Unraveling the Labyrinth: A Proposed Revision of the Nebraska Juvenile Code

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I. INTRODUCTION

While Nebraska child protection jurisprudence has a lengthy history, the present Nebraska Juvenile Code was enacted in 1981. The first reference in Nebraska jurisprudence to a “juvenile code” was in 1982. Since its enactment in 1981, the Juvenile Code has been amended many times. The result is “a maze of statutory redun-

1. See Stehr v. State, 92 Neb. 755, 760, 139 N.W. 676, 678 (Neb. 1913) (“Defendant was charged with the legal duty of seeing to it that the child’s life was not endangered. If he realized the condition of the boy’s feet and for 10 days failed to call a physician, or if he negligently refused to ascertain the condition of the boy’s feet in time to call a physician, then the jury would be justified in finding him guilty of criminal negligence.”); State v. Best, 173 Neb. 483, 494 113 N.W.2d 650, 657 (1962) (“The problem in this case was whether or not . . . the parents of the children were fit to perform the duties of the father and mother of their children, or whether such parents had, by wrongful acts and neglect, forfeited their right to the care and custody of their children or any of them.”).


dancy." This "maze" has created controversy about, inter alia, the respective authority of the courts and state agencies, liability for costs of various services for juveniles within the jurisdiction of the code, what constitutes a final order for purposes of appeal, and the meaning of the word "shall." The need for statutory clarity is reflected in this statement of the Nebraska Supreme Court:

6. In re Interest of A.M.H, 233 Neb. 610, 619, 447 N.W.2d 40, 46 (1989). Even in Sain, 211 Neb. at 511, 319 N.W.2d at 103, the court noted: "One would anticipate that the answer to the question would be relatively simple and that a reading of the statutes would suffice. Unfortunately, such does not appear to be the case..."


10. See In re Interest of Britny S., 11 Neb. Ct. App. 704, 708-12, 659 N.W.2d 831, 835-37 (2003) (finding the state failed to sustain its burden of proof that failure to hold adjudication hearing within 180 days was justified); see also State v. Taylor, 234 Neb. 18, 21-23, 448 N.W.2d 920, 923-24 (1989) (holding that failure to comply with former NEB. REV. STAT. § 29-401, which required parental notice when child taken into custody before child can enter plea in criminal case is not jurisdictional. The statute read "Every sheriff, deputy sheriff, constable, marshal or deputy marshal, watchman, police officer, or peace officer as defined in subdivision (17) of section 49-801, shall arrest and detain any person found violating any law of this state, or any legal ordinance of any city or incorporated village, until a legal warrant can be obtained; Provided, that (1) within twenty-four hours of the arrest, with or without warrant, of any child under eighteen years of age, the parent, guardian, or custodian of such child shall be notified of the arrest, and (2) the court in which the child is to appear shall not accept a plea from the child until finding that the parents of the child have been notified or that reasonable efforts to notify such parents have been made."); In re Interest of C.P., 235 Neb. 276, 281-83, 455 N.W.2d 138, 142-43 (1990) (stating that the statute requiring that adjudication of termination of parental rights petition be held within ninety days of date of filing petition was directory only); In re Interest of Brandy M., 250 Neb. 510, 513-23, 550 N.W.2d 17, 23-26 (1996) (holding NEB. REV. STAT. §§ 43-271, 43-278 confer[s] a statutory right to a prompt adjudication hearing to all juveniles within § 43-247(1), (2), (3)(b), and (4).) Those statutes, however, are "directory and do not require absolute discharge of a juvenile not adjudicated within the prescribed time period."); In re Interest of Brianna B., 9 Neb. Ct. App. 529, 531-32, 614 N.W.2d 790, 793 (2000), dismissed on other grounds (holding that the requirement for holding an adjudication hearing in dependency cases brought pursuant to NEB. REV. STAT. § 43-247(3)(a) is only directory).
Before remanding this matter to the district court, we are compelled to make certain observations about the proceedings in the juvenile court. We remind the juvenile court and counsel that this case involves impressionable children in their formative years, not impersonal flotsam and jetsam adrift on a sea of indecision or, much worse, societal insensitivity or apathy. According to the court stenographer’s certificates, the proceedings in the juvenile court consist of 80,750 words. There is one additional word which characterizes what has happened to the children in this case. However, judicial restraint precludes use of that word. As noted by the district court, the fees and costs thus far incurred in the juvenile court exceed $19,000, but that sum does not begin to approach the price being paid by the children, languishing during labyrinthine litigation in the juvenile court while they await a dispositional determination of their best interests.

The Supreme Court clearly recognizes the need for expeditious resolution to cases brought under the Nebraska Juvenile Code, a standard frequently applied to parents: “As we have held on numerous occasions, children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity.” When parties are required to ask appellate courts to interpret and apply confusing statutory provisions, the children, who are the subjects of the litigation, will continue to languish “during labyrinthine litigation.” The Proposed Code attempts to provide a statutory framework that will prevent the kind of delays the Nebraska Supreme Court recognized in 1986 as harmful to children.

Another impetus for the current proposed revision of the Nebraska Juvenile Code is the growing body of psychological and other social scientific research that can be used to inform laws that impact children and youth. For example, over the past two decades, researchers have learned that many adolescents are unable to understand Miranda warnings and have serious deficits in other capacities required for competent participation in trials. Similarly, researchers

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13. In re Interest of L.D., 224 Neb. at 263, 398 N.W.2d at 100.
14. Id.; see also Robert M. Gordon, Drifting Through Byzantium: The Promise And Failure of the Adoption and Safe Families Act of 1997, 83 MINN. L. REV. 637, 655-656 (1999) (“[L]ong-term care is self-perpetuating: as a child ages, her chances of both reunification and adoption decline precipitously. The longer children remain in foster care, therefore, the more likely they are to reach adulthood there, and children who do so face grim prospects. The provisions . . . seek to reduce drift reflect the growing harms that result from lengthy stays in foster care.”).
15. See generally CHILDREN, SOCIAL SCIENCE, AND THE LAW (Bette L. Bottoms et al. eds. 2002).
have found that young children can be vulnerable to suggestive questioning,\textsuperscript{18} that particular interviewing techniques can improve children's accuracy in recalling events,\textsuperscript{19} and that multiple placements in the foster care system appear to have serious negative effects on children's well being.\textsuperscript{20} Although there continues to be great need for more research and although many areas of law are governed by values rather than science, there are certain areas of juvenile law that can now benefit from rigorously gained scientific knowledge. The Proposed Code attempts to utilize the benefits of the work in the social science and psychology community whenever possible and appropriate.

The need for a revision has been recognized for some time. A committee, co-sponsored by the NSBA and the County Judges Association, worked on a revision for nearly two years. The work product of that committee provided a starting place for this project.

The mission of this project has been to substantially amend the Nebraska Juvenile Code to clarify its purpose and enable implementation of that purpose. Several goals were identified as immediate priorities in furtherance of that mission: researching statutory schemes in other jurisdictions, reviewing the literature in multiple disciplines (e.g., law, criminology, sociology, and psychology), consulting with academics and practitioners recognized as knowledgeable in relevant fields, and examining past efforts at revision.

The responses to the impetus for change in the Proposed Code include defining terms in a general section of the code, labeling the various forms of subject matter jurisdiction according the type of intervention required, re-ordering the code so court procedures for distinct kinds of legal interventions (i.e., abuse and neglect, status offenders, and juvenile offenders) are grouped contiguously and serially, clarifying the roles and limitations of the agencies involved in the several categories of interventions, and providing the juvenile court with expanded authority over children who violate the criminal law. These topics are addressed in detail below.

Drafting the Proposed Code has been a collaborative, interdisciplinary effort. The expertise and thoughtfulness of a number of people from diverse areas of practice and study have contributed to the project. Input was solicited and received from professionals in the juvenile system, researchers from multiple disciplines, and policy makers


\textsuperscript{20} Rae R. Newton et al., Children and Youth in Foster Care: Disentangling the Relationship Between Problem Behaviors and Number of Placements, 24 Child Abuse & Neglect 1363, 1371 (2000).
from multiple levels of the three branches of state and local government. Because the Juvenile Code is the foundation of the state's interaction with juveniles, a comprehensive, thoughtful revision to the Code will enable a unified approach to address numerous problems and promote systematic change.

This Article describes and analyzes key elements of the Proposed Code. The entire Proposed Code is attached for clarity of context. Comparison of the Proposed Code to the existing code, discussion of the effects of the suggested changes, reference to relevant psychological research, and related national and international perspectives are included in the analysis of the reviewed segments. The authors anticipate this article will stimulate further examination and discussion of Nebraska's statutory framework for protecting and rehabilitating children in need of state intervention in their lives. Furthermore, this Article seeks to elucidate the meaning of and reasoning behind the Proposed Code. It does not seek to defend the Proposed Code as the only viable solution to the impetus for change described herein. Because of the number and range of issues presented in the Proposed Code, the following neither discusses every section of the Proposed Code nor presumes to be a completely comprehensive analysis of any particular issue.

II. TERMINOLOGY

The jurisdiction of the juvenile court currently ends when the child reaches his or her nineteenth birthday if the child is already with the court's jurisdiction. No case may be filed in juvenile court once the child, who is the subject of the matter, reaches his or her eighteenth birthday. To eliminate this gap and foster uniformity, the Proposed Code re-defines "juvenile" as "child" and defines a child as any person under the age of nineteen years.

The Proposed Code suggests consistent terms to define the populations of children brought within the jurisdiction of the juvenile court. In the present code, Neb. Rev. Stat. section 43-247 defines the key populations as follows:

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 is unable to provide or 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,

(b) who, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who deports 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, or

(c) who is mentally ill and dangerous as defined in section 83-1009;\(^{26}\)

(4) Any juvenile who has committed an act which would constitute a traffic offense as defined in section 43-245.\(^{27}\)

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26. **NEB. REV. STAT. § 83-1009 (Reissue 1999)** states:

Mentally ill dangerous person shall mean any mentally ill person, alcoholic person, or drug-abusing person who presents: (1) A substantial risk of serious harm to another person or persons within the near future as manifested by evidence of recent violent acts or threats of violence or by placing others in reasonable fear of such harm; or (2) A substantial risk of serious harm to himself or herself within the near future as manifested by evidence of recent attempts at, or threats of, suicide or serious bodily harm or evidence of inability to provide for his or her basic human needs, including food, clothing, shelter, essential medical care, or personal safety.


29. For example, **NEB. REV. STAT. § 28-707** (Reissue 1998 & Cum. Supp. 2002) emphasizes added, provides:

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be: (a) Placed in a situation that endangers his or her life or physical or mental health; (b) Cruelly confined or cruelly punished; (c) Deprived of necessary food, clothing, shelter, or care; (d) Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or
paragraph "c," to incorporate a definition from another statute, children who are dependent, neglected, and delinquent, as well as status offenders. The terms "dependent child," "delinquent juvenile" (or delinquent child), "juvenile violator," and child in need of special protection, as defined in section 28-710, provide:

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


31. See Neb. Rev. Stat. § 43-707(1) (Reissue 1998) (providing that "[t]he Department of Health and Human Services shall have the power and it shall be its duty to promote the enforcement of laws for the protection and welfare of... dependent, neglected, and delinquent children").

32. Neb. Rev. Stat. § 43-245(15) (Reissue 1998 & Cum. Supp. 2002) (providing that "a status offender is 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") (emphasis added).


a child under the age of nineteen years who is living with a relative or with a caretaker who is the child’s legal guardian or conservator in a place of residence maintained by one or more of such relatives or caretakers as his, her, or their own home, or which child has been removed from the home of his or her father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first or second cousin, nephew, or niece as a result of judicial determination to the effect that continuation in the home would be contrary to the safety and welfare of the child and such child has been placed in a foster family home or child care institution as a result of such determination, when the state or any court having jurisdiction of such child is responsible for the care and placement of such child and one of the following conditions exists: (a) Such child received aid from the state in or for the month in which court proceedings leading to such determination were initiated; (b) such child would have received assistance in or for such month if application had been made therefor; or (c) such child had been living with such a relative specified in this subsection at any time within six months prior to the month in which such proceedings were initiated and would have received such aid in or for the month that such proceedings were initiated if in such month the child had been living with, and removed from the home of, such a relative and application had been made therefor.

34. Article III of the Interstate Compact on Juveniles says:

Any juvenile who has been adjudged to be within the provisions of subdivision (1), (2), or (4) of section 43-247 and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the
cial supervision,\textsuperscript{36} however, are also used throughout the existing juvenile code. Although not of jurisdictional interest, the description of the powers of the Department of Health and Human Services [hereinafter Department] does not explicitly mention the status offender/child in need of special supervision population.\textsuperscript{37} The statutes defining dispositional alternatives, however, clearly contemplate the possibility of placement of status offenders with the Department.\textsuperscript{38}

To promote clarity, consistency, and certainty, the Proposed Code creates four classes of children needing the intervention of the State for their safety and that of the community:

\textit{Child in need of state protection or protected child; defined.}

Child in need of state protection or protected child means a child reported, alleged, or determined to be an abused child, a neglected child, or an abandoned child.\textsuperscript{39}

\textit{Child in need of state supervision or supervised child; defined.}

(1) Child in need of state supervision or supervised child means a child who is twelve years of age or older for whom there is no pending investigation into a report of abuse, neglect, or abandonment; no pending petition alleging the child is in need of state rehabilitation; no current supervision by the court; no pending criminal charges; or no current placement or commitment to the department or the office. The court shall also find the child:

(a) To have persistently absented himself or herself from his or her responsible adults without sufficient cause, permission, or justification despite substantial attempts to remedy the conditions contributing to the behavior;

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\textsuperscript{35} NEB. REV. STAT. § 43-279 (Reissue 1998) is labeled as, “Juvenile violator or juvenile in need of special supervision; rights of parties; proceedings.” The statute states:

(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 ... the court shall inform the parties ... (2) ... After hearing the evidence on such question, the court shall make a finding ... whether or not the juvenile is a person described by subdivision (1), (2), (3)(b), or (4) of section 43-247 ... .

Id.

\textsuperscript{36} NEB. REV. STAT. § 28-709(2)(b) (Reissue 1995), states:

a child in need of special supervision shall mean any child under the age of eighteen years (i) who, by reason of being wayward or habitually disobedient, is uncontrolled by his parent, guardian, or custodian; (ii) who is habitually truant from school or home; or (iii) who deports himself so as to injure or endanger seriously the morals or health of himself or others.

\textsuperscript{37} See NEB. REV. STAT. § 43-707(1) (Reissue 1998).


\textsuperscript{39} Proposed Code §11.
(b) To be habitually truant from school, while subject to compulsory school attendance, despite substantial attempts to remedy the situation through:

(i) Appropriate child rearing or disciplinary practices of the child's responsible adults;

(ii) The procedures described in section 79-209; or

(iii) Voluntary participation by the child's responsible adults and the child in services offered by the department; or

(c) To have persistently disobeyed the reasonable and lawful demands of the child's responsible adults and to be beyond their control despite substantial attempts by the child's responsible adults to remedy the conditions contributing to the behavior.  

Child in need of state rehabilitation or law violator; defined.

Child in need of state rehabilitation or law violator means a child who has committed an act that would constitute a felony or misdemeanor under the laws of this state or a misdemeanor under a city or village ordinance.  

Child in need of state mental health treatment; defined.

Child in need of state mental health treatment means a child (1) who, as a result of a mental disorder (a) is in danger of serious physical harm or (b) manifests a serious risk of serious physical harm to himself or herself or to others and (2) for whom immediate mental health treatment can be obtained only through an involuntary placement in a mental health center.  

These terms are used consistently throughout the Proposed Code. The Revisor's Office of the Unicameral has also harmonized statutes outside the Proposed Code, in a draft version of the Proposed Code, to reflect the same nomenclature. While consistency in terminology will in no way eliminate every ambiguity inherent in statutory construction and application of an entirely new juvenile code, it certainly will diminish the need for appellate court divination of legislative intent. Examination of the proposed terminology and the supporting rationale follows.


The statute prescribes the duties of a school when a child has been repeatedly absent without valid excuse. The statute essentially requires the school to attempt provide services designed to result in the child's regular attendance. If such services are to no avail, the school is to file a report with the county attorney for possible legal action against either the child or the child's parents or both.

41. Proposed Code § 13(1).

42. Proposed Code § 12.

43. Proposed Code § 10.

A. Child in Need of State Protection

1. Current Statute

Children currently within the jurisdiction of the juvenile court are defined in Neb. Rev. Stat. § 43-247(3)(a). These children are alternatively referred to as “abused or neglected,” “dependent,” or, in lawyerly shorthand, “three-A.”

2. Proposed Change

The Proposed Code suggests a shift to a phrase that is descriptive of the intervention required for the population of children now generally referred to as either “abused or neglected” or “dependent” children. The proposed definition is significantly different than the present definition. “Children in Need of State Protection” include abused and neglected children. Perhaps the most significant change


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 is unable to provide or 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.

46. Proposed Code §§ 11, 69 (granting original jurisdiction to juvenile court for child in need of protection).


49. See Proposed Code § 11 (defining child in need of protection); see also Proposed Code § 5 (defining abused child); Proposed Code § 37 (defining neglected child); Proposed Code § 4 (defining abandoned child).
is the inclusion of children exposed to domestic abuse within the definition of an abused child.

3. Meaning of the Change

Under current law, a child who witnesses domestic abuse would not be within the jurisdiction of the court unless it could be established in court that such exposure either harmed the child or created a risk of harm. The proposed definition expresses a legislative finding that exposure to such violence is harmful, and requires only proof of the exposure.

4. Rationale

The proposal is based upon a considerable body of research finding that children in violent environments suffer severe adverse affects, regardless of whether they are ever physically injured. Unfortunately, many children are affected by domestic violence. It is estimated that 10 million American children are exposed to intimate partner violence each year. Moreover, there is a high rate of co-occurrence of domestic violence and physical abuse of children; however, the exact nature

50. “Domestic abuse means the occurrence of one or more of the following acts between household members: Attempting to cause or intentionally, knowingly, or recklessly causing physical injury with or without a deadly weapon; or placing, by physical menace, another in fear of imminent physical injury. Physical injury means physical pain or any impairment of physical condition.” Proposed Code § 5(2)(a).


Children have the right to grow up in a wholesome and healthful atmosphere, free of fear of abuse or injury. We further conclude that the mother's continued relationship with the abusive father constitutes substantial and continuous or repeated neglect and a refusal to give her child the parental care and protection which is necessary. ... By continuing to live in an environment where she is physically abused by the father, the mother has failed to place herself in a position for the child to be returned to her.


Despite shortcomings in the research literature, the findings of the deleterious impact of childhood exposure to domestic violence are quite robust. There is a clear consensus in the field that exposure to domestic violence places children of all ages at risk for a range of psychological concomitants and sequelae, which run the gamut from temporary distress to longer-term psychological dysfunction and psychopathology.

Id.

of the relationship between domestic violence and child maltreatment is not clearly understood.\textsuperscript{55} Yet, even if children are not actually physically harmed, living with domestic violence places them at risk for a range of harmful effects on their emotional, social, and cognitive development. The potential harm to children, resulting from exposure to domestic violence, includes aggressive behavior and other conduct problems; depression and anxiety; lower levels of social competence and self-esteem; poor academic performance; and symptoms consistent with posttraumatic stress disorder, such as emotional numbing, increased arousal, and repeated focus on the violent event.\textsuperscript{56}

5. \textit{Legal Issues}

Broadening the statutory definition of child abuse would expand the mandatory reporting law to include an obligation to report cases of domestic violence in families with children.\textsuperscript{57} As noted above,\textsuperscript{58} proof of exposure to domestic violence would constitute proof of abuse without independent evidence of either actual harm or risk of harm to a child.\textsuperscript{59}

6. \textit{National Perspective}

More than half the states,\textsuperscript{60} including Nebraska,\textsuperscript{61} have laws that require that domestic violence be considered when courts make child custody and visitation awards. Several states have also broadened the grounds for child maltreatment to include exposing children to domestic violence.\textsuperscript{62} The Minnesota legislature expanded the definition of child neglect to include exposure to adult domestic violence as a specific type of neglect, but repealed the act the following year because child abuse reports nearly doubled in the months following the legisla-


\textsuperscript{57} NEB. REV. STAT. § 28-711(1) (Reissue 1998 & Cum. Supp. 2002) (stating that \textquoteright\textquoteright{[w]hen any . . . person has reasonable cause to believe that a child has been subjected to abuse . . . he or she shall report such incident\textquoteright\textquoteright).

\textsuperscript{58} See supra Part I.A.3.

\textsuperscript{59} See People v. Johnson, 740 N.E.2d 1075, 1077 (N.Y. 2000) (stating that \textquoteright\textquoteright{to the extent that some courts have determined that . . . evidence of a child witnessing a severe act of violence is insufficient as a matter of law to support a conviction under this statute, those decisions are not to be followed\textquoteright\textquoteright).

\textsuperscript{60} Martha A. Matthews, \textit{The Impact of Federal and State Laws on Children Exposed to Domestic Violence}, \textit{FUTURE CHILDREN} Winter 1999, at 50, 53.

\textsuperscript{61} See NEB. REV. STAT. § 42-364 (2)(d) (Reissue 1998).

\textsuperscript{62} See Weithorn, supra note 53, at 100.
tive change. Alaska has also expanded its child protection laws to include exposure to domestic abuse, but requires that the exposure place the child at substantial risk of mental injury. Additionally, case law in other states has interpreted their statutes to include exposure to domestic violence as child maltreatment. Both California and New York “characterize children’s exposure to domestic violence as per se child maltreatment, rejecting the contention that actual [physical] harm to the child must be proved in order for the court to have jurisdiction.”

7. International Perspective

The United Nations Convention on the Rights of the Child [hereinafter UN Convention] article 19 recognizes children need protection from all forms of violence, and that this protection may involve the courts. The UN Convention “offers . . . a road map to guide the improvement of laws and policies that protect each nation’s most vulnerable citizens – its children. The Convention is . . . an instrument for countries to emulate.”

8. Social Science Research

Evaluations have not been conducted regarding the effectiveness of changing child protection laws to include exposure to domestic violence.

63. See id., at 104-09.
64. See Alaska Stat. § 47.17.020(h) (Michie 2002).
65. See Weithorn, supra note 53, at 95-98.
66. Id. at 97.
68. UN Convention art. 19 states:
   1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.
9. Public Policy Implications

Expanding the grounds for child maltreatment would result in increased activity of already overburdened and under-funded child protection organizations, law enforcement institutions, and court systems. Consequently, any such statutory change must be accompanied by appropriate funding legislation. There are also concerns that such legislative changes might discourage victims of domestic abuse from seeking help because of fears that their children will be reported under mandatory reporting laws and may be subsequently removed from their parent.\textsuperscript{70}

On the other hand, the proposed statutory change would protect children from the negative effects of exposure to domestic violence and would make a strong policy statement about the harmfulness of domestic violence to children. Further, because of the high co-occurrence of domestic violence and child abuse, investigations of cases that come into the system under this new ground for maltreatment are likely to reveal direct child maltreatment in many cases.

