juvenile lives or is domiciled and the court having juvenile court jurisdiction therein shall thereafter have sole charge of such proceedings and full authority to enter any order it could have entered had the adjudication occurred therein.

All documents, social histories, and records, or certified copies thereof, on file with the court

pertaining to the case shall accompany the transfer.

Sec. 25. That section 43-285, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-285. In any case when the court shall award a juvenile to the care of the Department of Social Services, an association, or individual, in accordance with the provisions of sections 43-245 to 43-249 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, which association and Department of Social Services shall have authority by and with the assent of the court to place such a juvenile in a suitable family home or institution. Such guardianship shall not include the guardianship of any estate of the juvenile. Within thirty days after such order, and once every six months thereafter 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. When the court awards a juvenile to the care of the department, an association, or 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 Chapter 43, article 2 the Nebraska Juvenile Code.

Sec. 26. That section 43-289, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-289. In no case shall a juvenile committed under the terms of sections 43-245 to 43-249 the Nebraska Juvenile Code be confined after he or she reaches the age of majority. The court may, when the health or condition of any juvenile adjudged to be within the terms of sections 43-245 to 43-249 such code shall require it, cause the juvenile to be placed in a public hospital or institution for treatment or special care, or in an accredited and suitable private hospital or institution which will receive the juvenile for like purposes. If the court finds any such juvenile to be a mentally retarded person, it may, upon attaching the physician's certificate and the report as to the mental capacity provided by section 83-221, commit such juvenile directly to an authorized and appropriate state or local facility or home.

The marriage of any juvenile committed to a state institution under the age of nineteen years shall not make such juvenile of the age of majority.

A juvenile committed to any such institution shall be subject to the control of the superintendent thereof, and the superintendent, with the advice and consent of the Department of Social Services or the

Department of Public Institutions, whichever has supervision of the institution, shall adopt regulations for the promotion, paroling, and final discharge of residents such as shall be considered mutually beneficial for the institution and the residents. Upon , ~~except that upon~~ final discharge of any resident, such department shall file a certified copy of the discharge with the court which committed the resident.

Sec. 27. That section 43-295, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-295. ~~Except when the care of the juvenile is awarded to the Department of Social Services; together with termination of parental rights; or the juvenile has been legally adopted, the jurisdiction of the court shall continue over any juvenile brought before the court; or committed under the provisions of sections 43-245 to 43-27,129; the Nebraska Juvenile Code and the court shall have power to order a change in the custody or care of any such juvenile; if at any time it is made to appear to the court that it would be for the best interests of the juvenile to make such change.~~

Sec. 28. That section 43-296, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-296. All associations receiving juveniles under ~~sections 43-245 to 43-27,129~~ the Nebraska Juvenile Code shall be subject to the same visitation, inspection, and supervision by the Department of Social Services as are public charitable institutions of this state, and it shall be the duty of the department to pass annually upon the fitness of every such association as may receive or desire to receive juveniles under the provisions of ~~sections 43-245 to 43-27,129~~ such code. Every such association shall annually, at such time as the department shall direct, make a report to the department; showing its condition, management, and competency to adequately care for such juveniles as are or may be committed to it; and such other facts as the department may require. Upon the department being satisfied that such association is competent; and has adequate facilities to care for such juveniles, it shall issue to such association a certificate to that effect, which certificate shall continue in force for one year; unless sooner revoked by the department. No juvenile shall be committed to any such association which has not received such a certificate within the fifteen months immediately preceding the commitment. The court may at any time require from any association receiving or desiring to receive juveniles under the provisions of ~~sections 43-245 to 43-27,129~~ the Nebraska Juvenile Code such reports, information, and statements as the judge shall deem proper and necessary for his or her action, and the court shall in no case be required to commit a juvenile to any association whose standing, conduct, or care of juveniles or ability to care for the same is not satisfactory to the court.

Sec. 29. That section 43-298, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-298. The court in committing juveniles under sections 43-245 to 43-2,129 the Nebraska Juvenile Code shall place them as far as practicable in the care and custody of some individual holding the same religious belief as the parents of the juvenile or with some association which is controlled by persons of like religious faith of the parents of the juvenile.

Sec. 30. That section 43-299, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-299. Nothing in sections 43-245 to 43-2,129 the Nebraska Juvenile Code shall be construed to repeal any portion of the act to aid the youth development centers for girls and boys.

Sec. 31. That section 43-2,107, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-2,107. On application of a party or on the court's own motion, the court may restrain or otherwise control the conduct of a person if a petition has been filed under sections 43-245 to 43-2,129 the Nebraska Juvenile Code and the court finds that such conduct is or may be detrimental or harmful to the juvenile. Notice of the application or motion and an opportunity to be heard thereon shall be given to the person against whom such application or motion is directed, except that the court may enter a temporary order restraining or otherwise controlling the conduct of a person for the protection of a juvenile without prior notice if it appears to the court that it is necessary to issue such order forthwith. Such temporary order shall be effective not to exceed ten days and shall not be binding against any person unless he or she shall have received a copy of such order.

