

LEGISLATIVE BILL 908

Approved by the Governor April 9, 2014

Introduced by Coash, 27; McGill, 26.

FOR AN ACT relating to children; to amend sections 30-2608, 43-104.02, 43-284.02, and 71-824, Reissue Revised Statutes of Nebraska, section 43-1318, Revised Statutes Cumulative Supplement, 2012, and sections 43-245, 43-285, and 43-905, Revised Statutes Supplement, 2013; to clarify certain adoption filings for children born out of wedlock; to provide for guardianships for certain adjudicated children as prescribed; to define a term; to change provisions relating to wards and guardianships; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 30-2608, Reissue Revised Statutes of Nebraska, is amended to read:

30-2608 (a) The father and mother are the natural guardians of their minor children and are duly entitled to their custody and to direct their education, being themselves competent to transact their own business and not otherwise unsuitable. If either dies or is disqualified for acting, or has abandoned his or her family, the guardianship devolves upon the other except as otherwise provided in this section.

(b) In the appointment of a parent as a guardian when the other parent has died and the child was born out of wedlock, the court shall consider the wishes of the deceased parent as expressed in a valid will executed by the deceased parent. If in such valid will the deceased parent designates someone other than the other natural parent as guardian for the minor children, the court shall take into consideration the designation by the deceased parent. In determining whether or not the natural parent should be given priority in awarding custody, the court shall also consider the natural parent's acknowledgment of paternity, payment of child support, and whether the natural parent is a fit, proper, and suitable custodial parent for the child.

(c) The court may appoint a standby guardian for a minor whose parent is chronically ill or near death. The appointment of a guardian under this subsection does not suspend or terminate the parent's parental rights of custody to the minor. The standby guardian's authority would take effect, if the minor is left without a remaining parent, upon (1) the death of the parent, (2) the mental incapacity of the parent, or (3) the physical debilitation and consent of the parent.

(d) The court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspended by prior or current circumstances or prior court order. The juvenile court may appoint a guardian for a child adjudicated to be under subdivision (3)(a) of section 43-247 as provided in section 8 of this act. A guardian appointed by will as provided in section 30-2606 whose appointment has not been prevented or nullified under section 30-2607 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty days after notice of the guardianship proceeding.

(e) The petition and all other court filings for a guardianship proceeding shall be filed with the clerk of the county court. The party shall state in the petition whether such party requests that the proceeding be heard by the county court or, in cases in which a separate juvenile court already has jurisdiction over the child in need of a guardian under the Nebraska Juvenile Code, such separate juvenile court. Such proceeding is considered a county court proceeding even if heard by a separate juvenile court judge, and an order of the separate juvenile court in such guardianship proceeding has the force and effect of a county court order. The testimony in a guardianship proceeding heard before a separate juvenile court judge shall be preserved as in any other separate juvenile court proceeding. The clerks of the district courts shall transfer all guardianship petitions and other guardianship filings which were filed with such clerks prior to August 28, 1999, to the clerk of the county court where the separate juvenile court which heard the proceeding is situated. The clerk of such county court shall file and docket such petitions and other filings.

Sec. 2. Section 43-104.02, Reissue Revised Statutes of Nebraska, is amended to read:

43-104.02 A Notice of Objection to Adoption and Intent to Obtain

Custody shall be filed with the biological father registry under section 43-104.01 on forms provided by the Department of Health and Human Services (1) ~~within at any time during the pregnancy and no later than five business days after the birth of the child~~ or (2) if the notice required by section 43-104.13 is provided after the birth of the child (a) ~~within at any time during the pregnancy and no later than five business days after receipt of the notice provided under section 43-104.12~~ or (b) ~~within no later than five business days after the last date of any published notice provided under section 43-104.14, whichever notice is earlier.~~ Such notice shall be considered to have been filed if it is received by the department or postmarked prior to the end of the fifth business day as provided in this section.

