

## LEGISLATIVE BILL 1222

Passed over the Governor's veto April 9, 1990.

Introduced by Hartnett, 45; Scofield, 49; Peterson, 21; Smith, 33; Labeledz, 5; Schmit, 23; Barrett, 39; Hall, 7; Hannibal, 4; Kristensen, 37; Schellpeper, 18; Coordsen, 32; Lynch, 13; Schimek, 27; Moore, 24; Nelson, 35; Crosby, 29; Landis, 46; Abboud, 12; Baack, 47; Bernard-Stevens, 42; Beck, 8

AN ACT relating to infants; to amend sections 28-726, 43-272.01, 43-1301, 43-1302, 43-1303, 43-1308, 43-1309, 43-1310, 43-1313, 43-1314, and 71-1904, Reissue Revised Statutes of Nebraska, 1943, section 71-1902, Revised Statutes Supplement, 1988, and section 43-285, Revised Statutes Supplement, 1989; to authorize the release of certain records to the State Foster Care Review Board; to provide and change powers and duties for guardians ad litem, the State Foster Care Review Board, local foster care review boards, and the Department of Social Services; to provide for the admissibility of certain evidence in proceedings concerning juveniles; to limit liability; to redefine terms; to change provisions relating to membership on the State Foster Care Review Board; to provide for review of certain additional foster care placements; to change provisions relating to review hearings; to provide a penalty; to require training in foster care as prescribed; to require the department to defray expenses as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 28-726, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-726. Except as provided in this section and section 28-722, no person, official, or agency shall have access to such records unless in furtherance of purposes directly connected with the administration of sections 28-710 to 28-727. Such persons, officials, and agencies having access to such records shall include,

but not be limited to:

(1) A law enforcement agency investigating a report of known or suspected abuse or neglect;

(2) A county attorney in preparation of an abuse, neglect, or termination petition;

(3) A physician who has before him or her a child whom he or she reasonably suspects may be abused or neglected;

(4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused or neglected child or a parent, a guardian, or other person responsible for the abused or neglected child's welfare who is the subject of a report; and

(5) Any person engaged in bona fide research or auditing. No information identifying the subjects of the report shall be made available to the researcher or auditor; and

(6) The State Foster Care Review Board when the records relate to a child in a foster care placement as defined in section 43-1301. The records provided to the state board shall not include the name or identity of any person making a report of suspected child abuse or neglect.

Sec. 2. That section 43-272.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

(2) In the course of discharging duties as guardian ad litem, the person so appointed shall consider, but not be limited to, the criteria provided in this subsection. The guardian ad litem (a) is appointed to stand in lieu of a parent for a protected juvenile who is the subject of a juvenile court petition and shall be present at all hearings before the court in such matter unless expressly excused by the court and may enter into such stipulations and agreements concerning adjudication and disposition deemed by him or her to be in the juvenile's best interests, (b) is not appointed to prosecute or defend the parents or other custodian of the protected juvenile but shall defend the legal and social interests of such juvenile. Social interests shall be defined generally as the usual and reasonable expectations of society for the appropriate parental custody and protection and quality of life for juveniles without regard to the socioeconomic status of

the parents or other custodians of the juvenile, (c) may at any time after the filing of the petition move the court of jurisdiction to provide medical or psychological treatment or evaluation as set out in section 43-258. The guardian ad litem shall have access to all reports resulting from any examination ordered under section 43-258, and such reports shall be used for evaluating the status of the protected juvenile, (d) shall make every reasonable effort to become familiar with the needs of the protected juvenile which may include (i) visitation with the juvenile within two weeks after the appointment and once every six months thereafter and (ii) consultation with caseworkers, physicians, psychologists, foster parents or other custodians, teachers, clergy members, and others directly involved with the juvenile or who may have information or knowledge about the circumstances which brought the juvenile court action or related cases and the development of the juvenile, (e) may present evidence and witnesses and cross-examine witnesses at all evidentiary hearings, (f) shall be responsible for making recommendations to the court regarding the temporary and permanent placement of the protected juvenile and shall submit a written report to the court at every dispositional or review hearing, or in the alternative, the court may provide the guardian ad litem with a checklist that shall be completed and presented to the court at every dispositional or review hearing. (g) shall consider such other information as is warranted by the nature and circumstances of a particular case, and (h) may file a petition in the juvenile court on behalf of the juvenile.

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

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

Sec. 3. That section 43-285, Revised Statutes Supplement, 1989, be amended to read as follows:

43-285. (1) When the court awards a juvenile to the care of the Department of Social 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 of the department, association, or individual to whose care he or she is committed. Any such association and the Department of Social Services 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. Such guardianship shall not include the guardianship of any estate of the juvenile.

(2) 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, and services which are to be provided to such juvenile and his or her family. If any other party, including, but not limited to, the guardian ad litem, parents, county attorney, or custodian, proves by a preponderance of the evidence that the department's plan is not in the juvenile's best interests, the court shall disapprove the department's plan. The court may modify the plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented. The department or any other party may request a review of the court's order concerning the plan by a juvenile review panel as provided in section 43-287.04.

