

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 928

Introduced by State-Tribal Relations Committee: Coash, 27,
Chairperson; Avery, 28; Brasch, 16; Davis, 43; Dubas,
34; Nordquist, 7.

Read first time January 15, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Nebraska Indian Child Welfare Act; to
2 amend sections 43-1406, 43-1501, 43-1502, 43-1504,
3 43-1505, 43-1506, 43-1507, 43-1508, and 43-1514, Reissue
4 Revised Statutes of Nebraska, and sections 43-279.01 and
5 43-1503, Revised Statutes Supplement, 2013; to define and
6 redefine terms; to change act provisions; to provide
7 duties for the Department of Health and Human Services;
8 to harmonize provisions; and to repeal the original
9 sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-279.01, Revised Statutes
2 Supplement, 2013, is amended to read:

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

8 (a) Nature of the proceedings and the possible
9 consequences or dispositions pursuant to sections 43-284, 43-285, and
10 43-288 to 43-295;

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

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

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

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

24 (f) Right to testify and to compel other witnesses to
25 attend and testify;

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

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

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

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

16 (4) In the case of a denial, the court shall allow a
17 reasonable time for preparation if needed and then proceed to
18 determine the question of whether the juvenile falls under the
19 provisions of section 43-247 as alleged. After hearing the evidence,
20 the court shall make a finding and adjudication to be entered on the
21 records of the court as to whether the allegations in the petition
22 have been proven by a preponderance of the evidence in cases under
23 subdivision (3)(a) of section 43-247 or by clear and convincing
24 evidence in proceedings to terminate parental rights. The court shall
25 inquire as to whether any party believes an Indian child is involved

1 in the proceedings prior the advisement of rights pursuant to
2 subsection (1) of this section. If an Indian child is involved, the
3 standard of proof shall be in compliance with the Nebraska Indian
4 Child Welfare Act, if applicable.

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

11 Sec. 2. Section 43-1406, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 43-1406 (1) A determination of paternity made by any
14 other state or by an Indian tribe as defined in section 43-1503,
15 whether established through voluntary acknowledgment, genetic
16 testing, tribal custom, or administrative or judicial processes,
17 shall be given full faith and credit by this state.

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

19 Sec. 3. Section 43-1501, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 43-1501 Sections 43-1501 to 43-1516 and sections 8, 9,
22 and 14 of this act shall be known and may be cited as the Nebraska
23 Indian Child Welfare Act.

24 Sec. 4. Section 43-1502, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 43-1502 The purpose of the Nebraska Indian Child Welfare
2 Act is to clarify state policies and procedures regarding the
3 implementation by the State of Nebraska of the federal Indian Child
4 Welfare Act., ~~25 U.S.C. 1901 et seq.~~ It shall be the policy of the
5 state to cooperate fully with Indian tribes in Nebraska in order to
6 ensure that the intent and provisions of the federal Indian Child
7 Welfare Act are enforced. This cooperation includes recognition by
8 the state that Indian tribes have a continuing and compelling
9 governmental interest in an Indian child whether or not the Indian
10 child is in the physical or legal custody of a parent, an Indian
11 custodian, or an Indian extended family member at the commencement of
12 an Indian child custody proceeding or the Indian child has resided or
13 is domiciled on an Indian reservation. The state is committed to
14 protecting the essential tribal relations and best interests of an
15 Indian child by promoting practices consistent with the federal
16 Indian Child Welfare Act and other applicable law designed to prevent
17 the Indian child's voluntary or involuntary out-of-home placement
18 and, whenever such placement is necessary or ordered, by placing the
19 Indian child, whenever possible, in a foster home, adoptive home, or
20 other type of custodial placement that reflects the unique values of
21 the Indian child's tribal culture and is best able to assist the
22 Indian child in establishing, developing, and maintaining a
23 political, cultural, and social relationship with the Indian child's
24 tribe or tribes and tribal community.