B. Child in Need of State Supervision

1. Current Statute

Nebraska Revised Statute § 43-245(15) states, "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."\textsuperscript{71}

2. Proposed Changes

Section 13 of the Proposed Code uses the terminology "child in need of state supervision or supervised child" and defines these children as 1) twelve years old or older and 2) without other current legal involvement such as a pending abuse/neglect or abandonment investigation, a pending juvenile offender or criminal charge, or placement or commitment to the Department or the court. Some of the behaviors, under certain conditions, that could trigger a judicial finding of this classification include: 1) "to have persistently absented himself or her-

\textsuperscript{70}. See supra, note 53, at 57.

self from his or her responsible adults," 2) "to be habitually truant from school," or 3) "to have persistently disobeyed the reasonable and lawful demands" of responsible adults. This section of the Proposed Code requires that before a child could be found to be in need of state supervision his or her parents have to show that they have reasonable parenting practices and that they have voluntarily and with good faith participated in family or individual counseling and other services provided by the Department to remedy the problems.

3. Meaning of the Changes

The changes suggested by the Proposed Code seek to reduce the number of children who will be charged and adjudicated in this category by eliminating its application to younger children and by requiring significant parental efforts to address the problem before court involvement. The proposed statute also requires the Department to provide services to families before there is an adjudication. Currently, the Department does not provide services to youth and families under this category unless the youth has been adjudicated a status offender.72

4. Rationale

Families have an obligation to address problems their children are having before turning to the courts. Similarly, the state has a responsibility to provide needed services to troubled youth and their families. The current system requires that children in need of help go through the onerous, expensive, and stigmatizing court process to get the help they need. The Proposed Code would require that help be provided first, and the legal system be used only as a last resort for those children and families for whom the mandatory list of voluntary efforts are insufficient.

5. Legal Issues

The proposed definition broadens the court's fact finding to include parental behavior and Department service provision, in addition to the youth's behavior. Additionally, the requirement that the Department provide services to troubled youth and their families before an adjudication is contrary to current Department policy73 and would require policy change. Finally, many cases that are currently being filed


73. "The Department provides services to status offenders only when a court has determined a child is a status offender and has ordered the Department's involvement." 390 Neb. Admin. Code 3-006.04 (1998).
as status offenses would instead be filed under the child protection statutes. This would properly find the parents at fault for neglect or abuse in appropriate cases.

6. National Perspective

There is considerable variability across states in how status offending behavior is addressed. Some states have eliminated status offenses as law violations and instead use dependent children statutes, shifting the responsibility for these youth from the courts to the child protection agency. Some states have laws permitting that parents are cited and fined if their children are truant. Other states have municipalities that attempt to increase control over youthful behavior in the form of curfew laws.

7. Social Science Research

Families of runaway adolescents, when compared to non-runaway families, are characterized by lower levels of parental monitoring, warmth, and supportiveness and higher levels of parental rejection, family violence, and sexual abuse. Consequently, there is ample support for laws to reflect the reality that in many instances of status offending behaviors, parents have not demonstrated reasonable parenting practices and good faith efforts in helping their children.

8. Public Policy Considerations

The major policy implication for this change would be the requirement that the Department offer services to troubled youth and their families before court involvement. Currently, the Department refers families to community agencies, but there is no state responsibility to help these families and the availability of community services varies widely. This change would underscore the state's commitment to helping, rather than punishing, troubled youth. As mentioned above, the other policy implication is the public acknowledgement that many status offenses are the result of abusive or neglectful family environments and should be handled in the legal system as such. The Proposed Code, while restricting or narrowing the court's jurisdiction over

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76. Steinhart, supra note 74, at 94
77. See id. at 95.
status offenders, stops short of completely eliminating that jurisdiction, an action recommended by many considering the issue.79

C. Children in Need of State Rehabilitation

1. Current Statute – Original Jurisdiction

Present law refers to juvenile offenders80 and delinquents.81 Jurisdiction over those children is vested in the district, county, and juvenile courts.82 Thus, children through age 15 who allegedly commit any crime other than a felony or a traffic offense83 are solely the province of the juvenile court.84 Such a case may be filed in district, county, or juvenile court if the child is either 16 or 17 years old.85 The same is true for a child of any age if the act charged is a traffic offense.86 Fi-

79. See Jan C. Costello, “Wayward and Noncomplaint” People with Mental Disabilities, What Advocates of Involuntary Outpatient Commitment can Learn from the Juvenile Court Experience with Status Offense Jurisdiction, 9 PSYCHOL. PUB. POL’Y & LAW 233, at 242-243 (2003). In her article, Costello states:

Recognizing the inherent problems of widening the net and escalating contact with the juvenile court, reformers for the past 25 years have advocated elimination of status offense jurisdiction. For example, in 1982 the American Bar Association Juvenile Justice Standards recommended replacing status offense jurisdiction with a system of diversion to voluntary social services.

Id.

80. “The Department is mandated to serve families with children who fall into the following seven broad categories . . . juvenile offenders . . . .” 390 NEB. ADMIN. CODE 1-006 (1998).


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 . . . . (C)oncurrent original jurisdiction with the district court as to any juvenile defined in subdivision (2) of this section. . . . 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 . . . .

83. “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.” Note that while “traffic offense” is defined in section 43-245, neither “felony” nor “misdemeanor” is so defined. NEB. REV. STAT. § 43-245(16) (Reissue 1998 & Cum. Supp. 2002).

84. “The juvenile court in each county as herein provided shall have jurisdiction of . . . [a]ny 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.” NEB. REV. STAT. § 43-247 (Reissue 1998 & Cum. Supp. 2002).

85. See id.

86. See id.
nally, the district and juvenile courts are equally empowered to hear cases in which a child is alleged to have committed a felony. Where concurrent jurisdiction exists, choice of forum is the prerogative of the county attorney. If the county attorney files in either county or district court, the child may seek to have the matter transferred to juvenile court. The presumption is for transfer to be granted based on the consideration of a number of factors; however, the court retains discretion. If the court does not transfer the case to juvenile court, it must set forth its reason on the record.

2. Proposed Change – Original Jurisdiction

The Proposed Code provides that all law violation cases must begin in juvenile court. Transfer to either the county or district court must be initiated by the county attorney. Before transferring a case, the juvenile court must find probable cause that the child committed the crime alleged and that there is clear and convincing evidence the child is not amenable to treatment while under the juvenile court’s jurisdiction. Jurisdiction of the juvenile court ends when the child reaches his or her nineteenth birthday. In order to have more time to achieve rehabilitation, a child may consent to expanded juvenile jurisdiction, which extends the juvenile court’s jurisdiction until the child’s twenty-first birthday.

3. Meaning of the Change

The most significant ramifications of this change are that the county attorney will no longer have discretion to choose where to file criminal charges against children and the court will have to find clear

87. See id.
90. "[T]he court shall . . . transfer the case unless a sound basis exists for retaining jurisdiction." Id.
94. Section 12 provides: "Child in need of state rehabilitation or law violator means a child who has committed an act that would constitute a felony or misdemeanor under the laws of this state or a misdemeanor under a city or village ordinance." Proposed Code § 12. Additionally section 158(1) provides: "The juvenile court shall have exclusive original jurisdiction over all children alleged to be in need of state rehabilitation." Proposed Code § 158(1).
95. See Proposed Code § 167.
96. See Proposed Code § 167(1)(a).
97. See Proposed Code § 158.
and convincing evidence that a child is not amenable to rehabilitation before transferring a case from juvenile court to either county or district court. Nebraska is one of only four states that grant the prosecutor this degree of discretion.100

4. Rationale

The Proposed Code is based upon the theory that juvenile courts have specialized knowledge regarding children and the services available to them and their families.101 Further, children are more amenable to treatment than adults, have generally less ability to consistently make mature judgments, and are more likely than adults to engage in risk-taking behavior that might bring them in disapproving contact with authorities.102 Establishing exclusive original jurisdiction in juvenile court would reinforce the juvenile court’s mission of viewing youthful law violators as different from adult offenders.103

Further, there is the question of whether children are generally competent to stand trial as adults. The standard used to determine competency to stand trial is stated in Dusky v. United States: “whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether [the defendant] has a rational as well as factual understanding of the proceedings against him.”104 Competency considerations have typically been raised when defendants are mentally ill or suffer from mental retardation. Recent scholars, however, have argued that the transfer of many children to the adult criminal justice system requires consideration of whether immaturity may limit the competency of youthful defendants.105 The MacArthur Juvenile Competence Study found that many children, particularly those under age 14, do not have the capacities to meet the standards of competency set forth in Dusky.106 Similarly, Mckee and Hall studied 108 children and 145 adults undergoing pre-trial psychiatric evaluations. They found that children under 13 largely failed to meet the Dusky standards for com-

100. The other states are Connecticut, New Jersey, and New York. See Eric K. Klein, Dennis the Menace or Billy the Kid: An Analysis of the Role of Transfer to Criminal Court in Juvenile Justice, 35 AM. CRIM. L. REV. 371, 385 (1998).
102. See Elizabeth S. Scott & Thomas Grisso, The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform, 88 J. Crim. L. & Criminology 137, 172-76 (1997); Howard N. Snyder, The Juvenile Court and Delinquency Cases, FUTURE CHILD., Winter 1996 at 53, 53 (“Almost all juveniles commit at least one delinquent act before turning 18, but most are never arrested.”).
103. See generally Schwartz, supra note 101.
106. See id. at 356-58.
For example, they found that most children younger than 13 could not describe the charges against them or the nature of the adversarial process, could not report facts relevant to their defense, and did not understand plea bargaining or the confidential nature of the attorney-client relationship. The thirteen and fourteen year olds had an even mix of understanding and deficits related to competency. The fifteen through sixteen year olds were about equal with adults in meeting the standards, except with regard to their understanding of plea bargaining. These researchers concluded that youths are in special jeopardy due to diminished competence to assist in their defense. This problem is important because fundamental fairness requires that youths not be placed in greater jeopardy at their trials than adult defendants. Because of the these known limitations to children's competence, Grisso urges attorneys to routinely consider the possibility that their young client may be trial incompetent, particularly when the child has a history of mental illness, mental retardation, learning disabilities, or when the child is younger than fourteen.

5. Legal Issues

The presumption that follows from this change is that a case, involving a child under the age of nineteen who is charged with the commission of a crime, will be filed in juvenile court. In order to transfer the case, the state will have to overcome the presumptions that the child is amenable to treatment, is less culpable, and is not competent to stand trial in adult court. Competency is an especially significant issue. Defendants in criminal cases must have the opportunity for meaningful participation in their case. If they do not, the right to trial is an empty right. Thus, it is unconstitutional to try an incompetent defendant because fundamental to an adversary system of justice is the requirement that the defendant have a rational and factual understanding of the proceedings against him, and the ability to consult with counsel and assist in preparing his defense. Therefore, an additional issue is whether due process or fundamental fairness requires

108. See id. at 96-97.
109. Id.
110. Id. at 96.
112. See Proposed Code § 172 (listing factors court must consider before accepting plea of no contest, admission, or submission, to expanded jurisdiction); Proposed Code §167(3) (listing factors court must consider in deciding whether to transfer case).
judicial involvement in finding the child competent to stand trial, if transferred to adult court.

D. Children in Need of Mental Health Treatment

1. Current Statute

In the Juvenile Code, there is no statutory definition of "mentally ill." One has to look elsewhere to find meaning for the language of Nebraska Revised Statute section 43-247(3)(c). However, other statutes provide little assistance, as the definitions are inconsistent and similarly circular.

2. Proposed Change

As noted previously, the Proposed Code redefines the group of children referred to indirectly in the Juvenile Code as "mentally ill and dangerous to themselves and others." The new category is descriptive of both the child and the intervention: "child in need of... mental health treatment."

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Serious mental illness means, on and after January 1, 2002, any mental health condition that current medical science affirms is caused by a biological disorder of the brain and that substantially limits the life activities of the person with the serious mental illness. Serious mental illness includes, but is not limited to (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder.

116. See supra notes 114-115 and accompanying text. The Proposed Code aspires to avoid circular definitions such as section 83-1009 which essentially defines the term mentally ill dangerous person as a person with a mental illness (which is undefined) who is dangerous, either to him or herself or to others. See Neb. Rev. Stat. § 83-1009 (Reissue 1999).

117. Proposed Code §10:

Child in need of state mental health treatment means a child (1) who, as a result of a mental disorder (a) is in danger of serious physical harm or (b) manifests a serious risk of serious physical harm to himself or herself or to others and (2) for whom immediate mental health treatment can be obtained only through an involuntary placement in a mental health center.
3. Rationale

Imbedded in section 10 of the Proposed Code are the value judgments that the risk of serious physical harm to the child can emanate from the child or from others,\(^\text{118}\) the child may be a risk to others,\(^\text{119}\) and treatment for the mental disorder can only be provided through the involuntary commitment process prescribed in sections 197 through 211 of the Proposed Code.\(^\text{120}\) The definition of "mental disorder" integrates reasonably objective behavioral manifestations, while attempting to avoid commitments based solely on either voluntary intoxication or recognized disabilities not constituting clinically recognized mental disorders.\(^\text{121}\) The expectation is that clearer, more objective criteria for involuntary commitments of children in need of mental health treatment will afford vulnerable people appropriate treatment by both the legal and mental health systems.

The sections of the Proposed Code addressing children who need commitment to receive mental health treatment seek not only to clarify terms, but also address the pervasive issue of children needing to be made wards of the state in order to access mental health treatment.\(^\text{122}\) As a result of the current state of the mental health system

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118. \text{id.} at paragraphs (1)(a) and (b).
119. \text{id.} at paragraph (1)(b).
120. \text{id.} at paragraph (2).
121. Proposed Code § 35 provides:

Mental disorder means a mental disease, dysfunction, or disability or emotional condition that has substantial adverse effects on a child's ability to function so as to jeopardize his or her health, safety, or welfare or that of others. Substantial adverse effects may be evidenced by (1) recent attempts at, or threats of, suicide, (2) recent attempts at, or threats of, serious bodily harm to him or herself, (3) recent violent acts or threats of violence or by placing others in reasonable fear of such harm, (4) the inability to provide for his or her essential human needs, including food, clothing, shelter, essential medical care, or personal safety, (5) repeated and escalating loss of cognitive or volitional control over his or her actions, or (6) severe deterioration in routine functioning. The presence of epilepsy, mental retardation, organic brain syndrome, physical or sensory handicaps, or brief periods of intoxication caused by alcohol or other substances is not sufficient to meet the criteria for a child in need of state mental health treatment but does not exclude a child otherwise determined to fulfill the criteria in this section.

122. \text{U.S. Gen. Accounting Office, Child Welfare and Juvenile Justice: Federal Agencies Could Play a Stronger Role in Helping States Reduce the Number of Children Placed Solely to Obtain Mental Health Services (GAO-03-397, April 21, 2003) (hereinafter Helping States).} According to this report, every year thousands of children are made wards of the juvenile court solely to access mental health services. In a survey of 50 states and the District of Columbia, only 19 states provided data. Officials in another eleven states acknowledged the practice, but could not provide data. \text{See also U.S. Gen. Accounting Office, Child Welfare and Juvenile Justice: Several Factors Influence the Placement of Children Solely to Obtain Mental Health Services (GAO-03-865T, July 17, 2003) (hereinafter Several Factors).}
for children, many children are placed in the custody of the Department because that is the only way they can gain access to care that should be available to them through a healthcare delivery system. As private insurance becomes less available due to increasing costs, the number of children "placed" to obtain mental health services will increase. Nebraska is working to alleviate this unduly disruptive and coercive method of providing mental health services to children.

4. Legal Issues

While the Proposed Code continues to use the juvenile court to access mental health services for children, it does so only in those cases where court intervention has historically been available. Courts and parties will have a detailed process to follow, with the burden of proof and time limits specified. Children will have their lib-


124. Helping States, supra note 122, at 5.

125. Federation of Families for Children's Mental Health, Relinquishing Custody to Obtain Necessary Treatment, Fact Sheet (1999) (consequences of relying on child welfare and juvenile justice system to provide necessary mental health services for children include children thinking they have been abandoned and a loss of parental autonomy).

126. "Nebraska has made significant strides in the past years to improve mental health services to children and families. These achievements include new initiatives at both the service and system levels." Statement from the Nebraska Health and Human Services System's web site, at http://www.hhs.state.ne.us/beh/mh/childmh.htm (last updated July 17, 2002). Adoption of the Proposed Code would assist that effort.


128. Proposed Code §§ 197 to 211. For instance, the court must set a time limit for the commitment not to exceed six months on any commitment warranted by the evidence (section 206(1)) and the commitment must be reviewed prior to the expiration of that limit if the child has not been previously discharged (section 209(1)).

129. Proposed Code §§ 201(1)(c) (stating the burden of proof to be probable cause); 206(1) (stating the burden of proof to be clear and convincing).

130. Proposed Code §§ 199(3) (stating that an officer must prepare certificate at time of emergency placement); 200(2) (stating that a child must be evaluated with thirty-six hours of emergency placement); 200(3) (stating that a county attorney must act with 48 hours of notice from evaluator); 201(1)(b) (stating that a court must hold preliminary examination with 48 hours of child being placed in custody); 201(1)(e), (2) (stating that a hearing on petition must be held with 7 days of hospitalization).
erty restricted without judicial review only for very short periods of time,131 and after judicial review only as long as medically necessary.132 No commitment may be ordered unless the court finds by clear and convincing evidence that 1) the child suffers from a mental disorder, 2) the child needs treatment for the mental disorder, 3) treatment for the mental disorder is available, and 4) there is no less restrictive alternative.133 Children have substantive legal rights at the hearing on the merits of the petition: the right to counsel and a guardian ad litem,134 to review records,135 to be present136 (even if that requires the hearing be held at the mental health center where the child is being held),137 and to confront and cross-examine witnesses.138 The cost of commitment and any necessary transportation of the child will be the responsibility of the county where the child is taken into custody.139

5. National Perspective

The Proposed Code is similar to mental health commitment statutes elsewhere.140

6. International Perspective

Article 20 of the UN Convention recognizes children may sometimes need to be removed from their home in order to protect the child's best interest.141 The UN Convention also recognizes the need and right of children to receive necessary and appropriate treatment for mental disabilities.142 The Proposed Code authorizes commitment of children for treatment only in limited circumstances and only as long as medically necessary.143 Article 25 of the UN Convention requires periodic review of the treatment provided to children placed by

131. See Proposed Code § 201(1)(b).
132. See Proposed Code §§ 206, 203 (stating that the commitment must be for a definite period, not to exceed six months, and the mental health center must discharge the child as soon as hospitalization is not required for treatment).
133. A finding that the child has a mental disorder would have to include a finding that as a result of the mental disorder, the child is either at risk of harm or poses a risk of harm, as required in the definition of mental disorder in section 35 of the Proposed Code. Proposed Code §§ 35 and 206.
135. Proposed Code § 204.
137. Proposed Code § 205(2).
141. UN Convention art. 20.
142. UN Convention art. 23.
143. Proposed Code §§ 197 to 211.
the court for the purposes of treatment of his or her physical or mental health. The Proposed Code requires such review.

III. ORGANIZATION

A. Purpose Statement

In order to promote clarity in both practice and policy, the Proposed Code is organized by topic and function. The purpose statement of the Proposed Code is the navigational beacon—in today's terms, the satellite signal—for practitioners and for those agency directors and service providers who will implement the code on a day to day basis. Any attorney, child protection worker, judge, or policy maker working with the Proposed Code will be able to determine if their actions are in conformity with the purpose statement by asking, “which of the five groups specified in the purpose statement is this procedure designed to protect?”

B. Definitions

The definitions are found in sections 4 through 48 of the Proposed Code. Some definitions are in the subparagraphs of the numbered sections. For instance, the definition of abused child in section 5 also contains the definitions of “physical injury,” “serious harm,” “serious mental or emotional injury,” serious physical injury,” and “household members.” All those terms are needed to clearly

144. UN Convention art. 25.
145. Proposed Code §§206, 208 (stating that commitment is only for a definite period, not to exceed six months, set by court and recommitment or extension of that time may only occur after full hearing).
146. “Protection” is the singular purpose of the Proposed Code. There are five distinct groups or classes of people who by definition require the State’s protection: children who are at either risk of abuse and neglect or who have been abused or neglected (children in need of the State’s protection), children whose behavior puts them at risk of harm (children in need of state supervision), children acutely in need of mental health services, children who have violated the criminal law (and require rehabilitative services only the state can provide), the families of these children require protection from further damage, either from the initial behaviors requiring state intervention, or from the state’s intervention itself; and the public generally. While the usual statement is that the public needs to be protected from re-offenses on the part of children in need of state rehabilitation (and the code is certainly designed to do that), the public also needs protection from the harms it suffers as a result of children being abused, neglected or at risk from their own behaviors. Proposed Code § 2.
define “abused child.” In addition, the definition of “custody”\textsuperscript{152} by
necessity, includes the definition of “care.”\textsuperscript{153} Definitions are founda-
tional to the Proposed Code, so they are placed together at the begin-
ning of the code. Reading the definitions gives one a fair
understanding of the tone of the entire code and the underpinning phi-
losophy of the Proposed Code. The definition of “abused child” hints
that the jurisdiction of the Proposed Code will be broader than the
existing code.

\section*{C. Procedures}

Following the definitional division of the Proposed Code, the proce-
dures to be followed for each the five classifications of children are
charted by topic.\textsuperscript{154} Time restrictions, burdens of proof, required judi-
cial findings, rights, obligations, and duties applicable to all interested
parties are grouped together by case classification.

