

LEGISLATIVE BILL 255

Approved by the Governor April 15, 1985

Introduced by Chambers, 11

AN ACT relating to children; to amend sections 43-101, 43-102, 43-103, 43-104, 43-104.06, 43-109, 43-111, 43-111.01, 43-113, 43-130 to 43-132, 43-138, 43-143, 43-246, 43-247, 43-263, 43-279, 43-701, 43-906, 43-1203 to 43-1205, 43-1301, 43-1308, 43-1311, and 43-1314, Reissue Revised Statutes of Nebraska, 1943; to adopt the Nebraska Indian Child Welfare Act; to change a residency requirement for certain adoptions; to harmonize provisions; to provide severability; and to repeal the original sections.

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

Section 1. Sections 1 to 16 of this act shall be known and may be cited as the Nebraska Indian Child Welfare Act.

Sec. 2. The purpose of the Nebraska Indian Child Welfare Act is to clarify state policies and procedures regarding the implementation by the State of Nebraska of the Federal Indian Child Welfare Act, 25 U.S.C. 1901 et seq. It shall be the policy of the state to cooperate fully with Indian tribes in Nebraska in order to ensure that the intent and provisions of the Federal Indian Child Welfare Act are enforced.

Sec. 3. For the purposes of the Nebraska Indian Child Welfare Act, except as may be specifically provided otherwise, the term:

(1) Child custody proceeding shall mean and include:

(a) Foster care placement which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

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

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

(d) Adoptive placement which shall mean the permanent placement of an Indian child for adoption,

including any action resulting in a final decree of adoption.

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

(2) Extended family member shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

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

(4) Indian child means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) Indian child's tribe means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) Indian organization means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act, as amended, 42 U.S.C. 1602(c);

(9) Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father when paternity has not been acknowledged or established;

(10) Reservation means Indian country as defined in 18 U.S.C. 1151 and any lands, not covered under such section, title to which is either held by the United States

in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) Secretary means the Secretary of the Interior; and

(12) Tribal court means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

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

(2) In any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe, except that such transfer shall be subject to declination by the tribal court of such tribe.

(3) In any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

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

Sec. 5. (1) In any involuntary proceeding in a state court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the secretary in like manner, who may provide the requisite notice to the parent or Indian custodian and the

tribe. No foster care placement or termination of parental rights proceedings shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the secretary. The parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

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

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

(4) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(5) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(6) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Sec. 6. (1) When any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian

custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

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

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

(4) After the entry of a final decree of adoption of an Indian child in any state court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under state law.

Sec. 7. Any Indian child who is the subject of any action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 4, 5, and 6 of this act.

Sec. 8. (1) In any adoptive placement of an Indian child under state law, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

- (a) A member of the child's extended family;
- (b) Other members of the Indian child's tribe;

or

- (c) Other Indian families.

(2) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his or her special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

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

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

(c) An Indian foster home licensed or approved by an authorized nonIndian licensing authority; or

(d) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(3) In the case of a placement under subsection (1) or (2) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (2) of this section. When appropriate, the preference of the Indian child or parent shall be considered, except that, when a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(4) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

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

Sec. 9. (1) Notwithstanding any other state law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 5 of this act, that such return of custody is not in the best interests of the child.

(2) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the Nebraska Indian Child Welfare Act, except in the case in which an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

Sec. 10. Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's

biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

Sec. 11. (1) The appropriate departments and agencies of this state are authorized to enter into agreements with Indian tribes respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between the state and Indian tribes.

(2) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

Sec. 12. When any petitioner in an Indian child custody proceeding before a state court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his or her parent or Indian custodian unless returning the child to his or her parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

Sec. 13. In any case when federal law applicable to a child custody proceeding provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under the Nebraska Indian Child Welfare Act, the state court shall apply the federal standard.

Sec. 14. Nothing in the Nebraska Indian Child Welfare Act shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his or her parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable state law, in order to prevent imminent physical damage or harm to the child. The state authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of the Nebraska Indian Child Welfare Act, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

Sec. 15. None of the provisions of the Nebraska Indian Child Welfare Act, except subsection (1) of section 4 of this act and section 11 of this act, shall affect a

proceeding under state law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

Sec. 16. Any state court entering a final decree or order in any Indian child adoptive placement after the effective date of this act shall provide the secretary with a copy of such decree or order together with such other information as may be necessary to show:

- (1) The name and tribal affiliation of the child;
- (2) The names and addresses of the biological parents;
- (3) The names and addresses of the adoptive parents; and
- (4) The identity of any agency having files or information relating to such adoptive placement.

When the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information.