Sec. 32. That section 43-2,109, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-2,109. In each county, the judge presiding over the juvenile court, as defined by sections 43-245 to 43-2,129, may appoint a board of four reputable residents, who shall serve without compensation, to constitute a board of visitation, whose duty it shall be to visit at least once a year all institutions, societies, and associations within the county receiving juveniles under sections 43-245 to 43-2,129 the Nebraska Juvenile Code. Visits shall be made by not less than two of the members of the board, who shall go together or make a joint report. The board of visitors shall report to the court, from time to time, the condition of juveniles received by or in the charge of such associations and institutions; and shall make an annual report to the Department of Social Services, Department of Correctional Services, and Department of Public Institutions in such form as each of the departments may prescribe. The county board may, in its discretion, make appropriations for the payment of the actual and

necessary expenses incurred by the visitors in the discharge of their official duties.

Sec. 33. That section 43-2,113, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-2,113. Where a separate juvenile court is established, the county board of the county shall provide suitable rooms and offices for the accommodation of the judge thereof and the officers and employees appointed by such judge or by the probation administrator pursuant to subsection (3) of section 29-2253. Such separate juvenile court, the judge thereof, and the officers and employees of such court shall have the same and exclusive jurisdiction, powers, and duties that are prescribed in ~~sections 43-245 to 43-2,129~~ the Nebraska Juvenile Code, concurrent jurisdiction under sections 83-223 and 83-1101 to 83-1139, and such other jurisdiction, powers, and duties as may hereafter be specifically provided by law. A juvenile court created in a separate juvenile court judicial district or a county court sitting as a juvenile court in all other counties shall have and exercise jurisdiction within such juvenile court judicial district or county court judicial district with the district court in all matters arising under ~~the provisions of~~ Chapter 42, article 3, when the care, support, custody, or control of minor children under the age of eighteen years is involved. Such cases shall be filed in the district court and may with the consent of the juvenile judge be transferred to the docket of the separate juvenile court or county court.

Sec. 34. That section 43-2,128, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-2,128. ~~Sections 43-245 to 43-2,129~~ The Nebraska Juvenile Code shall be liberally construed to the end that its purpose may be carried out as provided in section 43-246.

Sec. 35. That section 43-2,129, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-2,129. Sections 43-245 to 43-2,129 and sections 9 and 23 of this act shall be known and may be cited as the Nebraska Juvenile Code.

Sec. 36. That section 43-1301, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-1301. For the purpose of sections 43-1301 to 43-1318, 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, and any other person or entity receiving and caring for foster children;

(4) Foster care placements shall mean all 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 Social Services or any child placement agency licensed by the Department of Social Services;

(5) Person or court in charge of the child shall mean (a) the Department of Social Services, an association, or individual that 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 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 or (b) the court which has jurisdiction over the child;

(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; and

(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.

Sec. 37. That section 71-1903, Revised Statutes Supplement, 1984, be amended to read as follows:

71-1903. The department, before issuance of a license, shall cause such investigation to be made, as it shall deem necessary, to determine if the character of the applicant or person in charge of the business and the place where the child care is to be furnished are such as to insure the proper care and treatment of children. The department may investigate the character of prospective or existing licensees and the staff and employees of child care facilities by making a national criminal records check. The department may request the State Fire Marshal to inspect such places for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 and payable by the licensee or applicant for a license. The department may request the Department of Health to inspect such places to determine if they meet sanitation and health standards set by the Department of Health for the care and protection of such children. The authority to make such investigations may be delegated to qualified local fire prevention personnel pursuant to section 81-502 or environmental health personnel, as appropriate. The department may also, at any time it sees fit, cause an inspection to be made of the place where any licensee is furnishing child care; to see that such business is being properly conducted.

Sec. 38. That section 71-1912, Revised Statutes Supplement, 1984, be amended to read as follows:

71-1912. The department shall adopt and promulgate rules and regulations establishing standards for the physical well-being, safety, and protection of children pursuant to the licensing of providers. Such standards shall insure that the provider of a program is providing proper care for, and treatment of, the children served and that such care and treatment is consistent with the children's physical well-being, safety, and protection. Such standards shall not require the use of any specific instructional materials or affect the contents of any course of instruction which may be offered by a program. Before issuance or renewal of a license, the department shall investigate or cause an investigation to be made, when it deems necessary, to determine if the applicant or person in charge of the program meets or is capable of meeting the physical well-being, safety, and protection standards and the other rules and regulations of the department. The department may investigate the character of prospective or existing licensees and the staff and employees of early childhood programs by making a national criminal records check. The department may at any time inspect or cause an inspection to be made, of any place where a program is operating, to determine if such program is being properly conducted.

Sec. 39. That original sections 43-245 to 43-247, 43-250, 43-251, 43-254, 43-258, 43-261, 43-262, 43-264, 43-272.01, 43-279, 43-282, 43-285, 43-289, 43-295, 43-296, 43-298, 43-299, 43-2,107, 43-2,109, 43-2,113, 43-2,128, 43-2,129, and 43-1301, Reissue Revised Statutes of Nebraska, 1943, and sections 28-710, 71-1903, and 71-1912, Revised Statutes Supplement, 1984, are repealed.