Each of the five classes of cases (except emancipation) permits a
child to be taken into custody without prior judicial authorization.
That type of custody is always called “emergency custody” and is de-

defined.\textsuperscript{155} The requirements for, and limits of, emergency custody are
detailed in their respective sections.\textsuperscript{156}

Similarly, three of the five types of cases require a specific, task
defined judicial proceeding, designated an “initial hearing.”\textsuperscript{157} While
the purpose of the initial hearing is similar across all types of cases,
there are differences.\textsuperscript{158} Therefore, the purposes and requirements

\textsuperscript{152} Proposed Code § 17.
\textsuperscript{153} Id.
\textsuperscript{154} Proposed Code §§ 61 to 113 (prescribing the processes for cases involving children
in need of state protection); 114 to 132 (governing court ordered permanency
options, which pertain only to the former class of cases); 133 to 155 (referring only to
children in need of state supervision); 156 to 189 (controlling the government’s
management of children in need of state rehabilitation); 190 to 196 (directing the
conduct of emancipation cases); 197 to 211 (specifying the processes necessary for
the involuntary commitment of children in need of mental health treatment).
\textsuperscript{155} “Emergency custody means the temporary responsibility for the physical control
and supervision of a child taken in an emergency situation as authorized under
the Nebraska Juvenile Code.” Proposed Code §23.
\textsuperscript{156} Proposed Code §§ 71 to 76 (stating the requirements for Children in Need of State
Protection); 137 to 140, 145 (stating the requirements for Children in Need of State
Supervision); 159 to 164 (stating the requirements for Children in Need of State
Rehabilitation); 199 to 201 (stating the requirements for Children in Need of State
Mental Health Services)
\textsuperscript{157} Proposed Code §§ 81 to 89 (requiring a judicial hearing for Protected Children);
149 to 152 (requiring a judicial hearing for Supervised Children); 170 to 174 (re-
quiring a judicial hearing for Law Violators).
\textsuperscript{158} For example, while at the initial hearing for both Protected Children and Super-
vised Children, the court must advise “all parties” of their privilege against self
incriminations, but that privilege attaches only to the child alleged to be a law
are contained in the respective statutory sections.\textsuperscript{159} The same organizational strategy is used for adjudication hearings\textsuperscript{160} and disposition hearings.\textsuperscript{161}

IV. SUBSTANTIVE CHANGES

A. Court-Agency Relationships

There has been a significant amount of litigation regarding the respective authority of the juvenile courts and the Department (and its predecessor, the Department of Social Services).\textsuperscript{162} To some extent, this litigation represents a healthy and desirable tension between the courts and the agencies awarded custody of children by the courts – both have legitimate legal and moral responsibilities to protect the welfare of children.\textsuperscript{163} Sometimes, however, the statutory scheme

\textsuperscript{159} Proposed Code §§ 81 to 82 (stating the purpose and requirements regarding Protected Children); 149 to 150 (stating the purpose and requirements regarding Supervised Children).

\textsuperscript{160} Proposed Code §§ 87 to 98 (regarding Protected Children); 153 (regarding Supervised Children); 174 to 177 (regarding Law Violators).

\textsuperscript{161} Proposed Code §§ 99 to 107 (regarding Protected Children); 154 (regarding Supervised Children); 178 (regarding Law Violators).

\textsuperscript{162} In re Interest of Marie E., 260 Neb. 984, 988; 621 N.W.2d 65, 68-70 (2000) ("At issue in this case is the responsibility for the costs incurred after the juvenile has been placed in the custody of DHHS for evaluation but prior to DHHS' taking physical custody of the juvenile. The statutes are silent as to what person or entity is responsible for maintenance costs during this time period. . . . We determine that the detention of Marie constituted "evaluation" of the juvenile as that term is used in § 43-413(4). Accordingly, DHHS was responsible for the costs incurred in detaining Marie at the attention center."); In re Interest of Jeremy T., 257 Neb. 736, 749; 600 N.W.2d 747, 755-56 (1999) (discussing whether the Department should be ordered to reimburse Douglas County for the costs of placing and caring for a particular juvenile when the juvenile court gave custody of the juvenile to the Department on one docket and to another agency on another docket and finding that the Department should, even though it was error to award custody of one juvenile to two separate agencies); In re Interest of David C., 6 Neb. App. 198, 214-15, 572 N.W.2d 392, 402 (1997) (finding the county court exceeded its powers in requiring the Office of Juvenile Services (OJS) to submit treatment and placement plans, monthly progress reports, and to notify the court prior to releasing juveniles from YRTC, and that the county court had no authority to place juvenile on probation under care of OJS); In re Interest of Juan L., Neb. App. 683, 694, 577 N.W.2d 319, 327 (1998) (finding the juvenile court lacked authority to direct OJS to supervise juvenile's probation, house arrest, and payment of restitution).

\textsuperscript{163} Bruce A. Boyer, Jurisdictional Conflicts Between Juvenile Courts And Child Welfare Agencies: The Uneasy Relationship Between Institutional Co-Parents, 54 Md. L. Rev. 377, 379 (1995) (stating "[t]he responsibility for developing and implementing an appropriate long-term dispositional plan is commonly shared by child welfare agencies and juvenile courts, both of which are increasingly called upon to play the awkward role of institutional substitute parent").
regulating the boundaries of such responsibilities is, by circumstance or design, vague.\textsuperscript{164}

The Proposed Code seeks to clarify the distinct duties and authority of the juvenile court to minimize disputes regarding those issues. A reduction in mutual questioning of the limits of authority will allow the courts and agencies to focus on the protection of children, families, and the community. For instance, there is an explicit prohibition in the Proposed Code against the Department being required to pay for any services for a child not in its custody.\textsuperscript{165} This was the issue raised in \textit{Jeremy T.}\textsuperscript{166} Further, if the court awards custody of a protected child to the Department, the Department would be solely responsible to determine what the proper care for the child should be.\textsuperscript{167} The court, however, must approve the protective services that are appropriate for the particular situation,\textsuperscript{168} and if the courts find it necessary and possible, the court may contract for such services itself.\textsuperscript{169} These are examples of how the Proposed Code attempts to explicitly formulate the reaches and limits of the juvenile court and the Department, mindful of the need of each to execute its responsibilities with integrity.

\section{B. Speedy Hearings}

Current law specifies that the statutory deadlines for adjudication hearings are directory only.\textsuperscript{170} In effect, this means that the word

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\item \textit{Id.} at 383 (stating "[t]he relationship between juvenile courts and child welfare agencies is not always easy, and the boundaries of their respective responsibilities are not always clear").
\item Proposed Code § 49(c).
\item 257 Neb. 736, 600 N.W.2d 747 (1999).
\item Proposed Code § 70(1). Care is defined in section 17 as:

- providing necessary food, shelter, education, placement, training, and medicine. Medicine includes necessary medical, dental, and mental health care, including emergency care. When a child is placed out of home, care also includes (1) providing the opportunity for religious or spiritual practice and observation consistent with the beliefs of the child and the child's family; and (2) comprehensive medical and mental health assessments within five days of such placement.

- Proposed Code § 70(2). Protective services are defined in section 45 as "services and interventions designed to correct, eliminate, or ameliorate the circumstances or conditions creating the risk of harm which caused the child to be in need of state protection."

\item Proposed Code § 49(a)-(b).
\item \textit{In re Interest of Brandy M.}, 250 Neb. 510, 523, 550 N.W.2d 17, 25 (1996) (finding that the \textit{Neb. Rev. Stat.} § 43-271 requirement of adjudication of a law violator within 6 months of filing and the \textit{Neb. Rev. Stat.} § 43-278 requirement of adjudication of a status offender within 90 days of filing petition were both directory only because the statutes did not specify a remedy); see also \textit{In re Interest of C.P.}, 235 Neb. 276, 283, 455 N.W.2d 138, 143 (1990) (holding that the \textit{Neb. Rev. Stat.} § 43-273 requirement that a petition alleging a child to be as defined in \textit{Neb. Rev. Stat.} § 43-247(3)(a) be adjudicated within 90 days of filing was directory only).
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“shall” in Nebraska Revised Statutes sections 43-271 and 43-278, has been construed to mean “should.” The Proposed Code corrects the lack of a statutory remedy for failing to hold adjudications in the specified time. Such a strict rule affords the parties certainty, requires the State to move quickly in cases in which families are disrupted, and emphasizes that these classes of cases are as important as criminal cases. Though not demonstrated empirically, such a rule might also inform children that adults actually mean what they say. Because, at least in law violation cases, we attempt to hold children responsible for their actions, we should do no less with those who have authority over them.

C. Requirement for Children to Attend Their Abuse and Neglect Court Hearings

1. Current Statute

There is no statute in Nebraska that requires children to be present at a hearing regarding abuse and neglect.

2. Proposed Changes

Section 82 of the Proposed Code requires that at a hearing involving a protected child, which is a child reported, alleged, or determined to be an abused child, a neglected child, or an abandoned child, “all parties must be present at the hearing.” Section 77, which defines

171. NEB. REV. STAT. § 43-271 (Reissue 1998) (stating “[t]he hearing as to a juvenile in custody of the probation officer or the court shall be held as soon as possible but, in all cases, within a six-month period after the petition is filed, and as to a juvenile not in such custody as soon as practicable but, in all cases, within a six-month period after the petition is filed”); NEB. REV. STAT. § 43-278 (Reissue 1998) (stating “all cases filed under subdivision (3) of section 43-247 shall have an adjudication hearing not more than ninety days after a petition is filed. Upon a showing of good cause, the court may continue the case beyond the ninety-day period”). The language in section 43-271, “as soon as practical” and “as soon as possible”, seems to govern “shall”.

172. Adjudication hearings in Protected Child cases are to be set no later than 60 days after the petition has been filed. The court may grant continuances for good cause, but in any case, the adjudication must be held no later than 120 days after the petition was filed. Failure to do so results in a dismissal of the petition. Proposed Code § 88. Adjudication hearings in Supervised Child cases must be held no later than 90 days after the petition was filed if the child is in custody, or 120 days after the petition was filed if the child is not in custody. Time is calculated as in NEB. REV. STAT. § 29-1207. If the adjudication is not held within the time specified, the case is dismissed. Proposed Code §153. Adjudication hearings for Law Violators must be held within 90 days of when the child was first taken into custody, if the child is still in custody. If the child is not in custody, the adjudication must be held no later than 120 days after the petition was filed. Time is computed as in NEB. REV. STAT. § 29-1207. If adjudication not held within specified time, petition is dismissed and the dismissal acts as complete bar to refilling the petition. Proposed Code §174.
parties to a court action, includes the child. Section 83 allows a judge to excuse a child from attending a hearing upon considering the following factors: (a) whether the protected child will be represented at the initial hearing by counsel or by a guardian ad litem; (b) the wishes of the child; (c) the child's age and understanding of the proceedings; (d) any potential for physical, emotional, or psychological trauma to the protected child arising from the protected child's physical presence at the hearing; and (e) the importance of the protected child's physical presence to a just and fair outcome of the initial hearing.

3. Meaning of the Changes
For abuse and neglect cases, a child is required to be present at hearings, unless the judge excuses such attendance.

4. Rationale
Children have an interest in being informed about the decision making process that is affecting them and also may have an interest in expressing their views. Surveys of former state wards indicate that most wish they had been more fully informed about the decisions that affected them. In addition, having the child attend the hearing will make the child seem less abstract and may increase the pressure on the different systems involved to move more rapidly towards permanency.

5. Legal Issues
There is no established precedent that supports a constitutional requirement that children be present at their abuse and neglect hearings, even if hearings result in placement in locked psychiatric institutions. In re Gault established that youths in delinquency proceedings in juvenile court were entitled to due process protections, although not necessarily at the same level as adults in criminal court. Although Parham v. J.R. extended due process protections to youths who were voluntarily committed to psychiatric institutions by their parents, the protections were weak, as they involved “some kind of inquiry” by a neutral fact finder and did not require a “formal or quasi-formal hearing.”

175. 442 U.S. 584 (1979).
176. Id. at 606-07.
6. National Perspective

Generally, children's attendance of their court hearings for child maltreatment reviews is at the discretion of the judge. Several states, however, have recently passed legislation requiring children's participation in all or particular hearings. Texas requires that a "child shall attend each permanency hearing unless the court specifically excuses the child's attendance." In California, minors who are subjects of juvenile court hearings, such as dependency proceedings, are entitled to be present at the hearings. Minnesota lists the child first among parties who have a right to participate in all proceedings related to a protection petition. Further, the Minnesota Rules of Juvenile Procedure clarify the responsibilities of custodians or the child protection agency for ensuring the child's presence in court.

7. International Perspective

The UN Convention provides rights of participation for children in legal and administrative hearings about matters that affect them.

177. See, e.g., FLA. STAT. ch. 984.16(3) (1998) (stating "[t]he summons may require the custodian to bring the child to court if the court determines that the child's presence is necessary").


181. MINN. R. JUV. P. 63.02 advisory comm. cmt. (Supp. 2004).

For a child who is a party, the person with physical custody of the child should generally be responsible for assuring the child's attendance at hearings. When a child is in emergency protective care or protective care, the local social services agency is responsible for ensuring the child's presence in court. If the child is in the custody of the county in out-of-home placement, the social services agency should transport the child to the hearing. If the agency fails to make arrangements for the child to attend the hearing, the child's attorney or guardian ad litem may need to ask for a continuance and for an order requiring the child to be brought to the next hearing.

Id.

182. UN Convention art. 9, paras. 1-2; art. 12, paras. 1-2. Article 9 states:

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

Article 12 states:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters
This international law is not binding on the United States, but it does indicate that there is international consensus for children's participation in hearings.

8. Psychological Research

There is no research that specifically focuses on whether attending court hearings will have a positive or negative emotional impact on children and youth. Surveys of children who are in, or who were in, the foster care system have generally found that these children want more participation in the decision-making about their lives, and that many showed a "marked lack of understanding concerning their foster care status and reasons for placement."183 Foster children have reported that they wished they were asked their opinions about decisions that affected them.184 Further, it seems that children who had some choice in their placement were more satisfied with their placement than were children who did not have any input.185

Feelings of self-efficacy or perceived control appear to serve as a protective factor for maltreated children.186 There has been no research that has explored whether self-efficacy or perceived control may be enhanced or inhibited by features of the institutions that deal with maltreated children. As noted, however, by a prominent maltreatment researcher, Dante Cicchetti:

[R]ean children are placed in foster care, they frequently become pawns in a complex game involving court personnel, therapists, and caseworkers. Often,
neither parents nor children understand the processes in which they are involved and consequently may develop anger and, eventually apathy and helplessness. A thorough review of current approaches . . . should be undertaken . . . to determine how best to intervene effectively on behalf of maltreated children without eliminating feelings of empowerment in children.\textsuperscript{187}

Thus, Cicchetti suggests that institutions, such as the court, may play a role in maltreated children's perceptions of self-efficacy or control.

There has been some research on the emotional effects of testifying in court for children who have allegedly been sexually abused. Children under the age of ten were assessed at several points after they had testified.\textsuperscript{188} Some of the children who testified did show stress and anxiety reactions. Most of these effects diminished after the prosecution was complete because the greatest concerns expressed by children were related to facing the defendants. Most children expressed apprehension before their court appearances but the majority felt good about the experience after their appearance. Because the greatest source of stress was facing the defendant in a criminal trial, it would be expected that stress for children who are not testifying would be substantially less.

A study of anxiety of children attending their Children's Hearings (a quasi-judicial proceeding in Scotland using panels of three lay people as decision-makers) compared children attending their hearings with school children on measures of anxiety.\textsuperscript{189} Not surprisingly, children who were going into hearings had higher levels of state anxiety than school children in their classrooms. The children's anxiety levels dropped right after their hearing, however, and were not different from the school children's levels. This data suggest that the anxiety increases of children attending hearings are short term.

9. Public Policy Considerations

In many instances, foster parents or other caregivers will be willing and able to transport children to hearings. The requirement for children's presence, however, may place some additional burdens on an already overburdened child protection system. There may be portions of some hearings where a judge may consider removing the child from the courtroom. Thus, in addition to transportation, courts may need to have some child friendly waiting places and the possibility of supervision. Children may have reasons why they prefer not to attend

\textsuperscript{187} Dante Cicchetti et al., \textit{The Development of Psychological Wellness in Maltreated Children}, in \textit{The Promotion of Wellness in Children and Adolescents} 395, 417 (Dante Cicchetti et al., eds., 2000).


a hearing, and there should be a mechanism available to ensure that children are not forced to attend.

There are a number of other potential disadvantages to consistently including children in their hearings. Attending hearings may be stressful to some children. Judges and other professional participants may be uncomfortable with the presence of children in the courtroom. Involving children may increase the length of hearings.

Nevertheless, there are strong public policy reasons to support the children's presence. Attending hearings may be empowering and helpful to children. The children's views will be more easily communicated to the judge if they are in the courtroom. While not dispositive, children's perspectives are important for the judge to consider in making difficult decisions regarding where a child will live. Abused and neglected children, who are at increased risk for delinquency, may increase their respect for institutional authority (and consequently decrease one risk factor for delinquency). Decision makers may be influenced to work more urgently on achieving a permanent safe disposition for a child when they have contact with the actual child and are able to see the child's development. Finally, the safety of children may be enhanced if they appear in court on a regular basis where at least their superficial well being will be seen by all the professionals in a case.

D. Judicial Oversight of Voluntary Relinquishment of Parental Rights

1. Current Statutes

Nebraska Revised Statutes section § 43-106.01 allows for relinquishments by written instrument to the Department or to a licensed child placement agency. Department policy states, "Relinquishment of a child to the Department is effective upon written acceptance by the Department. Relinquishment to the Department is irrevocable and transfers guardianship and full parental rights to the Department." Relinquishments of parental rights to Native American children require execution before a judge.

2. Proposed Change

Section 240 of the Proposed Code provides that a voluntary relinquishment of parental rights to all children shall be by a written instrument executed in open court.

3. Meaning of the Changes

The proposed change means that individuals who wish to relinquish their parental rights must do so before a judge. Parents would no longer be able to relinquish their parental rights by merely undergoing relinquishment counseling and completing forms provided by the Department or any other child placement agency.

4. Rationale

The decision to relinquish parental rights is far reaching and affects the most significant relationships people have. Consequently, it is important to ensure that the decision is informed and voluntary. Relinquishment of parental rights is arguably a more significant decision than agreeing to conditions of a divorce settlement, where Nebraska law does require judicial oversight of agreements to ensure the agreement is not unconscionable. There is, at the minimum, an appearance of a conflict of interest for agency representatives who have an interest in the relinquishment occurring and who are entrusted with ensuring procedural safeguards for the parents. Further, recent state and federal mandates to accelerate terminations of parental rights increases the pressure on child protection workers to obtain voluntary relinquishments from parents. Judicial oversight would ensure that parents' rights are fully protected when they are making a decision of such magnitude and permanence.

5. Legal Issues

There is no constitutional requirement that would require that parents relinquish their rights to their children in open court, rather than in a written agreement with an agency.

6. National Perspective

A number of states, including Michigan and Colorado, have statutes that require a court hearing before a parent can voluntarily relinquish their parental rights. Utah does not require juvenile court

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193. MICH. COMP. LAWS § 710.29 (2002) ("Except as otherwise provided in this section, a release shall be by a separate instrument executed before a judge of the court of a juvenile court referee.").
194. COLO. REV. STAT. § 19-5-103 (2003). The Colorado statute states, in part, that:
   (3) Upon receipt of the petition for relinquishment, the court shall set the same for hearing on the condition that the requirements of subsection (1) of this section have been complied with by the petitioner.
   (7)(a) The court shall enter an order of relinquishment if the court finds after the hearing that [list of three factors follows].
involvement for some relinquishments, but requires that the juvenile court take relinquishments from parents of children who are under the jurisdiction of the court. The purpose of these statutes is to make sure the parents have freely consented to such relinquishment and are fully aware of the consequences of their actions.

7. Psychological Research

There is sparse research in the psychological area, and the little that is available is focused on young mothers of newborns. A recent study reported that: some mothers who relinquish their parental rights to their newborns experience feelings of coercion; birth mothers who believe they were coerced into relinquishment report higher levels of grief; and parents who believe they have had more responsibility for their decision to relinquish are better able to cope with their feelings of loss, mourning, and grief. Thus, a legal process that ensures voluntary participation in and full awareness of the consequences of the relinquishment decision may produce better psychological outcomes for these parents.

8. Public Policy Considerations

The major public policy issue is whether parents making decisions regarding relinquishment of their rights to their children are entitled to the same protections that they would have if they were making a decision about the terms and conditions of a divorce, or if they are entitled to the lesser protections provided to individuals who are, for example, buying or selling property. Protections, however, also involve potential burdens to parents wishing to relinquish their rights to their children. Mothers who are currently relinquishing their rights to newborns while still in the hospital would need to make a court appearance. These young mothers may not want to go to court and be asked questions about their decision by a judge. Consequently, some parents may be discouraged from relinquishing their parental rights,

195. UTAH. CODE ANN. § 78-3a-414 (2002). The Utah statute states, in part, that:
(1) Voluntary relinquishment or consent for termination of parental rights shall be signed or confirmed under oath either:
(a) before a judge of any court that has jurisdiction over proceedings for termination of parental rights in this state or any other state, or a public officer appointed by that court for the purpose of taking consents or relinquishments; or
(b) except as provided in Subsection (2), any person authorized to take consents or relinquishments under Subsections 78-30-4.18(1) and (2).
(2) Only the juvenile court is authorized to take consents or relinquishments from a parent who has any child who is in the custody of a state agency or who has a child who is otherwise under the jurisdiction of the juvenile court.

even when it is in their child's best interests, because they are reluctant to go to court. In addition to increasing the burden on parents, the requirement for a judicial hearing will increase the burden on courts.

The policy reasons for this change are to ensure that parents are making fully informed and voluntary decisions regarding relinquishment of their rights. This change will remove conflict of interest concerns that are present in the current law. The change may also reduce the likelihood that parents experience coercion in their decision to relinquish their parental rights. Consequently, parents who do relinquish their rights to their children may be better able to cope with their loss because of their full participation experience in a decision to promote their child's best interests.

E. Mandatory Consultation with Counsel

1. Current Statutes

There is currently only one statute that creates a youth's right to consult an attorney and no statutes that limit the youth's ability to waive the right. Nebraska Revised Statutes section 43-248.01 states:

All law enforcement personnel or other governmental officials having custody of any person under eighteen years of age who has been arrested, restrained, detained, or deprived of his or her liberty for whatever reason shall permit the person in custody, without unnecessary delay after arrival at a police station or detention facility, to call or consult an attorney who is retained by or on behalf of such person in custody or whom the person in custody may desire to consult, except when exigent circumstances exist.

2. Proposed Changes

Section 161(2) of the Proposed Code states, "No child thirteen years of age or younger may be questioned as a suspect about any felony unless they have consulted with an attorney prior to such questioning. The right to consult with an attorney, prior to being questioned as a suspect about any felony, cannot be waived. Consultation with an attorney prior to pleading to a delinquency petition is dealt with in section 172(a)(1) and requires that:

A child under the age of fourteen who is alleged in the petition to have committed a Class III or higher felony cannot waive his or her rights without first consulting an attorney. If the child or the child's responsible adults cannot afford to retain counsel for this purpose, the court shall appoint counsel.

Section 165(7) states: "If the child named in the petition is under twelve years of age, the court shall appoint counsel if the child is not represented and cannot afford counsel regardless of whether the child requests counsel." Regarding extended juvenile jurisdiction, section 186(1)(b) states: "The child may waive the right to a jury only after being advised of his or her rights and after consultation with the child's attorney." In addition, section 186(5) states: "A child desig-
nated as an extended juvenile jurisdiction offender has a right to counsel at every stage of the proceedings, including all reviews. This right to counsel cannot be waived." The Proposed Code also requires consultation with an attorney or guardian ad litem before children in need of protection can waive their right to notice of proceedings. Section 80(5)(a) and (b) states:

If a child is twelve years of age or older, the child may waive his or her right to seventy-two-hour notice if the child has consulted with counsel or a guardian ad litem and the court finds such waiver to be knowing and voluntary. The court shall personally address the child and the child's counsel or guardian ad litem before making such a finding; [and] if a child is under twelve years of age, the child's counsel or guardian ad litem may waive the child's right to seventy-two-hour notice. If the child is seven years old or older, the child's counsel or guardian ad litem shall confer with the child prior to entering a waiver on the child's behalf.