25 Sec. 5. Section 43-1503, Revised Statutes Supplement,

1 2013, is amended to read:

2 43-1503 For purposes of the Nebraska Indian Child Welfare
3 Act, except as may be specifically provided otherwise: ~~the term:~~

4 (1) Active efforts shall mean and include, but is not
5 limited to:

6 (a) A concerted level of casework, both prior to and
7 after the removal of an Indian child, exceeding the level that is
8 required under reasonable efforts to preserve and reunify the family
9 described in section 43-283.01;

10 (b) A request to the Indian child's tribe or tribes to
11 convene traditional and customary support and services;

12 (c) Actively engaging, assisting, and monitoring the
13 family's access to and progress in culturally appropriate and
14 available resources of the Indian child's extended family members,
15 tribal service area, Indian tribe or tribes, and individual Indian
16 caregivers;

17 (d) Identification and provision of information to the
18 Indian child's extended family members concerning appropriate
19 community, state, and federal resources that may be able to offer
20 housing, financial, and transportation assistance and actively
21 assisting the family in accessing such community, state, and federal
22 resources;

23 (e) Identification and engagement of tribally designated
24 representatives;

25 (f) Consultation with extended family members, or a

1 tribally designated representative if an extended family member
2 cannot be located, to identify family or tribal support services that
3 could be provided by extended family members or other tribal members
4 if extended family members cannot be located;

5 (g) Frequent family time in the Indian child's home and
6 the homes of the Indian child's extended family members; and

7 (h) Exhaustion of all tribally appropriate family
8 preservation alternatives;

9 (2) Best interests of the Indian child shall mean and
10 include:

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

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

23 ~~(1)~~(3) Child custody proceeding shall mean and include:

24 (a) Foster care placement which shall mean any action
25 removing which may voluntarily or involuntarily removes an Indian

1 child from his or her parent or Indian custodian for temporary or
2 emergency placement in a foster home or institution or the home of a
3 guardian or conservator where the parent or Indian custodian cannot
4 have the child returned upon demand, but where parental rights have
5 not been terminated;

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

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

12 (d) Adoptive placement which shall mean the permanent
13 placement of an Indian child for adoption, including any action
14 resulting in a final decree of adoption.

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

19 ~~(2)~~(4) Extended family member shall be as defined by the
20 law or custom of the Indian child's tribe or tribes or, in the
21 absence of such law or custom, shall ~~be~~ mean a person who has reached
22 the age of eighteen and who is the Indian child's parent,
23 grandparent, aunt or uncle, clan member, band member, sibling,
24 brother-in-law or sister-in-law, niece or nephew, cousin, or
25 stepparent;

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

3 ~~(3)-(6) Indian means~~ shall mean any person who is a
4 member of an Indian tribe, or who is an Alaska Native and a member of
5 a regional corporation defined in section 7 of the Alaska Native
6 Claims Settlement Act, 43 U.S.C. 1606;

7 ~~(4)-(7) Indian child means~~ shall mean any unmarried
8 person who is under age eighteen and is either (a) a member of an
9 Indian tribe or tribes or (b) is eligible for membership in an Indian
10 tribe ~~and is the biological child of a member of an Indian tribe; or~~
11 tribes;

12 ~~(5)-(8) Indian child's tribe means (a) the~~ or tribes
13 shall mean an Indian tribe or tribes in which an Indian child is a
14 member or eligible for membership; ~~or (b) in the case of an Indian~~
15 ~~child who is a member of or eligible for membership in more than one~~
16 ~~tribe, the Indian tribe with which the Indian child has the more~~
17 ~~significant contacts;~~

18 ~~(6)-(9) Indian custodian means~~ shall mean any Indian
19 ~~person~~ who has legal custody of an Indian child under tribal law or
20 custom or under state law or to whom temporary physical care,
21 custody, and control has been transferred by the parent of such
22 child;

23 ~~(7)-(10) Indian organization means~~ shall mean any group,
24 association, partnership, limited liability company, corporation, or
25 other legal entity owned or controlled by Indians or a majority of