Sec. 3. Section 43-245, Revised Statutes Supplement, 2013, is amended to read:

43-245 For purposes of the Nebraska Juvenile Code, unless the context otherwise requires:

(1) Abandonment means a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, and maintenance and the opportunity for the display of parental affection for the child;

~~(1)~~ (2) Age of majority means nineteen years of age;

~~(2)~~ (3) Approved center means a center that has applied for and received approval from the Director of the Office of Dispute Resolution under section 25-2909;

~~(3)~~ (4) Civil citation means a noncriminal notice which cannot result in a criminal record and is described in section 43-248.02;

~~(4)~~ (5) Cost or costs means (a) the sum or equivalent expended, paid, or charged for goods or services, or expenses incurred, or (b) the contracted or negotiated price;

~~(5)~~ (6) Criminal street gang means a group of three or more people with a common identifying name, sign, or symbol whose group identity or purposes include engaging in illegal activities;

~~(6)~~ (7) Criminal street gang member means a person who willingly or voluntarily becomes and remains a member of a criminal street gang;

~~(7)~~ (8) Custodian means a nonparental caretaker having physical custody of the juvenile and includes an appointee described in section 43-294;

~~(8)~~ (9) Guardian means a person, other than a parent, who has qualified by law as the guardian of a juvenile pursuant to testamentary or court appointment, but excludes a person who is merely a guardian ad litem;

~~(9)~~ (10) Juvenile means any person under the age of eighteen;

~~(10)~~ (11) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common-law, or chancery jurisdiction or the county courts and district courts of jurisdiction of domestic relations matters as defined in section 25-2740;

~~(11)~~ (12) Juvenile detention facility has the same meaning as in section 83-4,125;

~~(12)~~ (13) Legal custody has the same meaning as in section 43-2922;

~~(13)~~ (14) Mediator for juvenile offender and victim mediation means a person who (a) has completed at least thirty hours of training in conflict resolution techniques, neutrality, agreement writing, and ethics set forth in section 25-2913, (b) has an additional eight hours of juvenile offender and victim mediation training, and (c) meets the apprenticeship requirements set forth in section 25-2913;

~~(14)~~ (15) Mental health facility means a treatment facility as defined in section 71-914 or a government, private, or state hospital which treats mental illness;

~~(15)~~ (16) Nonoffender means a juvenile who is subject to the jurisdiction of the juvenile court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3) (a) of section 43-247;

~~(16)~~ (17) Nonsecure detention means detention characterized by the absence of restrictive hardware, construction, and procedure. Nonsecure detention services may include a range of placement and supervision options, such as home detention, electronic monitoring, day reporting, drug court, tracking and monitoring supervision, staff secure and temporary holdover facilities, and group homes;

~~(17)~~ (18) Parent means one or both parents or stepparents when the stepparent is married to a parent who has physical custody of the juvenile as of the filing of the petition;

~~(18)~~ (19) Parties means the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;

~~(19)~~ (20) Physical custody has the same meaning as in section 43-2922;

~~(20)~~ (21) Except in proceedings under the Nebraska Indian Child Welfare Act, relative means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

~~(21)~~ (22) Seal a record means that a record shall not be available to the public except upon the order of a court upon good cause shown;

~~(22)~~ (23) Secure detention means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;

~~(23)~~ (24) Staff secure juvenile facility means a juvenile residential facility operated by a political subdivision (a) which does not include construction designed to physically restrict the movements and activities of juveniles who are in custody in the facility, (b) in which physical restriction of movement or activity of juveniles is provided solely through staff, (c) which may establish reasonable rules restricting ingress to and egress from the facility, and (d) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. Staff secure juvenile facility does not include any institution operated by the department;

~~(24)~~ (25) Status offender means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult, including, but not limited to, juveniles charged under subdivision (3) (b) of section 43-247 and sections 53-180.01 and 53-180.02; and

~~(25)~~ (26) Traffic offense means any nonfelonious act in violation of a law or ordinance regulating vehicular or pedestrian travel, whether designated a misdemeanor or a traffic infraction.