3. Meaning of the Changes

The proposed changes limit the ability of children and young adolescents to waive certain due process rights without first consulting an attorney. The changes also limit the ability of children and young adolescents to waive their right to an attorney. For example, under Nebraska revised Statutes section 43-248.01, children have the right to talk with an attorney, but can waive these rights; under the Proposed Code, children under a certain age who may have committed offenses that would be felonies, cannot waive their right to talk with an attorney before interrogation or entering a plea in court.

4. Rationale

Children and young adolescents are vulnerable participants in police interrogations and in juvenile court proceedings because of their limited knowledge and understanding of the legal system, their socialized tendencies to comply with adult authority, and their impulsivity related to immaturity. There is ample evidence that many children and young adolescents do not have the capacity to knowingly, voluntarily, and intelligently waive their rights to an attorney during interrogations and when entering pleas. Consequently, the best protection for children to ensure that they interact with the legal system in the way that is most protective of their interests is to have attorneys present to advise them. Removing the ability to waive their right to an attorney would ensure this protection.

197. Grisso et al., supra note 16, at 361.
5. Legal Issues

Despite the intended rehabilitative focus of the juvenile court, youths facing juvenile court adjudications have due process protections, including the right to consult with an attorney. Waiver of rights to consult with an attorney must be made voluntarily, knowingly, and intelligently. In Fare v. Michael C., a sixteen year old boy asserted that his request to see his probation officer constituted a per se invocation of a request for counsel. The Supreme Court held that the "totality of the circumstances" test was adequate to protect children's rights because it gives judges discretion to consider a youth's immaturity in assessing whether waivers are voluntary, knowing, and intelligent. The Court noted, "[w]e discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights, as opposed to whether an adult has done so."

The Nebraska Supreme Court decided that a fourteen year old could waive his right to counsel and that his legal guardian did not have the authority to assert the child's right after the boy had waived it. More recently, in State v. Garner, the Nebraska Supreme Court upheld a trial court's refusal to admit a confession by an eleven year old under the residual hearsay exception because the court found the child's statements to be untrue because of factual inconsistencies in the statements:

The record reflects that Johnson, an 11-year-old child, was detained at the police station for approximately 7 hours. Much of the interrogation took place in the absence of Johnson's mother, even after he indicated to the officers that he wanted to see her. Johnson was obviously tired and fell asleep during portions of the interrogation. Johnson began crying during the interview, repeatedly asked the officers when he could go home, and eventually made up a story because he thought he would then be allowed to go home. This method of interrogation, particularly when used on such a young child, is most troubling to this court.

In contrast, in the same case, the court rejected the claim that the confession by the fifteen year old defendant was involuntary, despite the circumstances under which that confession was taken:

At the time he made his statement to police, Garner was 15 years old, had been interviewed for several hours beginning at approximately 2 a.m., and did not have a parent or guardian with him. During their interview of Garner, police made reference to public perception of the crime, stating that the public

201. Id. at 725.
204. Id at 53, 614 N.W.2d at 329.
would view Garner as a "monster" and would call for him to be put to death in the electric chair.\textsuperscript{205}

Thus, although the Nebraska Supreme Court has expressed some concern about forceful police interrogation of children, it has not gone so far as to conclude that adolescents need special protections to preserve their due process rights.

6. National Perspective

Several states have established rules treating interrogations of children with more care.\textsuperscript{206} Colorado mandates the presence of a parent, guardian, or counsel during an interrogation.\textsuperscript{207} Indiana mandates that a parent must knowingly and voluntarily waive the child's privilege against self-incrimination and that the child must consult with the parent.\textsuperscript{208} Texas requires the involvement of a member of the judiciary to establish that a confession is voluntary; a magistrate must instruct a child on his or her rights in the absence of any member of law enforcement, and the confession must be made in front of a

\textsuperscript{205} Id at 42, 614 N.W.2d at 323.


\textsuperscript{207} COLO. REV. STAT. §19-2-511 (2003). The Colorado statute states, in part, that:

(1) No statements or admissions of a juvenile made as a result of the custodial interrogation of such juvenile by a law enforcement official concerning delinquent acts alleged to have been committed by the juvenile shall be admissible in evidence against such juvenile unless a parent, guardian, or legal or physical custodian of the juvenile was present at such interrogation and the juvenile and his or her parent, guardian, or legal or physical custodian were advised of the juvenile's right to remain silent and that any statements made may be used against him or her in a court of law, of his or her right to the presence of an attorney during such interrogation, and of his or her right to have counsel appointed if he or she so requests at the time of the interrogation; except that, if a public defender or counsel representing the juvenile is present at such interrogation, such statements or admissions may be admissible in evidence even though the juvenile's parent, guardian, or legal or physical custodian was not present.

\textsuperscript{208} IND. CODE ANN. § 31-32-5-1 (Michie 2003). The Indiana statute states, in part, that:

Any rights guaranteed to a child under the Constitution of the United States, the Constitution of the State of Indiana, or any other law may be waived only:

(2) by the child's custodial parent, guardian, custodian, or guardian ad litem if:

(A) that person knowingly and voluntarily waives the right;
(B) that person has no interest adverse to the child;
(C) meaningful consultation has occurred between that person and the child; and
(D) the child knowingly and voluntarily joins with the waiver . . . .
North Dakota requires, in certain circumstances, that counsel be present during an interrogation of a child. New Mexico prohibits the admission of a statement by any child under the age of thirteen, and it has established a rebuttable presumption that children who are thirteen and fourteen cannot make a voluntary confession.

7. Psychological Research

There is a considerable body of research that suggests that many young teenagers do not have the requisite cognitive and judgment maturity to knowingly, voluntarily, and intelligently waive their rights to attorney consultation. For example, studies conducted over two decades ago found that teens involved in the juvenile court, especially those under the age of fifteen, did not comprehend the meaning of the Miranda warnings as well as adults. More recently, a study of fifty


(a) Notwithstanding Section 51.09, the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if:

(A) the statement shows that the child has at some time before the making of the statement received from a magistrate a warning that:
(i) the child may remain silent and not make any statement at all and that any statement that the child makes may be used in evidence against the child;
(ii) the child has the right to have an attorney present to advise the child either prior to any questioning or during the questioning;
(iii) if the child is unable to employ an attorney, the child has the right to have an attorney appointed to counsel with the child before or during any interviews with peace officers or attorneys representing the state; and
(iv) the child has the right to terminate the interview at any time;
and
(B) and:
(i) the statement must be signed in the presence of a magistrate by the child with no law enforcement officer or prosecuting attorney present...


F. Notwithstanding any other provision to the contrary, no confessions, statements or admissions may be introduced against a child under the age of thirteen years on the allegations of the petition. There is a rebuttable presumption that any confessions, statements or admissions made by a child thirteen or fourteen years old to a person in a position of authority are inadmissible.

212. See Feld, supra note 198, at 113.

213. Thomas Grisso, Juveniles' Capacity to Waive Miranda Rights: An Empirical Analysis, 68 Cal. L. Rev. 1134, 1160 (1980). Grisso assessed juvenile detainees on their ability to paraphrase the words in the Miranda warning, whether they could define critical words in the warning such as "attorney", and whether they
Canadian juvenile offenders, who were interviewed regarding their recent experiences with police and legal counsel, suggests that even when youths may know they have certain due process rights, they may not be well-equipped to assert such rights.214

A recent series of studies conducted comprehensive assessments of detained and non-detained children and jailed and non-jailed young adults regarding various legal competencies. The studies found that children aged fifteen and younger performed more poorly than young adults and that many young teens demonstrated a level of impairment similar to persons who are found incompetent to stand trial.215 Specifically, these studies found that eleven through thirteen year olds performed significantly worse than fourteen through fifteen year olds who performed significantly worse than older adolescents and young adults on legal competency measures of understanding and reasoning. Children with lower IQs were more likely to perform poorly and lower IQ's were common in the detained group. These researchers found that approximately two-thirds of the detained children aged fifteen and younger had an IQ that was associated with impaired understanding, reasoning, or both, to the extent that they would be incompetent to stand trial.

These studies utilized hypothetical vignettes to examine age related differences in legal decisions regarding responses to police questioning, disclosure of information to a defense attorney, and responses to a plea agreement for reduced consequences in exchange for a guilty plea and testimony against other defendants. Youths fifteen and younger demonstrated significantly more tendencies, as compared to older adolescents and adults, to comply with authorities, to not recognize risks or their likelihood and seriousness, and to not consider long-term consequences. For example, about one-half of the eleven through thirteen year olds believed that confession was the best choice as compared to only one-fifth of the young adults. Further, younger adolescents were more likely to accept the plea agreement than were older adolescents or young adults.

could give correct true-false answers to rewordings of the warnings. Only one fifth of the juveniles demonstrated understanding of the four components of a Miranda warning, and more than half exhibited no comprehension of at least one of the four warnings. Juveniles younger than age fifteen did the most poorly. Id. 214. Michele Peterson-Badali et al., Young People's Experience of the Canadian Youth Justice System: Interacting with Police and Legal Counsel. 17 BEHAV. SCI. & L. 455, 459-60 (1999). Over 60% of the participants remembered that they had been told of their rights to silence and counsel, but 75% did not contact an attorney at the police station and 50% answered the police questions. Of the youths who did not contact an attorney, 75% reported that they did not know how to (and were not told how) and 20% did not think an attorney could help. Some of the youths reported that the police told them that an attorney would just keep them at the police station longer.

8. Public Policy Considerations

The proposed legislation would place burdens on law enforcement agencies to expend extra time needed to arrange attorney consultation before questioning children and youths suspected of committing serious offenses. Youths who are now questioned in their homes or neighborhoods will likely need to be transported to police stations and the questioning will have to be delayed until an attorney was available. If a child’s parents are not indigent, it is not clear if the courts would be required to order the parents to pay attorney costs. Further, the likely result of this legislation will be that fewer children will offer confessions placing greater demands on law enforcement to conduct investigations. The proposed changes, however, will not create a large burden on the law enforcement and legal systems because the number of cases affected by the proposed changes are only the most serious offenses, which are small in number. The proposed changes constitute a policy statement that the state has a legitimate interest in providing special protections to youth because of their vulnerability to state power.

F. Extended Jurisdiction/Blended Sentencing

1. Current Statute

There is not a current Nebraska statute regarding extended juvenile jurisdiction.

2. Proposed Change

Section 25 of the Proposed Code defines extended juvenile jurisdiction as, "the authority of the juvenile court to determine the custody of a child found to be in need of state rehabilitation beyond the child’s eighteenth birthday." Additionally, section 184 of the Proposed Code states:

(1) The state may request extended juvenile jurisdiction designation in a petition to find a child in need of state rehabilitation or in a separate motion if: (a) The child is alleged in a petition to have committed a felony in any degree; (b) The child is alleged in a petition to have committed a misdemeanor involving the use of a weapon; (c) The child is alleged in a petition to have committed a misdemeanor sexual offense and the victim was at least two years younger than the alleged offender; or (d) The child has previously been found by any court of competent jurisdiction to have committed a violation of law punishable by one or more years of imprisonment.

(2) The child’s attorney may file a motion to request extended juvenile jurisdiction if the state could have filed pursuant to this section.

(3) When a party requests an extended juvenile jurisdiction designation, the court shall hold a designation hearing no later than sixty days after the request is filed with the court. If the child is in detention, the designation hear-

ing shall be held no later than thirty days after the request is filed with the court. The time shall be computed in accordance with section 29-1207.

(4) The party requesting the extended juvenile jurisdiction designation has the burden to prove by clear and convincing evidence that such designation is warranted.\textsuperscript{217}

3. \textit{Meaning of the Change}

This change would allow the juvenile court to impose both a juvenile disposition and a suspended adult sentence\textsuperscript{218} when a child is found to have committed a serious offense.\textsuperscript{219} Generally, authority to impose both an adult sentence and a juvenile disposition is referred to as "blended sentencing." "Extended jurisdiction" refers to the continuation of jurisdiction beyond the age of minority. Both concepts are present in the Proposed Code, and for simplicity's sake, this article will refer to both with the phrase "extended jurisdiction."\textsuperscript{220} The suspended adult sentence could only be imposed if the child subsequently violates the terms of the original disposition,\textsuperscript{221} is adjudicated on the basis of a new law violation,\textsuperscript{222} or is found to be untreatable in the juvenile court system.\textsuperscript{223} A child may seek relief from an extended juvenile jurisdiction disposition if the court finds the child has been rehabilitated,\textsuperscript{224} poses minimal risk to the public,\textsuperscript{225} and the discharge is in the child's best interest.\textsuperscript{226} Children tried under extended juvenile jurisdiction are provided the same procedural rights as adults tried in criminal court, including the right to a jury trial.\textsuperscript{227}

\begin{itemize}
\item \textsuperscript{217} Proposed Code § 184.
\item \textsuperscript{218} Proposed Code § 187(1) (stating "[i]f a child is found to be in need of state rehabilitation as an extended juvenile jurisdiction offender, the court may enter any of the juvenile dispositions authorized by section 178 of this act and suspend the imposition of any adult sentence authorized by law pending juvenile court review").
\item \textsuperscript{219} Proposed Code § 184(1) states:
\begin{itemize}
\item (a) ... a felony of any degree;
\item (b) ... a misdemeanor involving the use of a weapon;
\item (c) ... a misdemeanor sexual offense and the victim was at least two years younger than the alleged offender;
\item (d) ... has previously been found by any court of competent jurisdiction to have committed a violation of law punishable by one or more years of imprisonment.
\end{itemize}
\item \textsuperscript{220} See, e.g., Chauncey E. Brummer, Extended Juvenile Jurisdiction: The Best of Both Worlds?, 54 Ark. L. Rev. 777, 795 (2002) (using the terms blended sentencing and extended jurisdiction interchangeably).
\item \textsuperscript{221} Proposed Code § 187(2)(a).
\item \textsuperscript{222} Proposed Code § 187(2)(b).
\item \textsuperscript{223} Proposed Code § 187(2)(c).
\item \textsuperscript{224} Proposed Code § 188(2)(b).
\item \textsuperscript{225} Proposed Code § 188(2)(c).
\item \textsuperscript{226} Proposed Code § 188(2)(a).
\item \textsuperscript{227} Proposed Code § 186(1)(a).
\end{itemize}
4. Rationale

The juvenile court was developed because children are considered less culpable and more amenable to treatment than adults.\textsuperscript{228} Extended juvenile jurisdiction incorporates the rehabilitative ideal of juvenile court and grants the state the ability to seek long-term incarceration for youth who pose a continuing risk to society despite the court's rehabilitative efforts. Many youth characteristics will change with development\textsuperscript{229} and children are generally more amenable to treatment than adults.\textsuperscript{230} Thus, many children who have committed fairly serious crimes may pose little future risk to society when they reach adulthood.\textsuperscript{231} Extended juvenile court jurisdiction enables the child to become more mature and change his or her behavior over the course of the juvenile disposition. The concept of extended jurisdiction also implements the philosophy that juvenile courts are best equipped by training and experience to assess both appropriate sanctions and rehabilitative services for youthful offenders.\textsuperscript{232} Further, when a judge holds an assessment hearing to determine if a child can be discharged from the juvenile disposition, the judge will consider the child's change in development and behavior over the course of the juvenile disposition.\textsuperscript{233} If the youth has not changed sufficiently during the juvenile disposition, the judge can impose the adult sentence.\textsuperscript{234} If the child has been successfully rehabilitated, the judge can vacate the sentence.\textsuperscript{235} Extended jurisdiction schemes were developed, in part, to stem the national tide of prosecuting children as adults.\textsuperscript{236} By giving juvenile judges the option to impose adult sentences for certain juvenile offenders, it should silence, or at least diminish, the call to

\begin{footnotesize}
\begin{itemize}
  \item 228. Scott & Grisso, \textit{supra} note 102 at 138, 141
  \item 230. See Scott & Grisso, \textit{supra} note 102, at 147-48; see also Schwartz et al., \textit{supra} note 101, at 535.
  \item 231. See Seagrave & Grisso, \textit{supra} note 229, at 226-29.
  \item 232. See Schwartz et al., \textit{supra} note 101, at 536.
  \item 233. Proposed Code § 189(2)(b) (listing five factors juvenile court must consider when determining whether discharge is appropriate: "(i) The experience and character of the child before and after the juvenile disposition, including compliance with the court's orders; (ii) The nature of the offense or offenses and the manner in which the offense or offenses were committed; (iii) The recommendations of the professionals who have worked with the child; (iv) The need for protection of public safety; and (v) The opportunities provided to the child for rehabilitation and the child's efforts toward rehabilitation").
  \item 234. Proposed Code § 189(2)(d)(iii) states: "Following a discharge assessment hearing the court may . . . exercise its discretion to impose any adult sentence . . . ."
  \item 235. Proposed Code § 189(2)(d)(i) states: "Following a discharge assessment hearing the court may . . . discharge the child."
  \item 236. See generally Brummer, \textit{supra} note 220.
\end{itemize}
\end{footnotesize}
dismantle the juvenile justice system in favor of prosecuting increasing numbers of juveniles in adult courts.237

5. Legal Issues

Since it is possible that a child may ultimately face an adult sentence, the child would have to meet competency standards relevant to the child’s fitness to stand trial.238 Additionally, because juvenile courts would be imposing adult sentences on youth, it may blur the line between the jurisdiction of the juvenile court and that of the adult criminal court, requiring appropriate due process protections for the child.239

6. National Perspective

The state of Minnesota is regarded by many as the pioneer of extended juvenile jurisdiction.240 The Minnesota legislature created a task force that adopted a report that included the concept of extended juvenile jurisdiction.241 The purpose of the Minnesota legislation was to provide a “last chance” option for some serious juvenile offenders who might be salvageable through juvenile court dispositions.242 The Minnesota law permits extended juvenile jurisdiction for juveniles between the ages of fourteen and seventeen.243

The New Mexico legislature also enacted its own juvenile blended sentencing statute in 1996.244 Under New Mexico’s law the juvenile

237. Id.
240. See Brummer, supra note 220, at 792.
241. Id.
242. Id. at 793.
243. MINN. STAT. ANN. §§ 260B.125(1) and 101(1) (West 2003). The Minnesota statutes state, in part, that:

125(1) When a child is alleged to have committed, after becoming 14 years of age, an offense that would be a felony if committed by an adult, the juvenile court may enter an order certifying the proceeding for action under the laws and court procedures controlling adult criminal violations.

101(1) [T]he juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be delinquent, a juvenile traffic offender, a juvenile petty offender, and in proceedings concerning any minor alleged to have been a delinquent, a juvenile petty offender, or a juvenile traffic offender prior to having become 18 years of age.

court has the discretion to apply either an adult sentence or juvenile sanctions to a youthful offender. Prior to adjudication, the prosecutor must file written notice of his or her intent to invoke an adult sentence; however, it is not until after the trial that the judge, applying statutorily enumerated factors, chooses between the adult sentence and the juvenile disposition.

Approximately seventeen states have extended juvenile jurisdiction statutory schemes. Among those states, there are five models of blended sentencing schemes for juvenile offenders:

1) The “juvenile exclusive blend” in which the juvenile court imposes either a juvenile or adult sanction.

2) The “juvenile inclusive blend” where the juvenile court imposes both a juvenile and an adult sentence, suspending the adult sentence pending violation.

3) The “juvenile contiguous blend” in which the juvenile court imposes a juvenile sanction that may remain a force beyond the age of the court’s jurisdiction.

4) The “criminal exclusive blend” in which the criminal court imposes either a juvenile or adult sanction.

5) The “criminal inclusive blend” in which the criminal court imposes both a juvenile and an adult sanction suspending the adult sanction pending violation.

Extended jurisdiction in the Proposed Code best fits the “juvenile inclusive blend” model.


If the children’s court attorney has filed a notice of intent to invoke an adult sentence and the child is adjudicated as a youthful offender, the court shall make the following findings in order to invoke an adult sentence:

(1) the child is not amenable to treatment or rehabilitation as a child in available facilities; and

(2) the child is not eligible for commitment to an institution for the developmentally disabled or mentally disordered.

247. See Brummer, supra note 220, at 795.


249. Id. at 12.

250. Id.

251. Id.

252. Id.

253. Id.

254. Proposed Code § 187(1) (authorizing the juvenile court to impose a juvenile disposition and a suspended adult sentence).
7. Relevant Research

“As of 1998, only forty-two of the 339 teen-agers sentenced in the Minnesota program’s first twenty months had violated their juvenile sentence and been sent to adult state prisons.”255 In many instances, those juvenile offenders who had their adult dispositions invoked were “tripped up on small probation violations” as opposed to having committed serious criminal offenses.256

8. Practical or Policy Issues

An effective extended jurisdiction system will require a continuum of appropriate juvenile services to provide necessary rehabilitative opportunities for offenders.257 Without that array of services, there are certainly issues of fundamental fairness. For example, what justifies adult punishments of offenders because of inadequacies in juvenile rehabilitative services? Those issues are particularly problematic in Nebraska with state budget cuts,258 geographical disparities in service provision,259 and gaps in service capabilities most apparent in the chemical abuse260 and sex offender treatment arenas, as well as lim-


256. Id. at 136.


259. For instance, one of the key findings of a legislatively appointed task force was a “lack of Certified Alcohol/Drug Counselors, particularly in western Nebraska.” NEBRASKA COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE, SUBSTANCE ABUSE TREATMENT TASK FORCE FINAL REPORT 11 (2000); see also DENISE C. HERZ & AMY L. POLAND, NEBRASKA COALITION OF JUVENILE JUSTICE, ASSESSING THE NEED FOR AND AVAILABILITY OF MENTAL HEALTH SERVICES FOR JUVENILE OFFENDERS, EXECUTIVE SUMMARY, 96 (2001).

260. “Thirty to 40 percent of juvenile arrestees and 65 to 80 of juvenile offenders in the youth rehabilitation and treatment centers at Geneva and Kearney need substance abuse treatment compared to only five percent of the general juvenile population.” NEBRASKA COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE, SUBSTANCE ABUSE TREATMENT TASK FORCE FINAL REPORT 5 (2000).
ited juvenile detention facilities.\footnote{261} Finally, the Youth Rehabilitation and Treatment Centers have limited services.\footnote{262}

Court, supervision, and detention resources might be significantly affected by the enactment of extended court jurisdiction. More judges may be needed to handle the additional hearings required by the changes, which include presiding over jury trials.\footnote{263} Court facilities may need to be modified, particularly for the separate juvenile courts where there are now only juvenile proceedings.\footnote{264} Additional probation and parole personnel may be needed to provide the supervision necessary to give offenders appropriate rehabilitative opportunities.