1 whose members are Indians;

2 ~~(8)~~ (11) Indian tribe means shall mean any Indian tribe,
3 band, nation, or other organized group or community of Indians
4 recognized as eligible for the services provided to Indians by the
5 secretary because of their status as Indians, including any Alaska
6 Native village as defined in section 3(c) of the Alaska Native Claims
7 Settlement Act, as amended, 43 U.S.C. 1602(c);

8 ~~(9)~~ (12) Parent means shall be as defined by the law or
9 custom of the Indian child's tribe or tribes or, in the absence of
10 such law or custom shall be any biological parent or parents of an
11 Indian child or any Indian ~~person~~ who has lawfully adopted an Indian
12 child, including adoptions under tribal law or custom. ~~It~~ Parent does
13 not include ~~the~~ an unwed father when paternity has not been
14 acknowledged or established by the law or custom of the Indian
15 child's tribe or tribes or, in the absence of such law or custom,
16 under sections 43-1401 to 43-1418;

17 (13) Qualified expert witness shall mean one of the
18 following persons, in descending priority order:

19 (a) A person that the Indian child's tribe or tribes have
20 designated as an expert witness;

21 (b) A member of the Indian child's tribe or tribes who is
22 recognized as knowledgeable in tribal customs as they pertain to
23 family and childrearing practices;

24 (c) A professional that possesses substantial knowledge,
25 experience, and expertise in his or her area of specialty and on the

1 Indian child's tribal customs as they pertain to family and
2 childrearing practices;

3 (d) A person that possesses substantial knowledge,
4 experience, and expertise on the Indian child's tribal customs as
5 they pertain to family and childrearing practices; or

6 (e) A professional person approved or specified by the
7 Indian child's tribe or tribes and who has substantial education in
8 the area of his or her specialty;

9 ~~(10)~~ (14) Reservation means shall mean Indian country as
10 defined in 18 U.S.C. 1151 and any lands, not covered under such
11 section, title to which is either held by the United States in trust
12 for the benefit of any Indian tribe or individual or held by any
13 Indian tribe or individual subject to a restriction by the United
14 States against alienation;

15 ~~(11)~~ (15) Secretary means shall mean the Secretary of the
16 United States Department of the Interior;

17 ~~(12)~~ (16) Tribal court means shall mean a court with
18 jurisdiction over child custody proceedings and which is either a
19 Court of Indian Offenses, a court established and operated under the
20 code or custom of an Indian tribe, or any other administrative body
21 of a tribe which is vested with authority over child custody
22 proceedings; and

23 ~~(13)~~ (17) Tribal service area means shall mean a
24 geographic area, as defined by the applicable Indian tribe or tribes,
25 in which tribal services and programs are provided to Native American

1 ~~people.~~ Indians.

2 Sec. 6. Section 43-1504, Reissue Revised Statutes of
3 Nebraska, is amended to read:

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

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

22 (a) The tribal court determines that it does not have
23 subject matter jurisdiction under the laws of the tribe, federal law,
24 or the laws of Nebraska;

25 (b) One or more of the following factors exist:

1 (i) Circumstances exist in which the evidence necessary
2 to determine a case cannot be presented in tribal court without undue
3 hardship to the parties or witnesses, and the tribal court is unable
4 to mitigate the hardship by making arrangements to receive and
5 consider evidence or testimony by use of remote communication, by
6 hearing the evidence or testimony at a location convenient to the
7 parties or witnesses, or by use of any other means permitted by the
8 tribal court's rules of evidence or discovery;

9 (ii) The termination of parental rights proceeding is at
10 an advanced stage, meaning that the proceeding has at least concluded
11 the first day of trial; or

12 (iii) An objection to the transfer is made by the Indian
13 child who is at least twelve years old; or

14 (c) The party opposing the transfer of a case to tribal
15 court must show by clear and convincing evidence that good cause
16 exists under this section; and

17 (d) Any objection to transfer must be made in writing and
18 adequate notice must be provided to all interested parties, including
19 any tribe for which the child may be eligible for membership.