Sec. 17. That section 43-101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-101. Any Except as otherwise provided in the Nebraska Indian Child Welfare Act, any minor child may be adopted by any adult person or persons and any adult child may be adopted by the spouse of such child's parent in the cases and subject to the rules prescribed in sections 43-101 to 43-115, except that no person having a husband or wife may adopt a minor child unless the said husband or wife joins in the petition therefor. If the husband or wife so joins in the petition therefor, the adoption shall be by them jointly, except that ; PROVIDED, HOWEVER, an adult husband or wife may adopt a child of the other spouse whether born in or out of wedlock.

Sec. 18. That section 43-102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-102. Any Except as otherwise provided in the Nebraska Indian Child Welfare Act, any person or persons, desiring to adopt a minor child or an adult child of such person's spouse, shall file, in the county court of the county in which the person or persons desiring to adopt such child reside, a petition for adoption, signed and sworn to by the person or persons desiring to adopt, together with the consent or consents required by section 43-104 or 43-104.07, and the certificates required by sections 43-104.02 to 43-104.06 or the documents required by section 43-104.07.

Sec. 19. That section 43-103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-103. Except as otherwise provided in the Nebraska Indian Child Welfare Act, upon ~~upon~~ the filing of such petition the court shall fix a time for hearing the same, not less than four weeks nor more than eight weeks after the filing of such petition. The court may require notice of the hearing to be given to the child, if over fourteen years of age, to the natural parent or parents of the child, and to such other interested persons as the judge may, in the exercise of discretion, deem advisable, in the manner provided for service of a summons in a civil action. If the judge directs notice by publication, such notice shall be published three successive weeks in a legal newspaper of general circulation in said such county.

Sec. 20. That section 43-104, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-104. No Except as otherwise provided in the Nebraska Indian Child Welfare Act, no adoption shall be decreed unless the petition therefor is accompanied by written consents thereto executed by (1) the minor child, if over fourteen years of age, or the adult child of the adopting person's spouse, (2) any district court or separate juvenile court in the State of Nebraska having jurisdiction of the custody of a minor child by virtue of divorce proceedings had in any district court or separate juvenile court in the State of Nebraska, and (3) both parents, if living; the surviving parent of a child born in lawful wedlock; or, subject to the provisions of sections 43-104.02 to 43-104.06, the mother of a child born out of wedlock; except that consent shall not be required of any parent who shall (a) have relinquished the child for adoption by a written instrument; (b) have abandoned the child for at least six months next preceding the filing of the adoption petition; (c) have been deprived of his or her parental rights to such child by the order of any court of competent jurisdiction, or prior to July 13, 1967, have been deprived of the custody of such child by an order of any juvenile court of competent jurisdiction by reason of such child having been declared a dependent or neglected child, within the provisions of sections 43-201 to 43-227; or (d) be incapable of consenting.

Sec. 21. That section 43-104.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-104.06. (1) If the claimant seeks to oppose any proposed relinquishment of a child by the mother and requests custody of the child, the court shall inquire into the fitness of the claimant, his or her ability to properly care for the child, and whether the best interests of the child will be served by granting custody to the claimant. Only upon the appointment of a guardian ad litem for the child, and a finding that the claimant is a fit person, is able to properly care for the child, and that the child's best interests will be served by granting custody to the

claimant, shall custody be granted to the claimant.

(2) Upon Except as otherwise provided in the Nebraska Indian Child Welfare Act, upon relinquishment by the mother to a child placement agency licensed by the State of Nebraska, or upon a finding that the child's best interests would not be served by granting custody to the claimant, together with the recommendation by the guardian ad litem, and a finding that termination of the rights of the mother and the father is in the best interests of the child, the court shall terminate the rights of the mother and father and confer such rights upon the licensed child placement agency to whom the relinquishment has been given.

Sec. 22. That section 43-109, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-109. (1) If, upon the hearing, the court shall find that such adoption is for the best interests of such minor child or such adult child of the adopting person's spouse, a decree of adoption shall be entered. ~~No~~ PROVIDED, HOWEVER, no decree of adoption shall be entered unless it shall appear that the child has resided with the person or persons petitioning for such adoption for at least six months next preceding the entering of the decree of adoption, except that such residency requirement shall not apply in an adoption of an adult child of the adopting person's spouse.

(2) If the adopted child was born out of wedlock, that fact shall not appear in the decree of adoption.

(3) The court may decree such change of name for the adopted child as the petitioner or petitioners may request.

Sec. 23. That section 43-111, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-111. Except as provided in section 43-106.01 and the Nebraska Indian Child Welfare Act, after a decree of adoption has been entered, the natural parents of the adopted child shall be relieved of all parental duties toward and all responsibilities for such child and have no rights over such adopted child or to his or her property by descent and distribution.