(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. 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 or any other party may request a review of the change in placement by a juvenile review panel in the manner set out in section 43-287.04.

(4) 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.

(5) Whenever a juvenile is in a foster care placement as defined in section 43-1301, the State Foster Care Review Board may participate in proceedings concerning the juvenile as provided in section 43-1313.

(6) Any written findings or recommendations of the State Foster Care Review Board or any 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.

(7) Any member of the State Foster Care Review Board, any of its agents or employees, 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. 4. 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 purposes of the Foster Care Review Act, 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 or any other person or entity receiving and caring for foster children;

(4) Foster care placements shall mean all placements of juveniles as described in subdivision (3)(b) of section 43-247, placements of neglected, dependent, or delinquent children, including those made directly by parents or by third parties, and placements of children who have been voluntarily relinquished, pursuant to section 43-106.01, to the Department of Social Services or any child placement agency licensed by the Department of Social Services department;

(5) Person or court in charge of the child shall mean (a) the Department of Social Services, an association, or an individual that who 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 the 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, (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;

(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;

(8) Child-caring agency shall have the definition found in section 71-1902; and

(9) Child-placing agency shall have the definition found in section 71-1902.

Sec. 5. That section 43-1302, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

43-1302. (1) The State Foster Care Review Board shall be comprised of nine members to be appointed by the Governor, subject to confirmation by a majority of the members elected to the Legislature. At least one member shall be an attorney with legal expertise in child welfare. Two members shall be from each of the three congressional districts as they existed on January 1, 1982. In addition to the six members representative of the congressional districts, three members shall be appointed by the Governor from a group consisting of all the chairpersons of the local boards, and one such chairperson shall be appointed from each such congressional district. The appointment of a member of a local board to the state board shall not create a vacancy on the local board. Members other than those appointed from the group consisting of all the chairpersons of the local boards shall be appointed to three-year terms, and those members appointed from the group consisting of all the chairpersons of local boards shall be appointed to two-year terms. No person shall serve on the state board for more than six consecutive years. ~~No~~ A person employed by a child-caring agency, a child-placing agency, or a court shall ~~not~~ be appointed to the state board.

(2) The state board shall select a chairperson, vice-chairperson, and such other officers as the state board ~~may deem~~ deems necessary. Members of the state board shall be reimbursed for their actual and necessary expenses ~~in the performance of their official duties~~ as provided in sections 81-1174 to 81-1177, ~~for state employees.~~ The state board shall employ or contract for services from such persons as are necessary to aid it in carrying out its duties.

Sec. 6. That section 43-1303, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-1303. The state board shall meet at least twice per year. The State Foster Care Review Board state board shall establish a statewide register of all foster care placements occurring within the state, and there shall be a monthly report made to the state board registry of all foster care placements by any child-placing agency or court. For each child entering and leaving foster care, such monthly report shall consist of identifying information, placement information, and the plan developed by the person or court in charge of the child pursuant to section 43-1312. Every court and child-placing agency shall

report any foster care placement within three working days. The state board shall review the activities of local boards and may adopt and promulgate its own rules and regulations. Such rules and regulations shall provide for the:

(1) Establishment of training programs for local board members which shall include an initial training program and periodic inservice training programs;

(2) Development of procedures for local review boards;

(3) Establishment of a central record-keeping facility for all local review board files, including individual case reviews;

(4) Accumulation of data and the making of annual reports on children in foster care. Such ~~and such~~ reports shall include (a) personal data on length of time in foster care, (b) number of placements, (c) frequency and results of court review, and (d) number of children supervised by the foster care programs in the state annually; and

(5) To the extent not prohibited by section 43-1310, evaluation of the judicial and administrative data collected on foster care and the dissemination of such data to the judiciary, public and private agencies, the Department of Social Services, and members of the public; and

(6) Manner in which the state board shall determine the appropriateness of requesting a review hearing as provided for in section 43-1313.

The state board, upon completion of a review of local board activities, shall report and make recommendations to the Department of Social Services and county welfare offices. Such reports and recommendations shall include, but not be limited to, the annual judicial and administrative data collected on foster care pursuant to subdivision (4) of this section and the annual evaluation of such data. In addition the state board shall provide copies of such reports and recommendations to each court having the authority to make foster care placements. The state board may visit and observe foster care facilities in order to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met.

Sec. 7. That section 43-1308, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-1308. (1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, the state board



or designated local board shall:

(a) ~~{1}~~ Review at least once every six months the case of each child in a 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;

(b) ~~{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 whether there is a need for continued out-of-home placement, whether the current placement is appropriate, the specific reasons for the findings and recommendations, including factors, opinions, and rationale considered in its review, and the date of the next review by the state board or designated local board;

(c) ~~{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

(d) ~~{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.

(2) When the state board determines that the interests of a child in a foster care placement would be served thereby, the state board may request a review hearing as provided for in section 43-1313.