20 (3) In any state court proceeding for the foster care
21 placement of, or termination of parental rights to, an Indian child,
22 the Indian custodian of the child and the Indian child's tribe or
23 tribes shall have a right to intervene at any point in the proceeding
24 regardless of whether the intervening party is represented by legal
25 counsel. The Indian child's tribe or tribes and their counsel are not

1 required to associate with local counsel or pay a fee to appear pro
2 hac vice in a child custody proceeding under the Nebraska Indian
3 Child Welfare Act. Representatives from the Indian child's tribe or
4 tribes have the right to participate in every court proceeding held
5 under the act.

6 (4) The State of Nebraska shall give full faith and
7 credit to the public acts, records, and judicial proceedings of any
8 Indian tribe applicable to Indian child custody proceedings to the
9 same extent that the state gives full faith and credit to the public
10 acts, records, and judicial proceedings of any other entity.

11 Sec. 7. Section 43-1505, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 43-1505 (1) In any involuntary proceeding in a state
14 court, when the court knows or has reason to know that an Indian
15 child is involved, the party seeking the foster care placement of, or
16 termination of parental rights to, an Indian child shall ~~notify~~ send
17 a notice conforming to the requirements of 25 C.F.R. 23.11 to the
18 parent or parents, Indian custodian, and the Indian child's tribe, or
19 tribes by certified or registered mail with return receipt requested,
20 of the pending proceedings and of their right of intervention. If the
21 identity or location of the parent or Indian custodian and the tribe
22 cannot be determined, such notice shall be given to the secretary in
23 like manner, who may provide the requisite notice to the parent or
24 Indian custodian and the tribe. No foster care placement or
25 termination of parental rights proceedings shall be held until at

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

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

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

20 (4) Any party seeking to effect a foster care placement
21 of, or termination of parental rights to, an Indian child under state
22 law shall satisfy the court that active efforts have been made to
23 provide remedial services and rehabilitative programs designed to
24 prevent the breakup of the Indian family or unite the parent or
25 Indian custodian with the Indian child and that these efforts have

1 proved unsuccessful. Prior to the court ordering placement of the
2 child in foster care or the termination of parental rights, the court
3 shall make a determination (a) that active efforts have been provided
4 in a manner consistent with the prevailing social and cultural
5 conditions and way of life of the Indian child's tribe or tribes or
6 (b) that the party seeking placement or termination has demonstrated
7 that attempts were made to provide active efforts to the extent
8 possible under the circumstances. The determination of the court
9 shall be supported by clear and convincing evidence for a foster care
10 placement proceeding or supported by proof beyond a reasonable doubt
11 for a termination of parental rights proceeding. The parties shall
12 provide the court with evidence in the form of written documentation
13 to make such determination.

14 (5) ~~No~~ The court shall not order foster care placement
15 ~~may be ordered in such proceeding under this section~~ in the absence
16 of a determination by the court, supported by clear and convincing
17 evidence, including testimony of qualified expert witnesses, that the
18 continued custody of the child by the parent or Indian custodian is
19 likely to result in serious emotional or physical damage to the
20 child.

21 (6) ~~No~~ The court shall not order termination of parental
22 rights ~~may be ordered in such proceeding under this section~~ in the
23 absence of a determination by the court, supported by evidence beyond
24 a reasonable doubt, including testimony of qualified expert
25 witnesses, that the continued custody of the child by the parent or

1 Indian custodian is likely to result in serious emotional or physical
2 damage to the child.

3 Sec. 8. Notice of an involuntary proceeding in state
4 court involving an Indian child shall conform with the requirements
5 of 25 C.F.R. 23.11.