Sec. 4. Section 43-284.02, Reissue Revised Statutes of Nebraska, is amended to read:

43-284.02 The Department of Health and Human Services may make payments as needed on behalf of a child who has been a ward of the department after the appointment of a guardian for the child. Such payments to the guardian may include maintenance costs, medical and surgical expenses, and other costs incidental to the care of the child. All such payments shall terminate on or before the child's nineteenth birthday unless the child is eligible for extended guardianship assistance from the department pursuant to sections 43-4511 and 43-4514. The child under guardianship shall be a child for whom the guardianship would not be possible without the financial aid provided under this section.

The Department of Health and Human Services shall adopt and promulgate rules and regulations for the administration of this section.

Sec. 5. Section 43-285, Revised Statutes Supplement, 2013, is amended to read:

43-285 (1) When the court awards a juvenile to the care of the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the guardianship legal custody and care of the department, association, or individual to whose care he or she is committed. Any such association and the department shall have authority, by and with the assent of the court, to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to it. Any such association and the department shall be responsible for applying for any health insurance available to the juvenile, including, but not limited to, medical assistance under the Medical Assistance Act. Such guardianship custody and care shall not include the guardianship of any estate of the juvenile.

~~(2)(a) This subdivision applies until October 1, 2013. Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family. The plan shall include a statement regarding the eligibility of the juvenile for any health insurance, including, but not limited to, medical assistance under the Medical Assistance Act. The health and safety of the juvenile shall be the paramount concern in the proposed plan. When the plan includes the provision of services in order that the juvenile can remain in his or her home and such services are to prevent out-of-home placement, the plan shall be prepared and shall clearly state that the services described in the plan~~

are to prevent placement and that, absent preventive services, foster care is the planned arrangement for the child. The department shall include in the plan for a juvenile who is sixteen years of age or older and subject to the guardianship of the department a written independent living transition proposal which meets the requirements of section 43-1311.03 and, for eligible juveniles, the Young Adult Voluntary Services and Support Act. The court may approve the plan, modify the plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to assist the juvenile in acquiring independent living skills. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented.

(b) This subdivision applies beginning October 1, 2013. (2) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3)(a) or (c) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family. The health and safety of the juvenile shall be the paramount concern in the proposed plan. The department shall include in the plan for a juvenile who is sixteen years of age or older and subject to the guardianship legal care and custody of the department a written independent living transition proposal which meets the requirements of section 43-1311.03 and, for eligible juveniles, the Young Adult Voluntary Services and Support Act. The court may approve the plan, modify the plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to assist the juvenile in acquiring independent living skills. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented.

(3) Within thirty days after an order awarding a juvenile to the care of the department, an association, or an individual and until the juvenile reaches the age of majority, the department, association, or individual shall file with the court a report stating the location of the juvenile's placement and the needs of the juvenile in order to effectuate the purposes of subdivision (1) of section 43-246. The department, association, or individual shall file a report with the court once every six months or at shorter intervals if ordered by the court or deemed appropriate by the department, association, or individual. Every six months, the report shall provide an updated statement regarding the eligibility of the juvenile for health insurance, including, but not limited to, medical assistance under the Medical Assistance Act. The department, association, or individual shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties at least seven days before the placement of the juvenile is changed from what the court originally considered to be a suitable family home or institution to some other custodial situation in order to effectuate the purposes of subdivision (1) of section 43-246. The court, on its own motion or upon the filing of an objection to the change by an interested party, may order a hearing to review such a change in placement and may order that the change be stayed until the completion of the hearing. Nothing in this section shall prevent the court on an ex parte basis from approving an immediate change in placement upon good cause shown. The department may make an immediate change in placement without court approval only if the juvenile is in a harmful or dangerous situation or when the foster parents request that the juvenile be removed from their home. Approval of the court shall be sought within twenty-four hours after making the change in placement or as soon thereafter as possible. The department shall provide the juvenile's guardian ad litem with a copy of any report filed with the court by the department pursuant to this subsection.