Sec. 24. That section 43-111.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-111.01. If Except as otherwise provided in the Nebraska Indian Child Welfare Act, if, upon a hearing, the court shall deny a petition for adoption, the court may take custody of the child involved and determine whether or not it is in the best interests of the child to remain in the custody of the proposed adopting parents. The court may also, on its own motion, appoint a legal guardian over the person and property of such minor and make disposition in the best interests of the child without further notice, relinquishments, or consents as may otherwise be required

by sections 43-102 to 43-112.

Sec. 25. That section 43-113, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-113. Except as otherwise provided in the Nebraska Indian Child Welfare Act, all All papers pertaining to the adoption shall be kept by the county judge as a permanent record of the county court and withheld from inspection. No person shall have access to such records except on the order of the county judge of the court in which the decree of adoption was entered on good cause shown or as provided in sections 43-138 to 43-140.

Sec. 26. That section 43-130, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-130. Except as otherwise provided in the Nebraska Indian Child Welfare Act, an An adopted person twenty-five years of age or older born in this state who desires access to the names of relatives or access to his or her original certificate of birth shall file a written request for such information with the bureau. The bureau shall provide a form for making such a request.

Sec. 27. That section 43-131, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-131. (1) Upon receipt of a request for information, the bureau shall check the records of the adopted person making the request to determine whether the consent form provided by section 43-124 has been signed and filed by any relative of the adopted person and whether an unrevoked nonconsent form is on file from a biological parent or parents pursuant to section 43-132 or from an adoptive parent or parents pursuant to section 43-143.

(2) If the consent form has been signed and filed and has not been revoked and if no nonconsent form has been filed by an adoptive parent or parents pursuant to section 43-143, the bureau shall release the information on such form to the adopted person.

(3) If no consent forms have been filed, or if the consent form has been revoked, and if no nonconsent form has been filed pursuant to section 43-143, the following information shall be released to the adopted person:

(a) The name and address of the court which issued the adoption decree;

(b) The name and address of the child placement agency, if any, involved in the adoption; and

(c) The fact that an agency may assist the adopted person in searching for relatives as provided in sections 43-132 to 43-141.

(4) The provisions of this section shall not apply to persons subject to the Nebraska Indian Child Welfare Act.

Sec. 28. That section 43-132, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-132. A biological parent or parents may at

any time, if they desire, file a notice of nonconsent with the bureau stating that at no time after his or her death and prior to the death of his or her spouse, if such spouse is not a biological parent, may any information on the adopted person's original birth certificate be released to such adopted person. The provisions of this section shall not apply to persons subject to the Nebraska Indian Child Welfare Act.

Sec. 29. That section 43-138, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-138. After being contacted by an adopted person, if no valid nonconsent form, as provided in section 43-132 or 43-143, is on file the department or agency as the case may be shall apply to the clerk of the county court which issued the adoption decree for any information in the court records regarding the names and locations of the relatives of the adopted person. Any information which is available shall be given only to the department or agency. The department or agency shall keep such information confidential and shall not disclose it either directly or indirectly to the adopted person. The provisions of this section shall not apply to persons subject to the Nebraska Indian Child Welfare Act.

Sec. 30. That section 43-143, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-143. An adoptive parent or parents may at any time, if they desire, file a notice of nonconsent with the bureau stating that at no time prior to his or her death or the death of both parents if each signed the form may any information on the adopted person's original birth certificate be released to such adopted person. The provisions of this section shall not apply to persons subject to the Nebraska Indian Child Welfare Act.

Sec. 31. 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 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, 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 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; and

(6) To assure compliance, in cases involving Indian children, with the Nebraska Indian Child Welfare Act.

Sec. 32. 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) 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 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; and

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

Notwithstanding the provisions of the Nebraska Juvenile Code, the determination of jurisdiction over any Indian child as defined in section 3 of this act shall be subject to the Nebraska Indian Child Welfare Act.

Sec. 33. That section 43-263, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-263. Upon the filing of the petition, a summons with a copy of the petition attached shall issue requiring the person who has custody of the juvenile or with whom the juvenile may be staying to appear personally and, unless the court orders otherwise, to bring the juvenile before the court at the time and place stated. Service of the summons shall be effected not less than seventy-two hours prior to the hearing set therein, except that service may be waived by the parties. Every summons sent shall comply with the Nebraska Indian Child Welfare Act, if applicable.

Sec. 34. 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 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 in his or her own behalf;

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

(g) Of the right to appeal.

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 voluntarily and understandingly made and with an affirmative waiver of rights. 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 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 entered in the minutes, based on proof beyond a reasonable doubt, 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. If an Indian child is involved, the standard of proof shall be in compliance with the Nebraska Indian Child Welfare Act, if applicable.

(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 then proceed to an inquiry into the proper disposition to be made of such juvenile.