Thus, due to limited resources, the juvenile court may not be capable of assuming the additional responsibilities that accompany extended juvenile jurisdiction. Extended juvenile jurisdiction may also remove the incentive for the state to rehabilitate juveniles and would place the burden on the juvenile to become rehabilitated or face the imposition of the adult sentence.\footnote{265}

Extended juvenile jurisdiction, however, allows prosecutors and judges, who often desire to give a child an opportunity for rehabilitation, the ability to do so while fulfilling their obligation to protect public safety.\footnote{266} Further, the concept of extended juvenile jurisdiction provides the state with greater flexibility in determining an appropriate response to serious offenses committed by juveniles. Specifically, courts are not faced with an "either-or" dilemma in difficult cases.\footnote{267}

\footnote{261} See, e.g., \textsc{Denise C. Herz \& Amy L. Poland, Nebraska Coalition of Juvenile Justice, Assessing the Need for and Availability of Mental Health Services for Juvenile Offenders, Executive Summary, 4 (2001)} ("Similarly, the availability of detention facilities/programs and diversion programs varies because individual counties are financially responsible for them.").

\footnote{262} For instance, the Youth Rehabilitation and Treatment Center at Geneva (for females only) had an average daily population of 93 girls (the facility's rated capacity is 78 treatment beds), and the average stay was approximately nine months. \textsc{Nebraska Department of Health and Human Services, Youth Rehabilitation and Treatment Center-Geneva, 2001-2002 Annual Report (2001-02)}.

\footnote{263} See generally \textsc{Moore, supra note 255}; see also \textsc{Podkopacz \& Feld, supra note 239}.

\footnote{264} For instance, most Separate Juvenile Court facilities in Nebraska do not have jury boxes or jury deliberation rooms. See also \textsc{Brummer, supra note 220, at 802-03 (discussing the lack of facilities in most juvenile court rooms)}.

\footnote{265} \textsc{Proposed Code § 185 (listing factors court must consider in determining whether to exercise extended jurisdiction); Proposed Code §189 (in deciding discharge issues, court must consider public safety); see also Brummer, supra note 220, at 808 ("The concept of extended juvenile jurisdiction provides the state with great flexibility in determining an appropriate response to serious offenses committed by juveniles.")}.

\footnote{266} "Either" retain jurisdiction for a comparatively brief time "or" file the case in criminal court, as Nebraska's juvenile justice system now requires. See, e.g., \textsc{Moore, supra note 255, at 131-32 ("The judge can step away from the 'all or nothing' mentality of choosing one system over the other and use both the juvenile system and the adult criminal system to satisfy the desired goal.")}.
The hope is an adult sentence will provide incentive to the juvenile offender to take rehabilitation seriously. When coupled with the provision regarding exclusive original jurisdiction in delinquency proceedings, the extended jurisdiction scheme cements the notion that juvenile courts are best equipped to determine the appropriate sanctions and rehabilitative services for juvenile offenders.

V. CONCLUSION

The legal system is not the most effective tool to address the social problems of children and their families; however, when children need state protection, supervision, rehabilitation or mental health treatment, it is sometimes the only tool available. Then, it is the last resort, the final chance at safety, supervision, rehabilitation, or necessary mental health services for the most vulnerable of our citizens. Children deserve laws that affect them in a clear, thoughtful, fair, and functional manner.

Though dissatisfaction with the present code has been expressed for years, there are understandable concerns about the risks and uncertainty of starting afresh. Although Nebraska case law in the juvenile area is modest in volume, a new juvenile code would require courts and practitioners to operate without the guidance of established case law regarding statutory interpretation. Further, the inadequacies of our systems' responses to the problems of our children are as likely to be caused by inadequate resources in our child protection, juvenile justice, and mental health service systems as they are caused by problems in the existing juvenile code.

Still, the juvenile code represents our children's legal system. To the extent that the code is inconsistent, confusing, and labyrinthine, the experience of children in our system will be the same. The Proposed Code is no panacea for every existing ill confronting Nebraska's children and their families. It is, however, more clear, organized, flexible, and protective of children's rights than the existing collection of statutes, which over many years, has grown by accretion and not design.

The Proposed Code and this Article's admittedly brief overview reflect our attempt to stimulate discussion and action that will improve the statutory framework for our children who need the state's intervention. We have attempted to highlight the scholarly and scientific literature which motivated much of the Proposed Code. It clearly is a controversial proposal. Our highest aspiration is not the adoption of

268. Proposed Code § 158.
269. See generally, Brummer, supra note 220; Randi-Lynn Smallheer, Sentence Blending and the Promise of Rehabilitation: Bringing the Juvenile Justice System Full Circle, 28 HOFSTRA L. REV. 259 (1999).
the Proposed Code, but a conscientious and considered discussion of how Nebraska can best serve its least powerful, but most important constituency. They deserve no less.
APPENDIX A: PROPOSED REVISED NEBRASKA JUVENILE CODE

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Sec. 10. Child in need of state mental health treatment; defined.
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Sec. 12. Child in need of state rehabilitation or law violator; defined.
Sec. 13. Child in need of state supervision or supervised child; defined.
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Sec. 25. Extended juvenile jurisdiction; defined.
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Sec. 34. Mediator; defined.
Sec. 35. Mental disorder; defined.
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Sec. 53. Support of children under court jurisdiction; general provisions.
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Sec. 55. Support of children under court jurisdiction; determination.
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Sec. 59. Support of children under court jurisdiction; county liable; when.
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Sec. 61. Protected children; sections applicable.
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Sec. 64. Child protection investigations; law enforcement and department duties.
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Sec. 67. Child protection investigations; immunity.
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Sec. 69. Protected children; court jurisdiction.
Sec. 70. Protected children; department; powers and duties.
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Sec. 73. Protected children; emergency custody; report; continued emergency custody; hearing; when.
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Sec. 110. Juvenile review panel; review disposition; when.
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Sec. 129. Court-ordered permanency options; termination of parental rights; pleadings; service of process.
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Sec. 165. Law violators; petition.
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(g) Nebraska Juvenile Code; appeals; setting aside an adjudication.
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Sec. 213. Juvenile court; setting aside adjudications.

Sec. 240. Relinquishment of parental rights; procedure; revocation.

Sec. 1. Act, how cited. Sections 1 to 213 of this act shall be known and may be cited as the Nebraska Juvenile Code.

(a) General provisions.

Sec. 2. Purposes of the Nebraska Juvenile Code. The purposes of the Nebraska Juvenile Code are:
(1) To protect children from abuse, neglect, and abandonment;
(2) To protect abused children, neglected children, and abandoned children;
(3) To protect the family;
(4) To protect children in need of mental health services; and
(5) To protect the public by:
(a) Holding children who violate the law responsible for their actions; and
(b) Providing rehabilitative services for children who violate the law.

Sec. 3. General provisions; definitions, where found. For purposes of the Nebraska Juvenile Code the definitions in sections 4 to 48 of this act apply.

Sec. 4. Abandoned child; defined. Abandoned child means a child who has no parent willing or able to care for the child. No contact between the child and the child's parent for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

Sec. 5. Abused child; defined. (1) Abused child means a child who has been:
(a) Present when a parent committed an act of domestic abuse. Act includes a single act, multiple acts, or a continuing course of conduct, and present means physically present or able to see or hear;
(b) Confined or punished under circumstances which either:
(i) Created a substantial risk of imminent serious harm or death to the child; or
(ii) Resulted in serious harm or death to the child;
(c) Deprived of care under circumstances that either:
(i) Created a substantial risk of imminent serious harm or death; or
(ii) Resulted in serious harm or death to the child; or
(d) Placed in a situation that endangers his or her life or physical or mental health under circumstances that either:
(i) Created a substantial risk of imminent serious harm or death; or
(ii) Resulted in serious harm or death to the child.
(2) For purposes of this section:
(a) Domestic abuse means the occurrence of one or more of the following acts between household members: Attempting to cause or intentionally, knowingly, or recklessly causing physical injury with or without a deadly weapon; or placing, by physical menace, another in fear of imminent physical injury. Physical injury means physical pain or any impairment of physical condition;
(b) Household members include spouses or former spouses and other individuals who are presently residing together or who have resided together in the past, other individuals who have a child in common whether or not they have been married or have lived together at any time, and other individuals related by consanguinity or affinity;
(c) Serious harm means either serious physical injury or serious mental or emotional injury or sexual abuse or sexual exploitation.
Sexual abuse includes sexual assault as described in section 28-319 or 28-320 and incest as described in section 28-703; (d) Serious mental or emotional injury means mental or emotional impairment which now or in the future is likely to be evidenced by serious mental, behavioral, or personality disorder, including severe anxiety, depression or withdrawal, untoward aggressive behavior, seriously delayed development, or similar serious dysfunctional behavior; and (e) Serious physical injury means an injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sec. 6. Administrator; defined. Administrator means the Administrator of the Office of Juvenile Services or the administrator's designee.

Sec. 7. Adult sentence; defined. Adult sentence means punishment, as authorized by the Nebraska Criminal Code, subject to the limitation in section 179 of this act, for acts for which a child is adjudicated in need of state rehabilitation.

Sec. 8. Case plan; defined. Case plan means a specific written plan prepared by the department or probation office designed to correct, eliminate, or ameliorate the circumstances or conditions which caused the child to be in need of state protection, supervision, or rehabilitation.

Sec. 9. Child; defined. Child means an individual who has not attained his or her nineteenth birthday.

Sec. 10. Child in need of state mental health treatment; defined. Child in need of state mental health treatment means a child (1) who, as a result of a mental disorder (a) is in danger of serious physical harm or (b) manifests a serious risk of serious physical harm to himself or herself or to others and (2) for whom immediate mental health treatment can be obtained only through an involuntary placement in a mental health center.

Sec. 11. Child in need of state protection or protected child; defined. Child in need of state protection or protected child means a child reported, alleged, or determined to be an abused child, a neglected child, or an abandoned child.

Sec. 12. Child in need of state rehabilitation or law violator; defined. Child in need of state rehabilitation or law violator means a child who has committed an act that would constitute a felony or misdemeanor under the laws of this state or a misdemeanor under a city or village ordinance.

Sec. 13. Child in need of state supervision or supervised child; defined. (1) Child in need of state supervision or supervised child means a child who is twelve years of age or older for whom there is no pending inves-
tigation into a report of abuse, neglect, or abandonment; no pending petition alleging the child is in need of state rehabilitation; no current supervision by the court; no pending criminal charges; or no current placement or commitment to the department or the office. The court shall also find the child:
(a) To have persistently absented himself or herself from his or her responsible adults without sufficient cause, permission, or justification despite substantial attempts to remedy the conditions contributing to the behavior;
(b) To be habitually truant from school, while subject to compulsory school attendance, despite substantial attempts to remedy the situation through:
(i) Appropriate child rearing or disciplinary practices of the child's responsible adults;
(ii) The procedures described in section 79-209; or
(iii) Voluntary participation by the child's responsible adults and the child in services offered by the department; or
(c) To have persistently disobeyed the reasonable and lawful demands of the child's responsible adults and to be beyond their control despite substantial attempts by the child's responsible adults to remedy the conditions contributing to the behavior.
(2) For purposes of this section, substantial attempts means the following interventions designed to prevent the child from engaging in the conduct described in this section. Substantial attempts include:
(a) Reasonable parenting practices;
(b) Good faith participation in family or individual counseling; and
(c) Voluntary and good faith participation by the child's responsible adults and the child in services offered by the department.
Sec. 14. Commitment; defined. Commitment means a court order assigning custody of a child as authorized under the Nebraska Juvenile Code.
Sec. 15. County attorney; defined. County attorney means the elected county attorney and all deputy county attorneys in the office of an elected county attorney.
Sec. 16. Custodian; defined. Custodian means an individual or agency, other than a parent or guardian, who stands in loco parentis to the child solely because the individual or agency has custody of the child.
Sec. 17. Custody; defined. Custody means physical control and responsibility for the care and supervision of a child. Care is providing necessary food, shelter, education, placement, training, and medicine. Medicine includes necessary medical, dental, and mental health care, including emergency care. When a child is placed out of home, care also includes (1) providing the opportunity for religious or spiritual
practice and observation consistent with the beliefs of the child and the child's family; and (2) comprehensive medical and mental health assessments within five days of such placement. Supervision is the authority to direct the activities of a child. A court with personal jurisdiction of a child has custody of the child for purpose of determining placement and care of the child consistent with the Nebraska Juvenile Code.

Sec. 18. Date a child entered foster care; defined. Date a child entered foster care means the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect or the date that is sixty days after the date on which the child is removed from the home.

Sec. 19. Department; defined. Department means the Department of Health and Human Services.

Sec. 20. Detention; defined. Detention of a child means the placement or commitment of a child in a juvenile detention facility.

Sec. 21. Diligent efforts; defined. Diligent efforts means a course of conduct which is followed by a parent which results in a reduction in risk to the child in the child's home that would prevent the child's removal or allow the child to be safely placed permanently back in the home. After a disposition order has been entered, the course of conduct designed to reduce the risks to the protected child is the case plan.

Sec. 22. Emancipated child; defined. Emancipated child means a child who:
(1) Has entered into a valid marriage, whether or not such marriage was terminated by dissolution;
(2) Has been tried as an adult for a criminal offense, except a misdemeanor traffic offense, under state or federal law;
(3) Is on active duty with any of the armed forces of the United States; or
(4) Has been ordered emancipated pursuant to section 195 of this act.

Sec. 23. Emergency custody, defined. Emergency custody means the temporary responsibility for the physical control and supervision of a child taken in an emergency situation as authorized under the Nebraska Juvenile Code.

Sec. 24. Expanded juvenile jurisdiction; defined. Expanded juvenile jurisdiction means the authority of the juvenile court to determine custody of a child found to be in need of state rehabilitation until the child's twenty-first birthday. Expanded juvenile jurisdiction is obtained by the child's consent, as provided in section 167 of this act.

Sec. 25. Extended juvenile jurisdiction; defined. Extended juvenile jurisdiction means the authority of the juvenile court to determine the
custody of a child found to be in need of state rehabilitation beyond the child's eighteenth birthday.

Sec. 26. Extended juvenile jurisdiction offender; defined. Extended juvenile jurisdiction offender means a child designated to be subject to both a juvenile disposition and an adult sentence imposed by the juvenile court.

Sec. 27. Foster care; defined. Foster care means twenty-four-hour a day substitute care for a child placed away from his or her parents or guardian and for whom the department has placement and care responsibility.

Sec. 28. Guardian; defined. Guardian means a guardian appointed for a child by a court other than a permanent guardian.

Sec. 29. Juvenile court; defined. Juvenile court or court means either a county court sitting as a juvenile court or a separate juvenile court.

Sec. 30. Juvenile detention facility; defined. Juvenile detention facility means a facility or institution operated by a political subdivision or political subdivisions or the office for the secure custody and treatment of children younger than eighteen years of age, including children under the jurisdiction of a juvenile court who are serving a sentence pursuant to a conviction in a county court, district court, or juvenile court or who are in held in detention while waiting disposition of charges against them. Juvenile detention facility does not include any facility or institution operated by the Department of Correctional Services.

Sec. 31. Juvenile parole officer; defined. Juvenile parole officer means an employee of the office with case management responsibility only for children in need of state rehabilitation, whether conditionally released from a youth rehabilitation and treatment center or juvenile detention center or directly committed to the custody of the office. Juvenile parole officers shall not also be assigned case management responsibilities for protected children or children in need of state supervision.

Sec. 32. Law enforcement officer; defined. Law enforcement officer means any person who is responsible for the prevention or detection of crime or the enforcement of the penal, traffic, or highway laws of the state or any political subdivision of the state for more than one hundred hours per year and is authorized by law to make arrests.

Sec. 33. Mediation center; defined. Mediation center means a center that has applied for and received approval from the Director of the Office of Dispute Resolution under section 25-2909.

Sec. 34. Mediator; defined. Mediator means an individual who (a) has completed at least thirty hours of training in conflict resolution techniques, neutrality, agreement writing, and ethics set forth in section
Sec. 35. Mental disorder; defined. Mental disorder means a mental disease, dysfunction, or disability or emotional condition that has substantial adverse effects on a child's ability to function so as to jeopardize his or her health, safety, or welfare or that of others. Substantial adverse effects may be evidenced by (1) recent attempts at, or threats of, suicide, (2) recent attempts at, or threats of, serious bodily harm to him or herself, (3) recent violent acts or threats of violence or by placing others in reasonable fear of such harm, (4) the inability to provide for his or her essential human needs, including food, clothing, shelter, essential medical care, or personal safety, (5) repeated and escalating loss of cognitive or volitional control over his or her actions, or (6) severe deterioration in routine functioning. The presence of epilepsy, mental retardation, organic brain syndrome, physical or sensory handicaps, or brief periods of intoxication caused by alcohol or other substances is not sufficient to meet the criteria for a child in need of state mental health treatment but does not exclude a child otherwise determined to fulfill the criteria in this section.

Sec. 36. Mental health center; defined. Mental health center means a facility where shelter, food, and counseling, diagnosis, treatment, care, or related services are provided for a period of more than twenty-four consecutive hours to individuals residing at such facility who have a mental disorder. The facility shall demonstrate the ability to provide mental health treatment specifically for children. A mental health center includes a hospital providing such services.

Sec. 37. Neglected child, defined. Neglected child means a child whose parent has:
(1) Left the child unattended in a motor vehicle under conditions creating a substantial risk of harm to the child if such child is six years of age or younger;
(2) Deprived the child of care; or
(3) Placed the child in a situation that endangers the child's life or physical or mental health.

Sec. 38. Office; defined. Office means the Office of Juvenile Services.

Sec. 39. Parent; defined. Parent means a biological or adoptive father or mother or permanent guardian of a child.

Sec. 40. Parole; defined. Parole means conditional release from a youth rehabilitation and treatment center supervised by the office pursuant to the Health and Human Services, Office of Juvenile Services Act.
Sec. 41. *Permanency plan; defined.* Permanency plan means a specific written plan prepared by the department to provide a substitute, stable, long-term home for a child in need of state protection or supervision when return to the child's family is not possible or is not in the child's best interests.

Sec. 42. *Permanent guardian; defined.* Permanent guardian means an adult who has a court-ordered fiduciary relationship with a child in which the permanent guardian has the custody of the child and the powers and duties under section 30-2613. A permanent guardianship endures until the child reaches the age of majority, is emancipated, or the permanent guardianship is terminated as provided in sections 129 to 132 of this act or section 30-2614.

Sec. 43. *Placement; defined.* Placement means the designation by the individual or agency having physical control of a child of where and with whom the child will live.

Sec. 44. *Probation; defined.* Probation means a disposition under which a child adjudicated in need of state supervision or in need of state rehabilitation is released by a court to supervision by a probation officer and is subject to conditions imposed by the court.

Sec. 45. *Protective services; defined.* Protective services means services and interventions designed to correct, eliminate, or ameliorate the circumstances or conditions creating the risk of harm which caused the child to be in need of state protection.

Sec. 46. *Responsible adult; defined.* Responsible adult means a child's parent, guardian, or custodian.

Sec. 47. *Termination of parental rights; defined.* Termination of parental rights means complete severance by court order of the legal relationship, with all its rights and responsibilities, between child and parent. Termination of parental rights includes termination of a permanent guardianship.

Sec. 48. *Traffic offense; defined.* 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. 49. *General provisions; department and juvenile courts; service provision; policy.* (1) For purposes of implementation of the Nebraska Juvenile Code:
(a) The department may provide services to children and families on a voluntary basis to effect the purposes of the code;
(b) The department shall insure that all services necessary to effect the purposes of the code are available to every child committed to the department and to such child's family;
(c) The department shall not be required to provide or pay for court-ordered services for any child not committed to the department or for court-ordered services provided to a family of a child not committed to the department; and

(d) The juvenile court may develop, coordinate, contract for, or administer such services as it deems appropriate for children and families within the jurisdiction of the juvenile court.

(2) The following caseload standards apply under the Nebraska Juvenile Code: The director of Health and Human Services shall supervise the delivery of all services to children committed to the department and their families. The director shall establish and maintain caseloads that permit adequate, timely, and in-depth investigations and services to children and families. In establishing the standards for such caseloads, the director shall consider differing workload factors that may be due to geographic factors, types of case loads, office location, and travel required to provide a timely response in the investigation of abuse and neglect, the protection of children and the public, and the provision of services to children and families in a uniform and consistent statewide manner. The director shall consult with appropriate employee representatives and with appropriate professional and academic associations and groups in establishing such standards.

(3) The department and juvenile courts shall liberally apply and implement the Nebraska Juvenile Code so that the purposes of the code, stated in section 2 of this act, are carried out.

Sec. 50. General provisions; juvenile court jurisdiction. (1) The juvenile court has exclusive original jurisdiction over all proceedings relating to children residing or found in the state who are alleged to be in need of state:

(a) Protection;
(b) Supervision;
(c) Rehabilitation;
(d) Mental health treatment; or
(e) Emancipation.

(2) The juvenile court also has jurisdiction over:

(a) The proceedings for termination of parental rights as provided in the Nebraska Juvenile Code;
(b) The proceedings for termination of parental rights as provided in section 42-364;
(c) Any child who has been voluntarily relinquished pursuant to section 240 of this act for adoption to the department or any licensed child placement agency licensed by the department;
(d) The adoption or guardianship proceedings for any child over which the juvenile court has jurisdiction; and
(e) The paternity determination for any child over which the juvenile court has jurisdiction.
Sec. 51. General provisions; control conduct of a person; notice; hearing; temporary order; violation of order; penalty. On application of a party or on the court's own motion, the court may restrain or otherwise control the conduct of a person if a petition has been filed under the Nebraska Juvenile Code and the court finds that such conduct is or may be detrimental or harmful to the child. Notice of the application or motion and an opportunity to be heard thereon shall be given to the person against whom such application or motion is directed, except that the court may enter a temporary order restraining or otherwise controlling the conduct of a person for the protection of a child without prior notice if it appears to the court that it is necessary to issue such order forthwith. Such temporary order shall be effective not to exceed ten days and shall not be binding against any person unless he or she has received a copy of such order. Any individual who violates an order restraining or otherwise controlling his or her conduct under this section is guilty of a Class II misdemeanor and may be proceeded against as described in sections 42-928 and 42-929.

Sec. 52. Support of children under court jurisdiction; sections applicable. Sections 52 to 60 of this act apply for the determination of support for all children within the jurisdiction of the juvenile court.

Sec. 53. Support of children under court jurisdiction; general provisions. (1) Unless parental rights are terminated, parents are responsible for the financial support of their children. Whenever the child is placed or committed by the juvenile court to someone other than the child's parent, including placement with a state agency, when medical, psychological, or psychiatric evaluation or treatment is provided under order of the court, or when a child is committed to a mental health center as provided in sections 197 to 211 of this act, the court shall make a determination of financial support to be paid by a parent for the costs of such placement, evaluation, commitment, or treatment.