(4) The court shall also hold a permanency hearing if required under section 43-1312.

(5) When the court awards a juvenile to the care of the department, an association, or an individual, then the department, association, or individual shall have standing as a party to file any pleading or motion, to be heard by the court with regard to such filings, and to be granted any review or relief requested in such filings consistent with the Nebraska Juvenile Code.

(6) Whenever a juvenile is in a foster care placement as defined in section 43-1301, the Foster Care Review Office or the designated local foster care review board may participate in proceedings concerning the juvenile as provided in section 43-1313 and notice shall be given as provided in section

43-1314.

(7) Any written findings or recommendations of the Foster Care Review Office or the designated local foster care review board with regard to a juvenile in a foster care placement submitted to a court having jurisdiction over such juvenile shall be admissible in any proceeding concerning such juvenile if such findings or recommendations have been provided to all other parties of record.

(8) The executive director and any agent or employee of the Foster Care Review Office or any member of any local foster care review board participating in an investigation or making any report pursuant to the Foster Care Review Act or participating in a judicial proceeding pursuant to this section shall be immune from any civil liability that would otherwise be incurred except for false statements negligently made.

Sec. 6. Section 43-905, Revised Statutes Supplement, 2013, is amended to read:

43-905 (1) The Department of Health and Human Services shall be the legal guardian have legal custody of all children committed to it. The department shall afford temporary care and shall use special diligence to provide suitable homes for such children. The department shall make reasonable efforts to accomplish joint-sibling placement or sibling visitation or ongoing interaction between siblings as provided in section 43-1311.02. The department is authorized to place such children in suitable families for adoption, foster care, or guardianship or, in the discretion of the department, on a written contract.

(2) The contract shall provide (a) for the children's education in the public schools or otherwise, (b) for teaching them some useful occupation, and (c) for kind and proper treatment as members of the family in which they are placed.

(3) Whenever any child who has been committed to the department becomes self-supporting, the department shall declare that fact and the guardianship legal custody and care of the department shall cease. Thereafter the child shall be entitled to his or her own earnings. Guardianship Legal custody and care of and services by the department shall never extend beyond the age of majority, except that (a) services by the department to a child shall continue until the child reaches the age of twenty-one if the child is a student regularly attending a school, college, or university or regularly attending a course of vocational or technical training designed to prepare such child for gainful employment or the child receives extended services and support as provided in the Young Adult Voluntary Services and Support Act and (b) beginning January 1, 2014, coverage for health care and related services under medical assistance in accordance with section 68-911 may be extended as provided under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013, for medicaid coverage for individuals under twenty-six years of age as allowed pursuant to such act.

(4) Whenever the parents of any ward, whose parental rights have not been terminated, have become able to support and educate their child, the department shall restore the child to his or her parents if the home of such parents would be a suitable home. The guardianship legal custody and care of the department shall then cease.

(5) Whenever permanent free homes for the children cannot be obtained, the department shall have the authority to may provide subsidies to adoptive and guardianship families subject to a hearing and court approval. The department may also provide and pay for the maintenance of the children in private families, in foster care, in guardianship, in boarding homes, or in institutions for care of children.

Sec. 7. Section 43-1318, Revised Statutes Cumulative Supplement, 2012, is amended to read:

43-1318 Sections 43-1301 to ~~43-1318~~ 43-1321 and section 8 of this act shall be known and may be cited as the Foster Care Review Act.