6 Sec. 9. Whenever a petition seeking an involuntary foster
7 care placement of an Indian child or termination of parental rights
8 to an Indian child, the petition shall contain the following verified
9 information:

10 (1) The name, date of birth, and last-known address of
11 the Indian child;

12 (2) The name and address of the Indian child's parents,
13 paternal and maternal grandparents, and Indian custodians, if any. If
14 such persons cannot be identified or located, a detailed explanation
15 shall be included of the efforts made to locate them;

16 (3) The tribal affiliation of the Indian child and of the
17 parents or, if applicable, the Indian custodians. If the tribal
18 affiliation has not been determined, a statement shall be included
19 describing the efforts made to determine whether the child is an
20 Indian child and to identify the tribal affiliation of the Indian
21 child and of the parents or Indian custodians;

22 (4) A statement as to whether the Indian child's
23 residence or domicile is on the tribe's reservation. If there is
24 insufficient information for a determination regarding the Indian
25 child's residence or domicile, a statement to that effect shall be

1 included;

2 (5) An identification of any tribal court orders
3 affecting the custody of the Indian child to which a state court may
4 be required to accord full faith and credit. A copy of each such
5 order shall be attached to the petition;

6 (6) A specific and detailed account of the circumstances
7 that led to the filing of the petition;

8 (7) A statement, with documentation attached to the
9 petition, of the specific active efforts made by the department or
10 its designee. The statement shall indicate whether these efforts have
11 proved unsuccessful and state the reasons for any such lack of
12 success;

13 (8) A statement that the Indian child is not a ward of
14 the tribal court in order to establish jurisdiction. If there is
15 insufficient information available at the time of filing for a
16 determination regarding the status of the Indian child as a ward of
17 the tribal court, a statement to that effect shall be included. In
18 either case, a detailed explanation of the efforts made to determine
19 the status of the tribal court's jurisdiction shall be included; and

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

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

24 43-1506 (1) When any parent or Indian custodian
25 voluntarily consents (a) to a foster care placement, relinquishment,

1 or termination, including services offered by the Department of
2 Health and Human Services or its designee, or (b) to termination of
3 parental rights, such consent shall not be valid unless executed in
4 writing and recorded before a judge of a court of competent
5 jurisdiction and accompanied by the presiding judge's certificate
6 that the terms and consequences of the consent were fully explained
7 in detail and were fully understood by the parent or Indian
8 custodian. The court shall also certify that either the parent or
9 Indian custodian fully understood the explanation in English or that
10 it was interpreted into a language that the parent or Indian
11 custodian understood. Any consent given prior to, or within ten days
12 after, birth of the Indian child shall not be valid.

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

1 provided within five days after the initiation of voluntary services.

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

8 (4) Prior to any voluntary relinquishment or termination
9 of parental rights proceeding in which the Department of Health and
10 Human Services is a party or was providing assistance to a parent or
11 Indian custodian, the department or its designee shall submit a
12 written statement to the court which states:

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

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

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

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

22 (e) The parent fully understood the explanation of such
23 terms and consequences in English or, where necessary, that the
24 explanation was interpreted into a language that the parent
25 understood and that the parent fully understood the explanation of

1 such terms and consequences in the language into which such terms and
2 consequences were translated;

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

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

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

12 ~~(2)~~ (5) Any parent or Indian custodian may withdraw
13 consent to a foster care placement under state law at any time and,
14 upon such withdrawal, the child shall be returned to the parent or
15 Indian custodian.

16 ~~(3)~~ (6) In any voluntary proceedings for termination of
17 parental rights to, or adoptive placement of, an Indian child, the
18 consent of the parent may be withdrawn for any reason at any time
19 prior to the entry of a final decree of termination or adoption, as
20 the case may be, and the child shall be returned to the parent.

21 ~~(4)~~ (7) After the entry of a final decree of adoption of
22 an Indian child in any state court, the parent may withdraw consent
23 thereto upon the grounds that consent was obtained through fraud or
24 duress and may petition the court to vacate such decree. Upon a
25 finding that such consent was obtained through fraud or duress, the

1 court shall vacate such decree and return the child to the parent. No
2 adoption which has been effective for at least two years may be
3 invalidated under the provisions of this subsection unless otherwise
4 permitted under state law.