Sec. 54. Support of children under court jurisdiction; court jurisdiction. (1) For a child previously found to be within the jurisdiction of the juvenile court, the juvenile court has exclusive jurisdiction in all matters arising under Chapter 42, article 3, relating to the support or custody of such child. If such cases are filed in the county court or district court, they shall be transferred to the docket of the separate juvenile court or county court upon a finding that any child named in such case is within the jurisdiction of the juvenile court.

(2)(a) All juvenile court orders providing for child support or spousal support as defined in section 42-347 shall be governed by sections 42-347 to 42-381 and sections 52 to 60 of this act.

(b) Certified copies of such orders shall be filed by the clerk of the separate juvenile court or county court with the clerk of the district
court who shall maintain a record as provided in subsection (6) of section 42-364.
(c) There shall be no fee charged for the filing of such certified copies.

Sec. 55. Support of children under court jurisdiction; determination. (1) Support shall be determined in accordance with the Income Withholding for Child Support Act. This determination may be made at the hearing at which placement, evaluation, commitment, or treatment is determined or at a separate hearing. The rules of evidence shall not apply during the court's determination of support. If a separate hearing is held, notice to the parent shall be provided at least five days prior to the separate hearing.
(2) In making its determination, the court shall consider:
(a) The factors listed in the Income Withholding for Child Support Act;
(b) The cost of the care and support of the child; and
(c) The parent's ability to pay, including the parent's ability to provide health care benefit plan coverage which would pay for some or all of the health care expenses of the child.
(2)(a) The court may order a parent to obtain or continue to provide health care benefit plan coverage for the child or to pay over any plan benefit sums received as a result of such coverage for the child.
(b) The payment of any deductible under the health care benefit plan covering the child is the responsibility of the parent.

Sec. 56. Support of children under court jurisdiction; enforcement. If the parent willfully fails or refuses to pay any amount ordered or fails or refuses to pay over any health care plan benefit sums received, the court may proceed against the parent as for contempt, either on the court's own motion or on the motion of the county attorney or authorized attorney as provided in section 43-512 or execution may be issued at the request of any individual, agency, or facility treating or maintaining such child.

Sec. 57. Support of children under court jurisdiction; court order; effect. (1) An order of support entered under sections 52 to 60 of this act shall have the same force and effect as a civil judgment under the Income Withholding for Child Support Act.
(2) Any amounts received by the court under such act shall be transmitted to the individual, agency, facility, or institution having custody of the child the support is for or to an individual, agency, facility, or institution which provided services to such child in payment for services rendered.

Sec. 58. Support of children under court jurisdiction; modifications. (1) The court may at any time, with proper notice to the parties, revise or alter the order of payment for support because of a change in the circumstances of the parties.
(2) The juvenile court shall retain jurisdiction over a parent ordered to pay support for the purpose of enforcing such support order for so long as such support remains unpaid, but for not more than ten years after the nineteenth birthday of the youngest child for whom support was ordered.

Sec. 59. Support of children under court jurisdiction; county liable; when. If no provision is otherwise made by law for the support or payment for the support of the child, such support shall be paid, when approved by an order of the court, out of a fund which shall be appropriated by the county in which the petition is filed. The amount to be paid for education pursuant to this section shall not exceed the average cost for education of a public school student in the county where the child is placed and shall be paid only for education in kindergarten through grade twelve.

Sec. 60. Support of children under court jurisdiction; children in foster care; exemptions from costs of higher education; when. (1) State postsecondary education institutions, meaning the University of Nebraska, the state colleges, and the community colleges, shall waive higher education costs for an eligible student as provided in this section. Higher education costs shall not include any amounts in excess of those allowed by section 529 of the Internal Revenue Code. For purposes of this section, higher education costs means:

(a) The certified costs of tuition and fees, books, supplies, and equipment required for enrollment or attendance at the institution in which the student enrolls; and
(b) If the student is enrolled on at least a half-time basis, reasonable room and board expenses based on the minimum amount applicable for the institution during the period of enrollment.

(2) Eligible student means a student who:

(a) Preceding the student’s enrollment at a state postsecondary education institution, was placed with or committed to the department for any nine of any consecutive twenty-four months after the student’s twelfth birthday and prior to the student’s nineteenth birthday; and
(b) While with the department, either:

(i) Was adopted;
(ii) Became the ward of a permanent guardian; or
(iii) Reached the age of majority;
(c) Has graduated from an accredited high school or has completed general educational development (GED) requirements;
(d) Has satisfied admission requirements for admission to a state postsecondary education institution;
(e) Has enrolled in a state postsecondary education institution not later than the student’s twenty-first birthday and the earlier of:

(i) The third anniversary of the date the child was discharged from foster care; or
(ii) The date the student graduated from high school or completed the
general educational development requirements; and
(c) Meets the institution's requirements for establishing residency for
the purpose of paying instate tuition.
(3) The student remains eligible for the waiver so long as the student
maintains good academic standing as defined by the state postsecon-
dary education institution.
(4) The waiver of tuition shall be valid for one degree, diploma, or
certificate from a community college and one baccalaureate degree.
Receipt of the degree, diploma, or certificate from a community col-
lege shall precede receipt of the baccalaureate degree.
(5) A student who reaches the age of majority while placed with or
committed to the department solely as a child in need of state rehabili-
tation or a child in need of state supervision is not an eligible student.

(b) Children in need of state protection (Protected children)

Sec. 61. Protected children; sections applicable. All proceedings regard-
ing children in need of state protection are governed by sections 61 to
113 of this act.

Sec. 62. Child in need of state protection; policy. When a child is al-
leged in a report required by section 63 of this act, alleged in a petition
filed in court, or determined by the court to be a child in need of state
protection, the health and safety of the child shall be of paramount
concern. When state protection is required, the least intrusive and
least restrictive method consistent with the needs of the child shall be
employed. Any services required to insure the protection of the child
and to effect the other purposes of the Nebraska Juvenile Code shall
be provided as close to the home community of the child as possible.

Sec. 63. Child protection investigations; reports; requirements.
(1)When an individual has reasonable cause to believe that a child is
or may be in need of state protection, he or she shall cause a report to
be made to the proper law enforcement agency or to the department
on the toll-free number established by subsection (2) of this section.
Such report may be made orally by telephone with the caller giving his
or her name and address, shall be followed by a written report, and to
the extent available shall contain the address and age of the child in
need of state protection, the address of the person or persons having
custody of the child in need of state protection, the nature of the condi-
tions and circumstances which caused them to make the report, any
evidence of previous abuse or neglect including the nature and extent,
and any other information which in the opinion of the caller may be
helpful in establishing whether the child is in need of state protection
and the identity of the responsible adult. A law enforcement agency
receiving a report under this subsection shall notify the department of
the report on the next working day by phone or mail.
(2) The department shall establish a statewide toll-free number to be used by any individual any hour of the day or night, any day of the week to make reports required by subsection (1) of this section. All reports not previously made to a law enforcement agency under such subsection shall immediately be made to such agency by the department on a form provided by the department.

(3) The department shall file each report of suspected abuse or neglect in the state Child Protection Registry maintained in the department as provided in sections 264 to 274 of this act.

Sec. 64. Child protection investigations; law enforcement and department duties. (1) All reports alleging that a child is or may be a child in need of state protection shall be investigated.

(2) Law enforcement shall investigate every report alleging a child is or may be a child in need of state protection to determine whether a crime has been committed. The department shall investigate all such reports to determine whether the child or the child's family is in need of services.

(3) The department and law enforcement shall coordinate and collaborate with each other to insure the investigations required by this section are conducted in a manner designed to:
   (a) Insure the child's safety;
   (b) Minimize trauma to the child;
   (c) Determine whether the child is in need of state protection;
   (d) Protect the rights of any person accused or suspected of child abuse, neglect, or abandonment; and
   (e) Complete the investigation in a timely manner.

(4) Investigations shall be completed as soon as practicable, consistent with the safety of the child or children, the rights of all subjects of investigations, and public safety.

(5) The county attorney in the county where the child resides and the county in which the investigation occurs, if they are different counties, shall be advised, on a form provided by the department or the investigating law enforcement agency, of every investigation regarding a child alleged to be in need of state protection.

Sec. 65. Child protection investigations; interview of child. (1) A child alleged or suspected to be in need of state protection shall be interviewed in a safe place conducive to good interviewing practice. Good interviewing practice includes, but is not limited to, using language that is developmentally appropriate for the child being interviewed. The interview may be conducted:
   (a) In any public place or in any private place where the interviewers otherwise have a right to be present; and
   (b) Outside the presence of the child's parent.

(2) An individual in charge of a public place where an interview of a child alleged or suspected to be in need of state protection takes place
shall be notified of the interview but may not reveal the occurrence of
the interview or the content of the interview to anyone and may not
impede or obstruct the interview in any manner. Intentional, know-
ing, or willful violation of this subsection is a Class I misdemeanor.
Reckless or negligent violation of this subsection is a Class III
misdemeanor.

(3) An individual conducting, during an investigation, an interview of
a child alleged or suspected of being in need of state protection shall
have received specialized training regarding interviewing children
prior to conducting such an interview. Specialized training shall in-
clude training regarding the cognitive, linguistic, and emotional devel-
opment of children.

Sec. 66. Child protection investigations; notifications required. (1)
Upon completion of the investigation under section 64 of this act:

(1) In situations of alleged out-of-home abuse or neglect, the person or
persons having custody of the child or children alleged to be in need of
state protection shall be given written notice of the results of the in-
vestigation and any other information the law enforcement agency or
department deems necessary. Such notice and information shall be
sent by first-class mail; and

(2) The subject of the report shall be given written notice of the deter-
mination of the case and whether the subject of the report will be en-
tered into the Child Protection Registry pursuant to subdivision (1),
(2), or (3) of section 216 of this act. Such notice to the subject shall be
sent by certified mail to the subject’s last-known address and shall
include:

(a) The nature of the report;
(b) The classification of the report; and
(c) Notification of the subject’s right to a hearing and to an appeal in
accordance with section 219 of this act.

Sec. 67. Child protection investigations; immunity. An individual par-
ticipating in an investigation or the making of a report pursuant to
sections 63 to 66 of this act or participating in a judicial proceeding
resulting therefrom shall be immune from any liability, civil or crim-
inal, that might otherwise be incurred or imposed, except for mali-
ciously false statements.

Sec. 68. Child protection investigations; violations; penalty. An indi-
vidual who willfully fails to make a report required by sections 63 to
66 of this act or knowingly releases confidential information, other
than as provided by law, shall be guilty of a Class III misdemeanor.

Sec. 69. Protected children; court jurisdiction. (1) (a) The juvenile court
has exclusive original jurisdiction over every case in which a child is
alleged to be in need of state protection. The juvenile court’s subject
matter jurisdiction begins when continued emergency custody pro-
ceedings regarding a protected child are instituted. If a petition alleg-
ing a child to be a protected child is filed, the jurisdiction of the court
continues until the child is found not to be in need of state protection.
The juvenile court may find that a child is not in need of state protec-
tion at the adjudication hearing or any time thereafter.
(b) If the court finds a child to be in need of state protection, only the
court may determine the child to be no longer in need of state
protection.
(c) The juvenile court has jurisdiction over all parties to an action re-
garding a child alleged or found to be in need of state protection. The
juvenile court’s jurisdiction over the department is limited as provided
in section 105 of this act.
(2) Personal jurisdiction attaches to a protected child when:
(a) The child is taken into emergency custody; or
(b) The child is named in a petition filed with the court and:
(i) An order for emergency custody is entered; or
(ii) If there is no order for emergency custody, the child or the child’s
parent is served notice of the action as provided in section 80 of this
act.
(3) The juvenile court has jurisdiction over every adult alleged or
found to be a responsible adult for a protected child.
(4) Personal jurisdiction does not attach to a parent of a protected
child until:
(a) The child is taken into emergency custody; or
(b) The child is named in a petition filed with the court and:
(i) An order for emergency custody is entered; or
(ii) If there is no order for emergency custody, the parent is served
with notice of the action as provided in section 80 of this act.
(5) Personal jurisdiction over a protected child or a parent based solely
on emergency custody of the protected child attaches only as long as
the emergency custody continues.
(6) If an order entered by the juvenile court regarding a protected
child conflicts with an order entered by another court, the order of the
juvenile court has precedence.

Sec. 70. Protected children; department; powers and duties. (1) The de-
partment shall care for every protected child placed with or committed
to it and shall decide what care is appropriate.
(2) The department shall provide protective services as required by a
disposition order regarding a protected child and shall provide protec-
tive services to the family of every protected child.
(3) Protective services may be provided without a court order if:
(a) No petition alleging a child to be in need of state protection has
been filed;
(b) The family requests or agrees to protective services; and
(c) The department determines protective services are appropriate and necessary.

Sec. 71. Protected children; emergency custody; requirements. (1) A law enforcement officer may take emergency custody of a protected child without a court order whenever it reasonably appears that a situation or set of circumstances exist which create an imminent risk of serious harm to a child. Only a law enforcement officer may take emergency custody of a protected child without a court order.

(2) A law enforcement officer taking a child into emergency custody under this section shall take reasonable measures to notify the child's responsible adult that the child is in emergency custody and the reasons the child was taken into emergency custody.

(3) A law enforcement officer taking a child into emergency custody under this section shall, as soon as practicable, deliver the child to the department.

Sec. 72. Protected children; emergency custody; department duties. When a child is taken into emergency custody, the department shall place the child in the least restrictive setting consistent with the best interests of the child as determined by the department, and the department shall supervise the placement. Except as provided in subdivision (1)(d) of section 74 of this act, a protected child shall not be placed in a juvenile detention facility. The department shall consent only to necessary emergency medical, dental, psychological, or psychiatric treatment so long as emergency custody continues.

Sec. 73. Protected children; emergency custody; report; continued emergency custody; hearing; when. (1) Within twelve hours after assuming emergency custody of a child without a court order, the law enforcement officer shall submit a written report describing the emergency to:

(a) The county attorney of the county where emergency custody was taken; and

(b) The department's office in or nearest to the county where emergency custody was taken.

(2)(a) Anytime after a protected child has been taken into emergency custody without a court order, a request for continued emergency custody may be filed with the court.

(b) The request for continued emergency custody may be filed ex parte.

(c) The request shall set forth the reasons the court should grant continued emergency custody, including the situation or circumstances creating the emergency.

(d) The request shall be supported by testimony or affidavit. The affidavit may be based on information and belief. No child under the age of thirteen shall be required or asked to sign the affidavit or to testify
in support of the request. If the request is supported solely by testimony, a written report describing the facts and circumstances creating the emergency shall be filed with the request.

(e) Any party may request, or the court may order without a request, a hearing regarding continued emergency custody. If a party requests a hearing regarding continued emergency custody, the court shall set a hearing. The hearing shall be held prior to the expiration of emergency custody.

(f) The rules of evidence shall not apply to hearings regarding continued emergency custody.

(g) In any proceedings regarding continued emergency custody, the state has the burden of showing that probable cause exists to believe that the child is in need of state protection and that an emergency exists.

(h) If the court finds there is probable cause to believe the child is in need of state protection and that an emergency exists, the court shall order continued emergency custody for a period not to exceed five judicial days.

(i) If the court orders continued emergency custody, the department shall consent only to necessary emergency medical, dental, psychological or psychiatric treatment so long as continued emergency custody continues.

Sec. 74. Protected children; emergency custody or continued emergency custody; restrictions. (1) A child in emergency or continued emergency custody shall not be held or placed in:

(a) An adult correctional facility;

(b) The secure youth confinement facility operated by the Department of Correctional Services;

(c) A youth rehabilitation and treatment center;

(d) A juvenile detention facility, except that a protected child may be held in such a facility for a period not to exceed five days if no other facility is reasonably available; or

(e) The custody of the office.

(2) Unless compelling reasons are demonstrated by clear and convincing evidence, a child's responsible adult may not request visitation during emergency or continued emergency custody.

(3) The court's order, whether granting or denying the request for continued emergency custody, shall be in writing and shall state the reasons therefore.

(4) Continued emergency custody proceedings may be conducted telephonically for good cause shown. If proceedings are conducted telephonically and testimony is taken, a recording shall be made of the proceeding. Any documents required by this subsection may be filed electronically for good cause shown.

(5) An order for continued emergency custody is not a final order.
Sec. 75. Protected children; emergency custody or continued emergency custody; duration. (1) No protected child shall be held in emergency custody longer than forty-eight hours without judicial review. If a court order granting continued emergency custody has not been issued within forty-eight hours after the child was taken into emergency custody without a court order, the child shall be released to the child's parent. Willful failure to release a protected child as required by this section shall constitute false imprisonment in the second degree under section 28-315.

(2) If no request for continued emergency custody is filed within the time limits in subsection (1) of this section and custody is restored to the protected child's parent, the county attorney shall provide the protected child's parent with a written report explaining why the protected child was taken into emergency custody. The report shall set forth the facts and circumstances creating the emergency. This report shall be provided the parent within seven days after custody of the protected child was restored to the parent.

Sec. 76. Protected children; continued emergency custody; petition or release; when. (1) A petition alleging the child to be in need of state protection may be filed before the expiration of continued emergency custody. The filing of a petition and all subsequent proceedings are governed by sections 77 to 113 of this act.

(2) If no petition alleging the child to be in need of state protection is filed before the expiration of continued emergency custody, the protected child shall be released to the custody of the protected child's parent. Failure to release a protected child as required by this section shall constitute false imprisonment in the second degree under section 28-315.

Sec. 77. Protected children; petition; parties. Parties to a court action involving an allegation that a child is in need of state protection are:

(1) The child;
(2) The child's guardian ad litem;
(3) The child's responsible adult;
(4) The department;
(5) The petitioner;
(6) The court appointed special advocate, if one has been appointed under the Court Appointed Special Advocate Act;
(7) The State Foster Care Review Board, in any case in which a protected child is in foster care;
(8) In the case of an Indian child as defined in the Nebraska Indian Child Welfare Act:
(a) The Indian custodian of the child and the Indian child's tribe through the tribal representative;
(b) Any person who intervenes as a party;
(c) Any person who is joined as a party; and
(d) Any other person deemed by the court to be important to a resolution that is in the best interests of the child; and

(9) In any termination of parental rights matter or permanent guardianship proceedings, the parties shall also include:
(a) The child's parents, including a noncustodial parent and an adjudicated or presumed father;
(b) The proposed guardian; and

(10) Any person entitled to notice of adoption proceeding involving the child.

Sec. 78. Protected children; petition; procedure. (1) An action seeking to have a child found to be in need of state protection shall be commenced by the filing a petition in the office of the clerk of the juvenile court.

(2) A petition alleging a child to be in need of state protection shall be filed only by:
(a) The county attorney;
(b) The department; or
(c) With the consent of the county attorney, any party.

(3) A petition alleging a child to be in need of state protection shall include:
(a) The name of the court and county in which the action is brought;
(b) The names of the parties;
(c) A statement of the facts, in ordinary and concise language, showing the child to be in need of state protection;
(d) Whether the child is subject to the Nebraska Indian Child Welfare Act, and if so:
   (i) The tribal affiliations of the child;
   (ii) The specific actions taken to notify the child's tribes and the results of those contacts, including the names, addresses, titles and telephone numbers of the persons contacted. The person shall attach to the motion as exhibits any correspondence with the tribes; and
   (iii) The specific efforts that were made to comply with the placement preferences under the Nebraska Indian Child Welfare Act or the placement preferences of the appropriate Indian tribes;
(e) Whether exceptionally endangering circumstances listed in section 79 of this act exist and the facts supporting that allegation;
(f) A request that the court determine whether support will be ordered under sections 52 to 60 of this act; and
(g) A statement as to whether the protected child is in emergency or continued emergency custody. If the protected child is in emergency or continued emergency custody:
   (i) A statement as to whether the petitioner is seeking continued custody of the protected child. If the petitioner is seeking continued emergency custody, the court shall set a hearing to determine the issue.
The hearing regarding continued emergency custody shall be conducted as provided in section 73 of this act;
(ii) The date, time and place of any hearing regarding the child’s continued emergency custody and a statement that at such hearing the protected child’s responsible adults have the rights listed in section 85 of this act; and
(iii) A copy of all documents filed with the court prior to filing of the petition.

(4) A petition alleging a child to be in need of state protection may include:
(a) A request for emergency custody of the child alleged to be in need of state protection;
(b) A request that a permanent guardian be appointed. A request for appointment of a permanent guardian may only be granted upon compliance with sections 125 to 128 of this act. A request that a permanent guardian be appointed shall include the applicable statutory ground or grounds for termination of parental rights found in section 131 of this act, a summary statement of facts warranting a finding that termination of parental rights would not be in the child’s best interests, and the qualifications of the proposed permanent guardian;
(c) A request for termination of parental rights to the child alleged to be in need of state protection. A request for termination of parental rights in a petition alleging a child to be in need of state protection may only be granted upon compliance with sections 129 to 132 of this act. A request for termination of parental rights shall include the applicable statutory ground or grounds found in section 131 of this act authorizing termination of parental rights and a summary statement of facts warranting a finding that termination of parental rights is in the child’s best interests; and
(d) If necessary, a request for any other relief that is in the child’s best interests.

(5) Every petition alleging a child to be in need of state protection shall be made on information and belief and shall be verified as provided in subdivision (7) of section 49-1504.

(6) Upon the filing of a petition alleging a child to be in need of state protection, the court may appoint a guardian ad litem for the child and counsel for the child’s responsible adult.

Sec. 79. Protected children; exceptionally endangering circumstances, enumerated. Exceptionally endangering circumstances are:
(1) The parent has committed, or has aided or abetted, attempted, conspired, or solicited to commit, first or second degree murder, voluntary or involuntary manslaughter, motor vehicle homicide when it constitutes a felony as defined in section 28-306, or assisting suicide as defined in section 28-307 of any child;
(2) The parent has committed knowing or intentional child abuse of any child under section 28-707;
(3) The parent has committed an assault that resulted in serious bodily injury to any child;
(4) The parent has committed against any child a sexual assault in the first or second degree as defined in section 28-319 or 28-320 or sexual assault against a child as defined in section 28-320.01;
(5) The parent has committed either a false imprisonment in the first degree or a kidnapping of any child;
(6) The child is an abandoned child;
(7) The parent has subjected any child to torture or chronic abuse, torture meaning intentionally or knowingly inflicting either physical or serious mental injury for any prolonged period and chronic meaning lasting a long time or recurring often;
(8) The parental rights to any child of the parent have been terminated involuntarily; or
(9) The parent of the child is found by the court to be mentally or developmentally unable to discharge parental responsibilities and to be unable to discharge parental responsibilities in the foreseeable future.