Sec. 8. (1) If the permanency plan for a child established pursuant to section 43-1312 does not recommend return of the child to his or her parent or that the child be placed for adoption, the juvenile court may place the child in a guardianship in a relative home as defined in section 71-1901, in a kinship home as defined in section 71-1901, or with an individual as provided in section 43-285 if:

(a) The child is a juvenile who has been adjudged to be under subdivision (3)(a) of section 43-247;

(b) The child has been in the placement for at least six months;

(c) The child consents to the guardianship, if the child is ten years of age or older; and

(d) The guardian:

(i) Is suitable and able to provide a safe and permanent home for the child;

(ii) Has made a commitment to provide for the financial, medical, physical, and emotional needs of the child until the child reaches the age of majority or until the termination of extended guardianship assistance payments pursuant to section 43-4511 or 43-4514;

(iii) Has made a commitment to prepare the child for adulthood and independence; and

(iv) Agrees to give notice of any changes in his or her residential address or the residence of the child by filing a written document in the juvenile court file of the child.

(2) In the order granting guardianship, the juvenile court:

(a) Shall grant to the guardian such powers, rights, and duties with respect to the care, maintenance, and treatment of the child as the biological or adoptive parent of the child would have;

(b) May specify the frequency and nature of family time or contact between the child and his or her parents, if appropriate;

(c) May specify the frequency and nature of family time or contact between the child and his or her siblings, if appropriate; and

(d) Shall require that the guardian not return the child to the physical care and custody of the person from whom the child was removed without prior approval of the court.

(3) The juvenile court shall retain jurisdiction over the child for modification or termination of the guardianship order. The court shall discontinue permanency reviews and case reviews and shall relieve the Department of Health and Human Services of the responsibility of supervising the placement of the child. Notwithstanding the retention of juvenile court jurisdiction, the guardianship placement shall be considered permanent for the child.

(4) The child shall remain in the custody of the guardian unless the order creating the guardianship is modified by the court.

(5) Guardianships established under this section shall terminate on the child's nineteenth birthday unless the child is eligible for continued guardianship assistance payments under section 43-4511 or 43-4514 and an agreement is signed by the Department of Health and Human Services, the guardian, and the young adult, as defined in section 43-4503, to continue the guardianship assistance. The guardian shall ensure that any guardianship assistance funds provided by the department and received by the guardian for the purpose of an extended guardianship shall be used for the benefit of the young adult. The department shall adopt and promulgate rules and regulations defining services and supports encompassed by such benefit.

(6) Upon the child's nineteenth birthday regardless of the existence of an agreement to extend the guardianship until the child's twenty-first birthday, the guardian shall no longer have the legal authority to make decisions on behalf of the child and shall have no more authority over the person or property of the child than a biological or adoptive parent would have over his or her child, absent consent from the child.

(7) A guardianship established under this section does not terminate the parent-child relationship, including:

(a) The right of the child to inherit from his or her parents;

(b) The right of the biological parents to consent to the child's adoption; and

(c) The responsibility of the parents to provide financial, medical, or other support as ordered by the court.

(8) The Department of Health and Human Services shall adopt and promulgate rules and regulations for the administration of this section.

Sec. 9. Section 71-824, Reissue Revised Statutes of Nebraska, is amended to read:

71-824 No later than January 1, 2010, the department shall provide post-adoption and post-guardianship case management services for adoptive and guardianship families of former state wards on a voluntary basis. The department shall notify adoptive parents and guardians of the availability of such services and the process to access such services and that such services are provided on a voluntary basis. Notification shall be in writing and shall be provided at the time of finalization of the adoption agreement or completion of the guardianship and each six months thereafter until dissolution of the adoption, until termination of the guardianship, ~~or~~ until the former state ward attains nineteen years of age, or until extended guardianship assistance payments are terminated pursuant to section 43-4511 or 43-4514, whichever is earlier. Post-adoption and post-guardianship case management services under this section shall be administered by the Division of Children and Family Services and shall be evaluated. The evaluation shall

include, but not be limited to, the number and percentage of persons receiving such services and the degree of problem resolution reported by families receiving such services.

Sec. 10. Original sections 30-2608, 43-104.02, 43-284.02, and 71-824, Reissue Revised Statutes of Nebraska, section 43-1318, Revised Statutes Cumulative Supplement, 2012, and sections 43-245, 43-285, and 43-905, Revised Statutes Supplement, 2013, are repealed.