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

7 43-1507 Any Indian child who is the subject of any action
8 for foster care placement or termination of parental rights under
9 state law, any parent or Indian custodian from whose custody such
10 child was removed, and the Indian child's tribe or tribes may
11 petition any court of competent jurisdiction to invalidate such
12 action upon a showing that such action violated any provision of
13 sections 43-1504 to 43-1506 and sections 8 and 9 of this act.

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

16 43-1508 (1) In any adoptive placement of an Indian child
17 under state law, a preference shall be given, in the absence of good
18 cause to the contrary, to a placement with:

- 19 (a) A member of the Indian child's extended family;
20 (b) Other members of the Indian child's tribe or tribes;
21 or
22 (c) Other Indian families.

23 (2) Any child accepted for foster care or preadoptive
24 placement shall be placed in the least restrictive setting which most
25 approximates a family and in which his or her special needs, if any,

1 may be met. The child shall also be placed within reasonable
2 proximity to his or her home, taking into account any special needs
3 of the child. In any foster care or preadoptive placement, a
4 preference shall be given, in the absence of good cause to the
5 contrary, to a placement with one of the following in descending
6 priority order:

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

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

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

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

16 (e) A non-Indian facility or program for children
17 approved by an Indian tribe; or

18 (f) A non-Indian family committed to enabling the child
19 to have extended family time and participation in the cultural and
20 ceremonial events of the Indian child's tribe or tribes.

21 (3) In the case of a placement under subsection (1) or
22 (2) of this section, if the Indian child's tribe or tribes shall
23 establish a different order of preference by resolution, the agency
24 or court effecting the placement shall follow such order so long as
25 the placement is the least restrictive setting appropriate to the

1 particular needs of the child, as provided in subsection (2) of this
2 section. When appropriate, the preference of the Indian child or
3 parent shall be considered, except that, when a consenting parent
4 evidences a desire for anonymity, the court or agency shall give
5 weight to such desire in applying the preferences.

6 (4) The standards to be applied in meeting the preference
7 requirements of this section shall be the prevailing social and
8 cultural standards of the Indian community in which the parent or
9 extended family resides or with which the parent or extended family
10 members maintain social and cultural ties. Good cause to deviate from
11 the placement preferences in subsections (1) through (4) of this
12 section includes: (a) The request of the biological parents or the
13 Indian child when the Indian child is at least twelve years of age;
14 (b) the extraordinary physical or emotional needs of the Indian child
15 as established by testimony of a qualified expert witness; or (c) the
16 unavailability of suitable families for placement after a diligent
17 search has been completed for families meeting the preference
18 criteria. The burden of establishing the existence of good cause to
19 deviate from the placement preferences and order shall be on the
20 party urging that the preferences not be followed.

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

1 Sec. 13. Section 43-1514, Reissue Revised Statutes of
2 Nebraska, is amended to read:

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

18 (2) If any state authority, official, or agency has
19 reason to believe that an Indian child has been removed from his or
20 her parent or Indian custodian, the state authority, official, or
21 agency shall notify the Department of Health and Human Services, or
22 its designee, of the Indian child's removal within twenty-four hours.

23 Sec. 14. The Department of Health and Human Services, in
24 consultation with Indian tribes, shall establish standards and
25 procedures for the department's review of cases subject to the

1 Nebraska Indian Child Welfare Act and methods for monitoring the
2 department's compliance with the federal Indian Child Welfare Act and
3 the Nebraska Indian Child Welfare Act. The standards and procedures
4 and the monitoring methods shall be integrated into the department's
5 structure and plan for the federal government's child and family
6 service review process and any program improvement plan resulting
7 from that process.

8 Sec. 15. Original sections 43-1406, 43-1501, 43-1502,
9 43-1504, 43-1505, 43-1506, 43-1507, 43-1508, and 43-1514, Reissue
10 Revised Statutes of Nebraska, and sections 43-279.01 and 43-1503,
11 Revised Statutes Supplement, 2013, are repealed.