The court shall appoint a guardian ad litem to represent the parent in the proceeding if mental or developmental disability is alleged to be an exceptionally endangering circumstance.

Sec. 80. Protected children; petition; service of process. (1) Every party to an action seeking to have a child found by the court to be in need of state protection shall be served with a summons and a copy of the petition. The court shall endorse on the summons that the proceeding is one to find a child in need of state protection, shall set the time and place for an initial hearing, and shall cause service to be made.
(2) Except as provided in subsection (3) of this section, service shall be made in accordance with sections 25-505.01 to 25-514.01 and:
(a) Personal or residence service under section 25-505.01 shall be effected at least seventy-two hours before the time set for a hearing; and
(b) Certified mail service under section 25-501.01 shall be mailed at least five days before the date set for a hearing.
(3) Substitute and constructive notice may be permitted by the court, as provided in sections 25-517.02 to 25-527 and:
(a) Authorization of substitute or constructive service shall not expand the time a protected child can be held in custody without judicial review; and
(b) When the court authorizes substitute or constructive service, the court shall set hearings so parties who are the subject of such service have adequate time to prepare, consistent with the best interests of the child and the purposes of the Nebraska Juvenile Code.
(4) A party's voluntary appearance is the equivalent to service, except that a child's appearance is not the equivalent of service.
(5) A party may, either in writing or in open court on the record, waive the requirement for seventy-two-hour notice if the court finds the waiver to be in the child’s best interests and:
(a) If a child is twelve years of age or older, the child may waive his or her right to seventy-two-hour notice if the child has consulted with counsel or a guardian ad litem and the court finds such waiver to be knowing and voluntary. The court shall personally address the child and the child’s counsel or guardian ad litem before making such a finding; and
(b) If a child is under twelve years of age, the child’s counsel or guardian ad litem may waive the child’s right to seventy-two-hour notice. If the child is seven years old or older, the child’s counsel or guardian ad litem shall confer with the child prior to entering a waiver on the child’s behalf.

Sec. 81. Protected children; petition; initial hearing; purpose. The purposes of the initial hearing are to:
(1) Protect the best interests of the protected child;
(2) Insure adequate notice has been provided to all parties;
(3) Advise all parties of their rights;
(4) Appoint counsel and a guardian ad litem when appropriate;
(5) Determine continued custody and visitation;
(6) Determine support; and
(7) Set an adjudication hearing.

Sec. 82. Protected children; petition; initial hearing; requirements. (1) No sooner than seventy-two hours nor later than five days after service is effected as required, the court shall hold an initial hearing regarding the petition.
(2) The initial hearing shall be entirely on the record.
(3) All parties shall be present at the initial hearing. If a party has received service as required and does not appear at the initial hearing, the hearing shall not be continued unless the court finds a continuance is required in the interests of justice.

Sec. 83. Protected children; petition; initial hearing; excusal of child; when. (1) Upon prior application by any party, or on its own motion, the court may excuse the child in need of state protection from attending the hearing. In deciding whether to excuse the protected child, the court shall consider:
(a) Whether the protected child will be represented at the initial hearing by counsel or by a guardian ad litem;
(b) The wishes of the child;
(c) The child’s age and understanding of the proceedings;
(d) Any potential for physical, emotional, or psychological trauma to the protected child arising from the protected child’s physical presence at the hearing; and
(e) The importance of the protected child's physical presence to a just and fair outcome of the initial hearing.

(2) Any order excusing or denying a request for excusal of a protected child’s attendance at an initial hearing shall be in writing and shall include findings of fact and conclusions of law.

(3) An order excusing or denying a request for excusal of a protected child’s attendance at an initial hearing is not a final order.

Sec. 84. Protected children; petition; initial hearing; testimony of child; restrictions. (1) No party may call a protected child to testify at an initial hearing without the consent of the child and the child’s guardian ad litem. Consent of a child shall be found by the court to be knowing and voluntary. If the child is not capable of giving consent, counsel for the child has the authority to consent on the child's behalf. The court’s findings shall be in writing and shall include findings of fact and conclusions of law.

(2) If the court requires a protected child to testify at an initial hearing, the court may order allow the use of alternative modes of testimony.

Sec. 85. Protected children; petition; initial hearing; rights of parties. At the initial hearing, the parties shall be advised of their rights. Nothing in this section shall be construed as denying, limiting, or restricting any rights existing under either the Nebraska or United States Constitutions. Unless otherwise specified, all parties to any proceeding concerning children alleged to be in need of state protection shall have the right to:

(1) Receive notice;

(2) Have legal representation. The department shall be represented by the county attorney at all proceedings regarding a protected child as required in section 23-1201. If a conflict arises between the department and the county attorney regarding the prosecution of any case involving a protected child, an attorney employed or retained by the department may enter an appearance and represent the department’s interests in the case;

(3) Testify;

(4) Remain silent as to any matter of inquiry if the testimony sought to be elicited might tend to incriminate the party;

(5) Be present at all hearings unless excluded or excused as provided elsewhere in the Nebraska Juvenile Code;

(6) Conduct discovery;

(7) Bring motions;

(8) Subpoena witnesses;

(9) Argue in support of or against the petition;

(10) Present evidence;

(11) Cross-examine witnesses;
(12) Request trial court review of the disposition upon a showing either of a substantial change of circumstances or that the disposition was inadequate;
(13) Bring post-adjudication or post-disposition motions;
(14) Appeal final orders of the court; and
(15) Any other rights as set forth in statute.

Sec. 86. Protected children; petition; initial hearing; legal counsel; appointment; when.
(1) If the child in need of state protection is not represented by an attorney, the court shall determine the child's preferences regarding the proceedings if the child is of suitable age to express a preference. A protected child thirteen years of age or older shall be appointed counsel upon request.
(2) The court shall determine whether appointment of counsel for the child in need of state protection is necessary under all the circumstances, including the child's expressed preferences, the issues presented in the petition, and whether the child's rights can adequately be protected by the guardian ad litem.
(3) If the protected child desires counsel but is unable to employ counsel, the court shall appoint counsel to represent the child if the court finds that such an appointment is necessary.
(4) The court may, on its own motion, or the motion of any party, appoint counsel for a protected child at any stage of the proceedings.
(5) The court may terminate an appointment of counsel for a protected child under thirteen years of age if the court determines the protected child's rights are being adequately protected by the protected child's guardian ad litem. An order terminating the appointment of counsel shall be in writing and shall include findings of fact and conclusions of law. An order terminating appointment of counsel is a final order and may be appealed as provided in section 212 of this act.
(6) Counsel for the child shall not also act as the child's guardian ad litem.

Sec. 87. Protected children; petition; initial hearing; answer; adjudication; when. At the initial hearing:
(1) After advisement of rights as required in section 85 of this act, the court may accept an answer of admission, no contest, or denial from the protected child's parent to all or any part of the petition;
(2) The protected child's parent may remain mute. In such case, the court shall enter an answer of denial for the parent;
(3) If the answer is admission or no contest, the court shall insure the answer is knowing and voluntary, and that a factual basis exists for the answer before accepting it;
(4) If the court accepts the answer of admission or no contest, the allegations in the petition shall be found to be true and an adjudication based on the answer shall be entered finding the child to be in need of state protection; and
Upon the entry of adjudication finding the child to be in need of state protection based on an answer of admission or no contest, the court shall:

(a) Order the department to prepare and file with the court a proposed case plan for the protected child;

(b) Set a disposition hearing; and

(c) Enter any other orders required by section 89 of this act.

Sec. 88. Protected children; petition; answer; denial; adjudication hearing; when; continuances. (1)(a) If the answer is a denial, the court shall set an adjudication hearing. If the parties are prepared, the adjudication hearing may be held immediately. Otherwise, the court shall allow a reasonable time for preparation.

(b) If the protected child is in an out-of-home placement, the adjudication hearing shall be held no more than thirty days after the child was first removed from the child's home.

(c) If the protected child is living with the child's parent, the adjudication hearing shall be held no more than sixty days after the petition was filed.

(2) The court may, consistent with the best interests of the child, grant reasonable continuances of the adjudication hearing for the following reasons:

(a) If there is newly discovered evidence;

(b) When there are unavoidable delays in obtaining critical witnesses or evidence;

(c) When any party experiences a personal emergency; or

(d) For any other reason in the interests of justice which furthers the best interests of the child.

(3) No adjudication hearing shall be held more than one hundred twenty days after the date the petition is filed. If an adjudication hearing is not held within one hundred twenty days after the date the petition is filed, the petition shall be dismissed and the protected child returned to the custody of the protected child's parent. Continuances granted under subsection (2) of this section do not extend this time.

Sec. 89. Protected children; petition; initial hearing; requirements prior to adjournment. Prior to adjourning the initial hearing, the court shall:

(1) Determine the issues of continued custody and placement of the protected child;

(a) The protected child shall be placed with his or her parent unless:

(i) Reasonable efforts to preserve or reunify the family have been made and were unsuccessful or such reasonable efforts are not required because exceptionally endangering circumstances listed in section 79 of this act are present;
The court determines the least restrictive and least intrusive placement consistent with the safety and well-being of the child is not with his or her parent; and

(iii) The court finds there is probable cause to believe any or all of the allegations of the petition are true;

(b) A finding that there is not probable cause to believe any or all of the allegations of the petition are true does not require dismissal of the petition; and

(c) If the court orders continued out-of-home placement of the protected child, the child shall not be placed in or committed to an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, a juvenile detention facility, a youth rehabilitation and treatment center, or the office;

(2) Set a schedule of visitation if the protected child is not placed with his or her parent. In determining the schedule of visitation, the health and safety of the child are of paramount concern;

(3) Set conditions of visitation or placement requiring the parent to:

(a) Abide by any conditions the court finds necessary under the circumstances to:

(i) Protect the health and safety of the protected child;

(ii) Insure the presence of the protected child and the child’s parent at all court hearings; and

(iii) Effect reunification if reunification appears to be a reasonable goal;

(b) Abide by any agreements entered into between the parent and any state agency regarding the care of the protected child named in the petition. The court shall determine such agreements are in the protected child’s best interests, are in accordance with parental rights, and were knowingly and voluntarily agreed to by the protected child’s parent. Such agreements may require the parent to:

(i) Eliminate the specified conditions constituting or contributing to the problems which led to the juvenile court action;

(ii) Provide adequate food, shelter, clothing, and medical care and for other needs of the child;

(iii) Give adequate supervision to the child in the home;

(iv) Cease and desist from specified conduct and practices which are injurious to the welfare of the child; and

(v) Resume proper responsibility for the care and supervision of the child;

(4) Determine whether support should be ordered under sections 52 to 60 of this act and, if so, enter an order regarding support;

(5) Appoint counsel for the protected child and the protected child’s parent if necessary; and

(6) Appoint a guardian ad litem for the protected child if one has not been previously appointed.
Sec. 90. *Protected children; adjudication; purposes.* The purposes of the adjudication are to protect the best interests of the protected child and to determine whether the allegations contained in the petition are true.

Sec. 91. *Protected children; adjudication; burden of proof; evidence; record.*

1. The burden of proof is on the party filing the petition. The standard of proof is a preponderance of the evidence, unless the Nebraska Indian Child Welfare Act applies.

2. The rules of evidence shall apply to an adjudication.

3. The adjudication shall be entirely on the record.

Sec. 92. *Protected children; adjudication; parties; requirements.* All parties shall be present at the adjudication. If a party has received service as required and does not appear at the adjudication, the hearing shall not be continued unless:

1. The court finds the absence justified;

2. A continuance is in the child's best interests; and

3. The continuance is required in the interests of justice.

Sec. 93. *Protected children; adjudication; excusal of child; when.*

1. Upon application by any party, or on its own motion, the court may excuse the child in need of state protection from attending the adjudication. In deciding whether to excuse the protected child, the court shall consider:

   a. Whether the protected child will be represented at the adjudication by counsel or by a guardian ad litem;

   b. The wishes of the child;

   c. The child's age and understanding of the proceedings;

   d. Any potential for physical, emotional, or psychological trauma to the protected arising from the protected child's physical presence at the hearing; and

   e. The importance of the protected child's physical presence to a just and fair outcome of the adjudication.

2. Any order excusing or denying a request for excusal of a protected child's attendance at an adjudication shall be in writing. The order shall contain findings of fact and conclusions of law.

3. An order granting or denying a request for excusal of a protected child's attendance at an adjudication is a not final order.

Sec. 94. *Protected children; adjudication; testimony of child.*

1. Any party may call a protected child to testify at an adjudication.

2. Any party may ask that the protected child be excused from testifying at the adjudication hearing.

3. In deciding whether to excuse the protected child, the court shall consider:

   a. The child's age and understanding of the proceedings;
(ii) Any potential for physical, emotional, or psychological trauma to the protected child arising from the protected child's physical presence at the hearing; and
(iii) The importance of the protected child's testimony to a just and fair outcome of the adjudication.
(d) The court's findings shall be in writing and supported by findings of fact and conclusions of law.
(2) If the court requires a protected child to testify at an adjudication, the court may order the use of alternative modes of testimony.
(3) An order granting or denying a request for excusing a protected child's testimony at an adjudication is a final order and may be appealed as provided in section 212 of this act.

Sec. 95. Protected children; adjudication; child found in need of state protection; duties.
If any or all of the allegations in the petition are found to be true, the court shall find the child to be in need of state protection and shall:
(1) Order the department to prepare and file with the court a proposed case plan for the protected child. The proposed case plan for a protected child sixteen years of age or older shall include a proposal describing programs and services designed to assist the protected child in acquiring independent living skills. The proposed case plan shall be completed within fourteen days of the adjudication hearing and shall be made available to all parties no less than five days prior to the disposition hearing;
(2) Set a disposition hearing so that it occurs no more than thirty days after the date the court found the child to be in need of state protection. The disposition hearing may, consistent with the interests of justice and best interests of the child, be continued for a reasonable time if there is newly discovered evidence, when there are unavoidable delays in obtaining critical witnesses or evidence, when any party experiences a personal emergency, or for any other reason in the interests of justice. In no case may a disposition hearing be held more than sixty days after the date the court found the child to be in need of state protection. If a disposition hearing is not held within sixty days after the date the court found the child to be in need of state protection, the petition shall be dismissed and the case closed;
(3) Review the issue of continued custody and placement of the protected child. The protected child shall be placed with his or her parent unless:
(a) Reasonable efforts to preserve or reunify the family have been made and were unsuccessful or such reasonable efforts are not required because exceptionally endangering circumstances listed in section 79 of this act are present; and
(b) The court determines the least restrictive and least intrusive placement consistent with the safety and well-being of the child is not with his or her parent;
(4) Set a schedule of visitation if the protected child is not placed with his or her parent. In determining the schedule of visitation, the health and safety of the child are of paramount concern; and
(5) Set conditions of visitation or placement requiring the parent to:
(a) Abide by any conditions the court finds necessary under the circumstances to:
(i) Protect the health and safety of the protected child;
(ii) Insure the presence of the protected child and the child's parent at all court hearings; and
(iii) Effect reunification if reunification appears to be a reasonable goal; and
(b) Abide by any agreements entered into between the parent and any state agency regarding the care of the protected child named in the petition. The court shall determine such agreements are in the protected child's best interests and are in accordance with parental rights and were knowingly and voluntarily agreed to by the protected child's parent. Such agreements may require the parent to:
(i) Eliminate the specified conditions constituting or contributing to the problems which caused the child to be in need of state protection;
(ii) Provide adequate food, shelter, clothing, and medical care and for other needs of the protected child;
(iii) Give adequate supervision to the protected child in the home;
(iv) Cease and desist from specified conduct and practices which are injurious to the welfare of the protected child; or
(v) Resume proper responsibility for the care and supervision of the protected child.

Sec. 96. Protected children; adjudication; findings of exceptionally endangering circumstances; duties. (1) If the court finds exceptionally endangering circumstances exist as listed in section 79 of this act, the court shall order the department to prepare a permanency plan.
(2) The court shall set a hearing to review the permanency plan, and if, appropriate, to determine whether parental rights should be terminated pursuant to sections 129 to 132 of this act.

Sec. 97. Protected children; adjudication; allegations untrue; duties. If none of the allegations in the petition are found to be true, the petition shall be dismissed and custody of the protected child returned to his or her parent if the child had been in emergency custody, continued emergency custody, or an out-of-home placement.

Sec. 98. Protected children; adjudication; order or dismissal of petition; appeal; when. (1) Except as provided in subsection (5) of section
105 of this act, an order adjudicating a child to be in need of state protection is not a final order.
(2) An order dismissing a petition alleging a child to be in need of state protection is a final order and may be appealed as provided in section 212 of this act.

Sec. 99. Protected children; disposition hearing; purpose. The purposes of the disposition hearing are to determine:
(1) Who shall have custody of the protected child;
(2) What, if any, protective services are necessary for the protected child and his or her family in order to eliminate the specified conditions or circumstances which caused the child to be in need of state protection; and
(3) If exceptionally endangering circumstances listed in section 79 of this act are present, what the permanency plan shall be for the protected child.

Sec. 100. Protected children; disposition hearing; evidence; record; parties. (1) The disposition hearing shall be entirely on the record.
(2) The rules of evidence shall not apply at a disposition hearing.
(3) All parties shall be present at disposition hearing. If a party has received notice as required and does not appear, the hearing shall not be continued unless the court finds a continuance is required in the interests of justice and that a continuance is in the best interests of the protected child.

Sec. 101. Protected children; disposition hearing; excusal of child; when. (1) Upon prior application by any party, or on its own motion, the court may excuse the child in need of state protection from attending the disposition hearing. In deciding whether to excuse the protected child, the court shall consider:
(a) Whether the protected child will be represented by counsel or by a guardian ad litem;
(b) The wishes of the child;
(c) The child's age and understanding of the proceedings;
(d) Any potential for physical, emotional, or psychological trauma to the protected child arising from the protected child's physical presence at the hearing; and
(e) The importance of the protected child's physical presence to a just and fair outcome of the disposition.
(2) Any order excusing or denying a request for excusal of a protected child's attendance at disposition hearing shall be in writing. The order shall contain findings of fact and conclusions of law.
(3) An order granting or denying a request for excusal of a protected child's attendance at the disposition hearing is not a final order.
Sec. 102. Protected children; disposition hearing; testimony of child. (1) Any party may call a protected child to testify at the disposition hearing.
(2) Any party may ask that the protected child be excused from testifying.
(3) In deciding whether to excuse the protected child, the court shall consider:
(a) The child's age and understanding of the proceeding;
(b) Any potential for physical, emotional, or psychological trauma to the protected child arising from the protected child's physical presence at the hearing; and
(c) The importance of the protected child's testimony to a just and fair outcome of the disposition.
(4) The court's findings shall be in writing and shall be supported by findings of fact and conclusions of law.
(5) If the court requires a protected child to testify at the disposition hearing, the court may order the use of alternative modes of testimony.
(6) An order granting or denying a request for excusing a protected child's testimony at the disposition hearing is not a final order.

Sec. 103. Protected children; disposition; placement and commitment; restrictions. A child in need of state protection shall not, as part of a disposition order, be placed in or committed to an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, a juvenile detention facility, a youth rehabilitation and treatment center, or the office.

Sec. 104. Protected children; disposition; department; case plan. (1)(a) The case plan submitted by the department is presumed to be in the protected child's best interests. A case plan is in the child's best interests if it provides the most appropriate protective services in the least restrictive setting. This presumption is rebuttable.
(b) If any party proves by a preponderance of the evidence that the department's plan is not in the protected child's best interests, the court shall disapprove the department's plan.
(c) If the court disapproves the department's plan, the court shall, consistent with section 105 of this act:
(i) Modify the case plan;
(ii) Order that an alternative case plan be developed; or
(iii) Implement another case plan that is in the child's best interests.
(d) If the court disapproves the department's plan, any party may appeal such finding to the juvenile review panel pursuant to sections 108 to 113 of this act.
(e) The department shall pay the cost of services ordered by the court pursuant to subdivisions (c)(i) and (c)(ii) of this section.
(2) Prior to ordering a case plan the court shall make a finding that each term, condition, and consequence of the case plan has been thoroughly explained to and is understood by each party or a party's guardian ad litem.

(3) The court need not order a case plan if the court finds that exceptionally endangering circumstances listed in section 79 of this act are present. The court shall instead order only a permanency plan, in accordance section 96 of this act.

Sec. 105. Protected children; disposition; orders. (1) After reviewing the department's proposed case plan and considering the evidence, the court may, in its disposition order:

(a) Permit the protected child to remain in his or her own home subject to state supervision;

(b) Commit the child to:

(i) A suitable facility or institution;

(ii) Inpatient or outpatient treatment at a mental health center or mental health program;

(iii) A reputable citizen of good moral character;

(iv) An association willing to receive the child embracing in its objects the purpose of caring for or obtaining homes for such children, which association is accredited as provided in section 231 of this act;

(v) A suitable family; or

(vi) The department;

(c) Terminate parental rights, if requested in the petition, a supplemental petition, or motion, and if the court finds by clear and convincing evidence:

(i) A statutory ground for termination of parental rights, as listed in section 131 of this act;

(ii) One or more exceptionally endangering circumstances listed in section 79 of this act exist; and

(iii) That termination of parental rights is in the child's best interests;

or

(d) Appoint a permanent guardian, if requested in the petition, a supplemental petition, or motion, and if the court finds by the appropriate level of proof all of the following:

(i) A statutory ground for termination of parental rights, as listed in section 131 of this act;

(ii) One or more exceptionally endangering circumstances listed in section 79 of this act exist;

(iii) That termination of parental rights is not in the protected child's best interests; and

(iv) That the proposed permanent guardian is qualified as required in section 128 of this act.

(2) The court shall enter any other orders necessary to fulfill the case plan, including, but not limited to:
(a) Orders requiring parties to cooperate with the case plan;
(b) Restraining orders controlling the conduct of any party likely to frustrate the achievement of the case plan; and
(c) Visitation orders.

(3) Except as provided in section 104 of this act, the court cannot order specific placements, specific services, or specific service providers in the case plan.

(4) In making its disposition order, the health and safety of the child shall be of paramount concern to the court.

(5) Upon the court's filing of a written disposition order, the adjudication order becomes a final order. The disposition order is a final order.

Sec. 106. Protected children; protective services; order and provision.
(1) The court, consistent with section 105 of this act, shall order the type of protective services it deems necessary.

(2)(a) The department shall select the provider of the type of protective services ordered by the court.
(b) If any party objects to the provider selected by the department, that party may request judicial review of the department's selection.
(c) The party seeking review of the department's selection has the burden of proving by a preponderance of the evidence that the department's selection is not in the child's best interests.
(d) The court may sustain or overrule the department's selection. If the court overrules the department’s selection, the court shall select another provider.
(e) The court's decision regarding the requested review shall be in writing and shall include findings of fact and conclusions of law.
(f) A decision overruling the department's selection of a provider is a final order. A decision sustaining the department’s selection is not a final order.