Sec. 35. That section 43-701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-701. Ne Except as otherwise provided in the

Nebraska Indian Child Welfare Act, no person, other than a parent, shall (1) place, (2) assist in placing, (3) advertise a child for placement, or (4) give the care and custody of any child to any person or association for adoption or otherwise, except for temporary or casual care, unless such person shall be duly licensed by the Department of Social Services under such rules and regulations as the department shall prescribe. The department may grant or revoke such a license and make all needful rules regarding the issuance or revocation thereof.

Sec. 36. That section 43-906, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-906. The Except as otherwise provided in the Nebraska Indian Child Welfare Act, the Department of Social Services, or its duly authorized agent, may consent to the adoption of children committed to it upon the order of a juvenile court if the parental rights of the parents or of the mother of a child born out of wedlock have been terminated or upon the relinquishment to such department by their parents or by the mother of a child born out of wedlock, except that the ~~7 PROVIDED; such~~ department may consent to the adoption of children committed to it by an order of a juvenile court prior to July 13, 1967, without an order terminating parental rights.

Sec. 37. That section 43-1203, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-1203. (1) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) This state (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of his or her removal or retention by a person claiming his or her custody or for other reasons, and a parent or person acting as parent continues to live in this state;

(b) It is in the best interest of the child that a court of this state assume jurisdiction because (i) the child and his or her parents, or the child and at least one contestant, have a significant connection with this state; and (ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(c) The child is physically present in this state and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he or she has been subjected to or threatened with mistreatment or abuse or is otherwise neglected; ~~or~~

(d)(i) It appears that no other state would have jurisdiction under prerequisites substantially in

accordance with subdivision (a), (b), or (c) of this section, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction; or

(e) The child is not an Indian child over which jurisdiction is otherwise provided under the Nebraska Indian Child Welfare Act.

(2) Except under subdivisions (c) and (d) of subsection (1) of this section, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his or her custody.

Sec. 38. That section 43-1204, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-1204. Before Except as otherwise provided in the Nebraska Indian Child Welfare Act, before making a decree under sections 43-1201 to 43-1225, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to section 43-1205.

Sec. 39. That section 43-1205, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-1205. (1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in the manner provided for service of a summons in a civil action.

(2) Notice under this section shall be served, delivered, or last published at least fourteen days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service; or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made.

(4) Notice is not required if a person submits to the jurisdiction of the court.

(5) The provisions of this section shall not apply to persons subject to the notice provisions of the Nebraska Indian Child Welfare Act.

Sec. 40. 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;

(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, or (c) the entity having jurisdiction over the child pursuant to the Nebraska Indian Child Welfare Act;

(6) Voluntary placement shall mean the placement by a parent or legal guardian who relinquishes the possession and care of a child to a third party, individual, or agency; 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. 41. That section 43-1308, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-1308. The Except as otherwise provided in the Nebraska Indian Child Welfare Act, the state board or designated local board shall:

(1) Review at least once every six months the case of each child in foster care placement who has resided in foster care for a period of more than six months to determine what efforts have been made to carry out the plan for rehabilitation of the foster child and family unit or for permanent placement of such child pursuant to section 43-1312;

(2) Submit to the court having jurisdiction over such child for the purposes of foster care placement, within thirty days after the review, its findings and recommendations regarding the efforts and progress made to carry out the plan established pursuant to section 43-1312, together with any other recommendations it chooses to make regarding the child. The findings and recommendations shall include the date of the next review by the state board or designated local board;

(3) If the return of the child to his or her parents is not likely or reasonable grounds exist that indicate adoption is not likely, encourage the placement of the child in the most family-like long-term foster care situation possible, considering the needs of the child in question; and

(4) Promote and encourage stability and continuity in foster care by discouraging unnecessary changes in the placement of foster children and by encouraging the recruitment of foster parents who may be eligible as adoptive parents.

Sec. 42. That section 43-1311, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

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

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

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

Sec. 43. That section 43-1314, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-1314. Not~~ee~~ Except as otherwise provided in the Nebraska Indian Child Welfare Act, notice of the court review and the right of participation in all court reviews pertaining to a child in foster care shall be provided by the court having jurisdiction over such child for the purposes of foster care placement by certified mail, and such notice shall be mailed no later than fourteen days before the court review. Such notice shall be provided to (1) the person charged with the care of such child, (2) the child's parents or guardian, unless the parental rights of the parents have been terminated by court action as provided in section 43-292 or 43-297, (3) the foster child, if age fourteen or over, (4) the foster parent or parents of the foster child, and (5) the guardian ad litem of the foster child.

Sec. 44. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 45. That original sections 43-101, 43-102, 43-103, 43-104, 43-104.06, 43-109, 43-111, 43-111.01, 43-113, 43-130 to 43-132, 43-138, 43-143, 43-246, 43-247,

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43-263, 43-279, 43-701, 43-906, 43-1203 to 43-1205, 43-1301, 43-1308, 43-1311, and 43-1314, Reissue Revised Statutes of Nebraska, 1943, are repealed.