Sec. 8. That section 43-1309, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-1309. Upon the request of the state board or the designated local board, any records pertaining to a case assigned to such board, or upon the request of the Department of Social Services, any records pertaining to a case assigned to the department, shall be furnished to the requesting board or department by the agency charged with the child or any public official or employee of a political subdivision having relevant contact with the child. Upon the request of the state

board or designated local board, and if such information is not obtainable elsewhere, the court having jurisdiction of the foster child shall release such information to the state board or designated local board as the court deems necessary to determine the physical, psychological, and sociological circumstances of such foster child.

Sec. 9. That section 43-1310, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-1310. All records and information regarding foster children and their parents or relatives in the possession of the state board or local board shall be deemed confidential. Unauthorized disclosure of such confidential records and information or any violation of the rules and regulations of the Department of Social Services or the state board shall be a Class III misdemeanor.

Sec. 10. That section 43-1313, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-1313. When a child has been is in foster care, for a period of one year, the court having jurisdiction over such child for the purposes of foster care placement shall review the dispositional order for such child at least once every six months. The court may reaffirm the order or direct other disposition of the child. Any review hearing by a court having jurisdiction over such child for purposes of foster care placement shall be conducted on the record as provided in sections 43-283 and 43-284, and any recommendations of the state board or a local board concerning such child shall be included in the record. The court shall review a case on the record more often than every six months and at any time following the original placement of the child if the state board requests a hearing in writing specifying the reasons for the review. Members of the state board or its designated representative may attend and be heard at any hearing conducted under this section and may participate through counsel at the hearing with the right to call and cross-examine witnesses and present arguments to the court. After the initial review the court having jurisdiction over such child for the purposes of foster care placement shall conduct additional reviews or issue orders concerning continuing foster care once every six months. At the additional review, the court may reaffirm the order or may direct other disposition of the child.

Sec. 11. That section 43-1314, Reissue

Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-1314. 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 a foster care placement shall be provided by the court having jurisdiction over such child for the purposes of foster care placement either in court, by mail, or in such other manner as the court may direct. Such notice shall be provided to: (1) The ~~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; and (6) the state board.

Sec. 12. That section 71-1902, Revised Statutes Supplement, 1988, be amended to read as follows:

71-1902. No person shall furnish or offer to furnish child care for two or more children from different families without having in full force and effect a written license issued by the department upon such terms and conditions as may be prescribed by general rules and regulations adopted and promulgated by the department. After the effective date of this act, no license shall be issued pursuant to this section unless the applicant has completed the required hours of training in foster care as prescribed by the department. All licenses issued under sections 71-1901 to 71-1905 shall expire one year from the date of issuance and shall be subject to renewal under the same terms and conditions as the original license. After the effective date of this act, no license issued pursuant to this section shall be renewed unless the licensee has completed the required hours of training in foster care in the preceding twelve months as prescribed by the department. For the issuance or renewal of each license, the department shall charge a fee of twenty-five dollars for group homes, twenty-five dollars for child-caring agencies, and twenty-five dollars for child-placing agencies. A license may be revoked for cause, after notice and hearing, in accordance with ~~such~~ rules and regulations as ~~may~~ be prescribed by the department.

For purposes of this section:

(1) Foster family home shall mean any home

which provides twenty-four-hour care to children who are not related to the foster parent by blood or adoption;

(2) Group home shall mean a home which is operated under the auspices of an organization which is responsible for providing social services, administration, direction, and control for the home and which is designed to provide twenty-four-hour care for individuals in a residential setting;

(3) Child-caring agency shall mean an organization which is incorporated for the purpose of providing care for children in buildings maintained by the organization for that purpose; and

(4) Child-placing agency shall mean an organization which is authorized by its articles of incorporation and by its license to place children in foster family homes.

Sec. 13. That section 71-1904, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1904. The department shall make such adopt and promulgate rules and regulations, consistent with pursuant to sections 71-1901 to 71-1905, as it shall deem necessary for (1) the proper care and protection of children by licensees under said such sections, (2) the issuance, suspension, and revocation of licenses to carry on the business of child care, and (3) the provision of training in foster care, which training shall be directly related to the skills necessary to care for children in need of out-of-home care, including, but not limited to, abused, neglected, dependent, and delinquent children, and (4) the proper administration of said such sections. The training required by subdivision (3) of this section shall be between twelve and twenty-four hours as determined by the department.

Sec. 14. Funds of the Department of Social Services shall be used to defray the reasonable expenses incurred in the recruitment, training, and recognition of foster care providers and volunteers, including expenses incurred for community forums, public information sessions, and similar administrative functions.

Sec. 15. That original sections 28-726, 43-272.01, 43-1301, 43-1302, 43-1303, 43-1308, 43-1309, 43-1310, 43-1313, 43-1314, and 71-1904, Reissue Revised Statutes of Nebraska, 1943, section 71-1902, Revised Statutes Supplement, 1988, and section 43-285, Revised Statutes Supplement, 1989, are repealed.