(g) Except as provided in section 104 of this act, the department is not responsible for the cost of any protective service if the department did not select the provider of such protective services or the protective service was not selected by the court as provided in this section.

Sec. 107. Protected children; disposition; order of removal or continued removal; reasonable efforts; reunification efforts; when.
(1) Except as provided in subsections (2) and (3) of this section, if the court orders removal or continued removal of the child from his or her home at the disposition hearing, the court shall order the department to make reasonable efforts to provide reunification services to the child and the child's parent to facilitate reunification of the family.

(2) If the court determines that such reasonable efforts to reunify a child with the child's parent would not be successful, the court shall not order reunification services. In addition to any other relevant factors, the court shall consider the following factors in determining if reunification efforts would be successful:
(a) Testimony by a competent professional regarding whether efforts to modify the parent’s behavior are likely to be successful;
(b) Whether the parent has expressed an interest in reunification with the child; and
(c) Whether the parent has demonstrated diligent efforts.

(3) If the court finds any of the following circumstances by clear and convincing evidence, a presumption exists that reunification services should not be provided:

(a) A party to the action provides a verified affidavit that states that a reasonably diligent search has failed to identify and locate the parent within three months after the filing of the petition alleging the child to be in need of state protection;
(b) The parent is suffering from a mental illness or mental deficiency of such magnitude that it renders the parent incapable of benefiting from the reunification services. This finding shall be based on evidence from a psychologist or physician that establishes that, even with reunification services, the parent is unlikely to be capable of adequately caring for the child within twelve months after the date of the disposition order;
(c) The child previously has been removed and adjudicated a protected child due to physical or sexual abuse. After the adjudication the child was returned to the custody of the parent and then subsequently removed within eighteen months due to additional physical or sexual abuse;
(d) The parent has been convicted of murder or manslaughter of another child or of aiding or abetting or attempting, conspiring, or soliciting to commit murder or manslaughter of another child;
(e) The parent inflicted serious injury on the child;
(f) A person who the parent reasonably should have known was likely to have engaged in such conduct, inflicted serious injury on the child;
(g) The parent’s rights to another child have been terminated and the parent has not successfully addressed the issues that led to the termination; or
(h) After a finding that a child is in need of state protection, all of the following are true:
   (i) A child has been removed from the parent on at least two previous occasions;
   (ii) Reunification services were offered or provided to the parent after the prior removals; and
   (iii) The parent is currently unable for any reason to discharge parental responsibilities.

(4) A disposition order removing a protected child from his or her home shall include written findings of fact that:
(a) Continuation in the home would be contrary to the health, safety, or welfare of such child; and
(b) Reasonable efforts to preserve and reunify the family have been made if required.

Sec. 108. Juvenile review panel; disposition review; use; intent. Sections 108 to 113 of this act provide the exclusive method for expedited review of disposition orders described in section 110 of this act by a juvenile review panel. Nothing in such sections shall otherwise limit the right of a party to appeal other final orders regarding protected children pursuant to section 212 of this act.

Sec. 109. Juvenile review panel; appointment; hearing location. (1) A juvenile review panel shall consist of three county court or separate juvenile court judges, one of whom shall be designated as the presiding judge. All judges of the county court and separate juvenile court shall be eligible to serve on the juvenile review panel, except that no judge may serve on a panel reviewing a case originally heard by that judge. The Supreme Court shall provide for the appointment of a juvenile review panel after receiving a request for review from the court entering the order for which expedited review is being sought.

(2) A juvenile review panel may hear a case in the county where the case was originally decided or at some other location that is convenient to the panel.

(3) The juvenile review panel shall use the courtroom, office facilities, and staff of the county court or separate juvenile court where the panel is hearing the case. The presiding judge shall be responsible for arranging the date and place of the hearing, for causing notice of the hearing to be given, and for preparing the disposition of the panel.

Sec. 110. Juvenile review panel; review disposition; when. A juvenile review panel shall only review a disposition of a court when the court makes an order directing the implementation of a case plan different than the case plan prepared by the department and a party believes that the court's disposition order is not in the best interests of the protected child.

Sec. 111. Juvenile review panel; request for review; procedures. A party seeking to have a disposition described in section 110 of this act reviewed has ten days after the written disposition order is filed by the court to file a request for review by a juvenile review panel. Such request for review shall be filed with the clerk of the court where the action was originally heard. Upon receipt of the request for review, the clerk of the court shall forward a copy of the request to the Clerk of the Supreme Court.

Sec. 112. Juvenile review panel; record; powers; decision, when; effect. (1) A juvenile review panel shall review the disposition of a court de novo on the record. The record shall consist of a transcript and bill of exceptions that shall be requested and prepared as in appeals from the county court to the district court. The record shall be filed with
the judicial review panel no later than thirty days after the date the clerk of the court where the action was originally heard received the request.

(2) A juvenile review panel shall affirm the disposition unless it is shown by a preponderance of the evidence that the disposition was not in the best interests of the child.

(3) If the review panel finds the contested disposition not in the best interests of the child:

(a) The panel may:

(i) Modify either the court-ordered case plan or the original case plan of the department; or

(ii) Substitute the department’s original case plan for the contested court-ordered case plan; and

(b) The panel shall remand the case back to the court with directions to implement the plan approved or entered by the juvenile review panel.

(4) A review of a contested disposition order by a juvenile review panel shall stay the enforcement of the contested disposition order.

(5) The review by the juvenile review panel shall be as expeditious as possible, and a decision shall be made within thirty days after receiving the bill of exceptions from the court stenographer.

(6) The panel’s decision is a final order and is binding on the parties, except that the final order may be appealed as provided in section 113 of this act.

Sec. 113. Juvenile review panel; decision; appeal. (1) Any party may appeal from any final order entered by the juvenile review panel.

(2) Such order shall be reviewed by the Court of Appeals or the Supreme Court within the same time and in the same manner prescribed by law for review of an order of the district court.

(3) The appellate court shall review the disposition of the juvenile review panel de novo on the record submitted to the panel.

(4) An appeal made pursuant to this section shall not stay any order of a juvenile review panel.

(c) Court-ordered permanency options

Sec. 114. Court-ordered permanency options; sections applicable. All proceedings regarding court-ordered permanency options for children are governed by sections 114 to 132 of this act.

Sec. 115. Court-ordered permanency options; policy. (1) When children are removed from their home for any reason, it is the policy of the state:

(a) To make reasonable efforts to preserve the family and to reunite the child with his or her family in a timeframe appropriate to the age and developmental needs of the child so long as the best interests of the child, the health and safety of the child being of paramount con-
cern, and the needs of the child have been given primary consideration in making a determination whether or not reunification is possible; (b) When a child cannot remain with his or her parents, to give preference to relatives as a placement resource; (c) To minimize the number of placement changes for children in out-of-home care so long as the needs, health, safety, and best interests of the child in care are considered; and (d) When families cannot be reunited and when active parental involvement is absent, adoption shall be aggressively pursued.

(2) If adoption is not in the best interests of the child or is not reasonably possible, other permanent settings shall be pursued. Preference shall be given to relatives for the permanent placement of the child. The health, safety, and best interests of the child shall always be of paramount concern.

(3) In light of children's developmental needs and sense of time, permanency planning efforts for children shall begin as soon as a child enters foster care and shall be expedited by the timely and effective provision of reunification services to families. Permanency planning decisions, including decisions regarding the initiation of proceedings to terminate parental rights, shall be made within specified time limits.

Sec. 116. Court-ordered permanency options; foster care review hearing; requirements; procedure. (1) A foster care review hearing is a review of the placement of a child in foster care to determine:

(a) Whether the protected child's physical, psychological, and sociological needs are being met;

(b) Whether the department is providing reasonable efforts to return the child to the child's home; and

(c) Whether the child's parents are engaged in diligent efforts.

(2) The health and safety of the child are of paramount concern in a foster care review hearing.

(3) The court having jurisdiction over a protected child in foster care shall conduct a foster care review hearing no later than six months after the date a child entered foster care. The court may reaffirm the placement of the child in foster care or direct another disposition of the child that the court determines to be in the child's best interests. Foster care review hearings shall be conducted on the record. The rules of evidence shall not apply at a review hearing. The recommendations of the State Foster Care Review 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 protected child's original placement in foster care of the child if any party, including 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 review hearing.
and may participate through counsel at the hearing with the right to call and cross-examine witnesses and present arguments to the court.

Sec. 117. Court-ordered permanency options; department responsibility. (1) When required by a disposition order, the department shall provide protective services designed to either prevent a child's removal or to permit a child to be safely returned home.

(2) The department shall make good faith efforts to include the family when determining which protective services are necessary and appropriate.

Sec. 118. Court-ordered permanency options; parents; duties. When required by a disposition order, parents shall make diligent efforts to prevent a child's removal from the child's home or to permit a protected child to be returned safely home.

Sec. 119. Court-ordered permanency options; department; reasonable efforts; requirements. (1) When returning the child to the family's home is consistent with the safety of the child, the reasonable efforts required of the department are the provision or delivery of protective services designed to:

(a) Preserve and unify the family prior to the out-of-home placement of a child;

(b) Eliminate the need for removal of the child from his or her home; and

(c) Make it possible for the child to safely return to the family's home.

(2) When returning the child to the family's home is not consistent with the safety of the child or not possible for other reasons, the reasonable efforts required by the department shall include efforts made in a timely manner to finalize a permanency plan for the child.

(3) In the court's determination of whether the department has made the reasonable efforts required by this section, the child's health and safety are of paramount concern.

(4) In determining whether the department has made reasonable efforts, the juvenile court shall consider both of the following:

(a) The relative risk to the child of remaining in the child's home versus removal of the child; and

(b) The type, duration, and intensity of protective services offered or provided to the child and the child's family.

Sec. 120. Court-ordered permanency options; reasonable efforts; duties of department and court. (1) Provision or delivery of reasonable efforts to preserve the family or to finalize a permanency plan is the department's responsibility.

(2) Determining whether protective services shall or shall not be provided or delivered is the responsibility of the juvenile court.
(3) Determining whether the protective services provided or delivered by the department constitute reasonable efforts is the responsibility of the court.

(4) If protective services are not ordered, the court record shall enumerate the reasons the services were not ordered, including but not limited to whether the services:
   (a) Were not available;
   (b) Were not accepted by the child’s family;
   (c) Were determined by the court to be unable to protect the child during the time the services would have been provided; or
   (d) Were determined by the court to be unlikely to successfully prevent removal of the child.

(5) If protective services are not ordered, the juvenile court shall insure that the department is actively planning for a child’s permanency.

Sec. 121. Court-ordered permanency options; permanency hearing; implementation hearing; requirements. (1) Every child in foster care shall have a permanency hearing within the time limits specified in this section. The permanency hearing shall determine the permanency plan for a child in foster care. Paper reviews, ex parte hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents or guardian of the child, the child, if of appropriate age, and foster parents or preadoptive parents, if any, are not permanency hearings.

(2) A permanency hearing shall be held no later than twelve months after the date a child entered foster care unless the court has determined reasonable efforts to reunify the child and family are not required. If the court has made a determination that reasonable efforts are not required, a priority permanency hearing shall be held no later than thirty days after such determination.

(3) A permanency plan implementation hearing shall be held within twelve months after the permanency hearing. A permanency plan implementation hearing shall be held within ninety days after a priority permanency hearing.

Sec. 122. Court-ordered permanency options; expedited procedures. (1) Any party can request an expedited permanency hearing prior to the expiration of the times specified in section 121 of this act. The request shall be granted unless:
   (a) The expedited hearing is found by the court to be contrary to the child’s best interests; or
   (b) Granting the request will unduly prejudice the interests of another party. The child’s health and safety are of paramount concern to the court to be balanced against any prejudice to another party.
(2) The court shall make written findings of fact and conclusions of law supporting a denial of a request for an expedited permanency hearing.

(3) Denial of a request for an expedited permanency hearing is not a final order.

Sec. 123. Court-ordered permanency options; department recommendations. The recommendations that the department may make at a permanency hearing are limited to:

(1) Return of custody of the protected child to the child’s parent;
(2) Adoption, including a recommendation that a petition for termination of parental rights be filed;
(3) Permanent guardianship; or
(4) Placement in another planned permanent living arrangement, but only in cases in which the department has documented to the court a compelling reason for determining that it would not be in the best interests of the child to follow one of the other options in this section.

Sec. 124. Court-ordered permanency options; parties. Parties to a court action involving appointment of a permanent guardian or termination of parental rights are:

(1) The child;
(2) The child’s guardian ad litem;
(3) The child’s responsible adult;
(4) The department;
(5) The petitioner;
(6) The court appointed special advocate, if one has been appointed under the Court Appointed Special Advocate Act;
(7) The State Foster Care Review Board, in any case in which a protected child is in foster care;
(8) In the case of an Indian child as defined in the Nebraska Indian Child Welfare Act:
(a) The Indian custodian of the child and the Indian child’s tribe through the tribal representative;
(b) Any person who intervenes as a party;
(c) Any person who is joined as a party; and
(d) Any other person deemed by the court to be important to a resolution that is in the best interests of the child;
(9) The child’s parents, including any noncustodial parent and any adjudicated or presumed father;
(10) The proposed guardian; and
(11) A person entitled to notice of any adoption proceeding involving the child.

Sec. 125. Court-ordered permanency options; permanent guardianship; request for. (1) A petition, supplemental petition, or motion may be
filed with the court requesting the appointment of a permanent guard-
ian for a child.

(2) The petition, supplemental petition, or motion shall contain:
(a) The name, sex, residence, and date and place of birth of the child;
(b) The facts and circumstances supporting the grounds for permanent
 guardianship;
(c) The name and address of the prospective guardian and a statement
 that the prospective guardian agrees to accept the duties and respon-
sibilities of permanent guardianship;
(d) The basis for the court’s jurisdiction;
(e) The relationship of the child to the prospective guardian; and
(f) Whether the child is subject to the Nebraska Indian Child Welfare
 Act, and if so:
   (i) The tribal affiliations of the child and the child’s parents;
   (ii) The specific actions the person who files the motion has taken to
      notify the parents’ tribes and the results of those contacts, including
      the names, addresses, titles, and telephone numbers of the persons
      contacted. The person shall attach to the motion as exhibits any corre-
      spondence with the tribes;
   (iii) The specific efforts that were made to comply with the placement
      preferences under the Nebraska Indian Child Welfare Act or the
      placement preferences of the appropriate Indian tribes; and
   (iv) The name, address, marital status, and date of birth of the birth
      parents, if known.

Sec. 126. Court-ordered permanency options; permanent guardianship;
service of process.
(1) Upon the filing of a petition, supplemental peti-
tion, or motion to appoint a permanent guardian, the court shall issue
a summons and a copy of the pleading to the parties.
(2) The court shall endorse on the summons that the proceeding is one
for appointment of a permanent guardian, shall set the time and place
for an initial hearing, and shall cause service to be given.
(3) Except as provided in subsection (4) of this section, service shall be
made in accordance with sections 25-505.01 to 25-514.01 and:
   (a) Personal or residence service under section 25-505.01 shall be ef-
      fected at least seventy-two hours before the time set for a hearing; and
   (b) Certified mail service under section 25-501.01 shall be mailed at
      least five days before the date set for a hearing.
(4) Substitute and constructive notice may be permitted by the court,
as provided in sections 25-517.02 to 25-527 and:
   (a) Authorization of substitute or constructive service shall not expand
      the time a protected child can be held in custody without judicial re-
      view; and
   (b) When the court authorizes substitute or constructive service, the
court shall set hearings so parties who are the subject of such service
have adequate time to prepare, consistent with the best interests of the child and the purposes of the Nebraska Juvenile Code.

(5) Parties to a permanent guardianship proceeding are listed in section 124 of this act.

Sec. 127. Court-ordered permanency options; permanent guardian; hearing.

(1) All parties shall be present at the hearing regarding appointment of a permanent guardian. If a party has received service as required and does not appear at the adjudication, the hearing shall not be continued unless:

(a) The court finds the absence justified;
(b) A continuance is in the child's best interests; and
(c) The continuance is required in the interests of justice.

(2) The rules of evidence shall apply at the hearing and the hearing shall be entirely on the record.

(3) The presence and testimony of the protected child at the hearing for appointment of a permanent guardian shall be determined in accordance with sections 101 and 102 of this act.

Sec. 128. Court-ordered permanency options; permanent guardian; qualifications; appointment.

(1) After hearing the evidence, the court may appoint a permanent guardian if the court finds by clear and convincing evidence that termination of parental rights is not in the best interests of the child, one or more of the grounds for termination of parental rights exists, appointment of a permanent guardian is in the best interests of the child, and the proposed guardian is qualified.

(2) The court shall find the proposed guardian to be qualified if the proposed guardian:

(a) Is emotionally, mentally, physically, and financially suitable to become the permanent guardian;
(b) Has expressly committed to remain the permanent guardian for the duration of the child's minority; and
(c) Has expressly demonstrated a clear understanding of the financial implications of becoming a permanent guardian including an understanding of any resulting loss of state benefits or other assistance.

Sec. 129. Court-ordered permanency options; termination of parental rights; pleadings; service of process.

(1) A petition, supplemental petition, or motion may be filed with the court requesting termination of parental rights. Such pleading shall only be filed by:

(a) The county attorney;
(b) The department;
(c) The child's guardian ad litem; or
(d) With the consent of the county attorney, any party.

(2) Upon the filing of a petition, supplemental petition, or motion to terminate parental rights, every party shall be served with a sum-
mons and a copy of the pleading. The court shall endorse on the sum-
mons that the proceeding is one to terminate parental rights, shall set
the time and place for an initial hearing, and shall cause service to be
made.
(3) Except as provided in subsection (4) of this section, service shall be
made in accordance with sections 25-505.01 to 25-514.01 and:
(a) Personal or residence service under section 25-505.01 shall be ef-
fected at least seventy-two hours before the time set for a hearing; and
(b) Certified mail service under section 25-501.01 shall be mailed at
least five days before the date set for a hearing.
(4) Substitute and constructive notice may be permitted by the court,
as provided in sections 25-517.02 to 25-527 and:
(a) Authorization of substitute or constructive service shall not expand
the time a protected child can be held in custody without judicial re-
view; and
(b) When the court authorizes substitute or constructive service, the
court shall set hearings so parties who are the subject of such service
have adequate time to prepare, consistent with the best interests of
the child and the purposes of the Nebraska Juvenile Code.
(5) Parties to a termination of parental rights proceeding are listed in
section 124 of this act. If the child named in the petition has been in
foster care with the same foster parents for ninety days or more, the
child's foster parents are also parties the proceedings.
Sec. 130. Court-ordered permanency options; termination of parental
rights; contents of pleadings. A petition, supplemental petition, or mo-
tion requesting termination of parental rights shall include:
(1) The name of the court and county in which the action is brought;
(2) The names of the parties;
(3) A statement of the facts, in ordinary and concise language, sup-
porting the request for termination of parental rights; and
(4) Whether the child is subject to the Nebraska Indian Child Welfare
Act, and if so:
(a) The tribal affiliations of the child;
(b) The specific actions taken to notify the child's tribes and the re-
results of those contacts, including the names, addresses, titles, and
telephone numbers of the persons contacted. The person shall attach
to the motion as exhibits any correspondence with the tribes; and
(c) The specific efforts that were made to comply with the placement
preferences under the Nebraska Indian Child Welfare Act or the
placement preferences of the appropriate Indian tribes.
Sec. 131. Court-ordered permanency options; termination of parental
rights; grounds.
(1) The court may terminate parental rights if the court finds by clear
and convincing evidence that termination of parental rights is in the
best interests of the child and one or more of the following grounds exists:

(a) The child is an abandoned child;

(b) The parents have substantially and continuously or repeatedly neglected and refused to give the child or a sibling of the child necessary parental care and protection;

(c) The parents, being financially able, have willfully neglected to provide the child with the necessary subsistence, education, or other care necessary for his or her health, morals, or welfare or have neglected to pay for such subsistence, education, or other care when custody of the child is not with the parents and such payment ordered by the court;

(d) The parents have engaged in conduct seriously detrimental to the health, morals, or well-being of the child;

(e) Following a determination that the child is in need of state protection, reasonable efforts to preserve and reunify the family, if required, have failed to correct the conditions leading to the determination;

(f) The child has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months, except that this is not a ground for termination if the child has been out of home for fifteen or more months of the most recent twenty-two months solely due to a juvenile court disposition order regarding a child in need of state supervision or state rehabilitation; or

(g) The parent has engaged in conduct constituting exceptionally endangering circumstances as listed in section 79 of this act.

(2) If the child is an Indian child as defined in Nebraska Indian Child Welfare Act, the findings required by subsection (1) of this section shall be proven beyond a reasonable doubt.

(3) Notwithstanding any other provisions of this section, parental rights shall not be terminated if the child objects to such termination and the child is fourteen years of age or older or otherwise of an age of decision-making competency, as determined by the court. Prior to accepting a child's objection under this subsection, the court shall personally question the child to determine whether the objection is the voluntary and knowing choice of the child.

Sec. 132. Court-ordered permanency options; termination of parental rights; rights of parties. Except as otherwise provided, parties to any termination of parental rights proceeding shall have the rights listed in section 85 of this act. If the child named in the petition is placed with or committed to the department, the department shall be represented by the county attorney as required in section 23-1201. If a conflict arises between the department and the county attorney regarding the prosecution of any termination proceeding involving a protected child, an attorney employed or retained by the department may enter an appearance and represent the department's interests in the case.
(d) Children and families in need of state supervision (Supervised children)

Sec. 133. Supervised children; sections applicable. All proceedings regarding children and families in need of state supervision are governed by sections 133 to 155 of this act.

Sec. 134. Supervised children; policy. (1) The Legislature recognizes that some children engage in conduct that creates substantial risk of harm to themselves. This conduct of a run-away, truant, or disobedient child as described in section 13 of this act, is not defined as criminal or requiring the child to be in need of state rehabilitation. Often, parents cannot prevent the child from engaging in such conduct. When parents have made substantial attempts to prevent such conduct and the child persists in the conduct, the child is in need of state supervision. The purpose of state supervision is to provide appropriate services and placement designed to assist the child and the child's family in altering the child's conduct to minimize risk to the child.

(2) Services and placement shall be provided in the least intrusive and least restrictive method consistent with the needs of the child. Any services required for a child in need of state supervision to effect the other purposes of the Nebraska Juvenile Code shall be provided as close to the home community of the child as possible.

Sec. 135. Supervised children; court jurisdiction. (1) (a) The juvenile court has exclusive original jurisdiction over every case in which a child is alleged to be in need of state supervision. The juvenile court's subject matter jurisdiction begins when continued custody proceedings regarding a child in need of state supervision are instituted. If a petition alleging a child to be in need of state supervision is filed, the jurisdiction of the court continues until the child is found not to be in need of state supervision. The juvenile court may find that a child is not in need of state supervision at the adjudication hearing or any time thereafter.

(b) If the court finds a child to be in need of state supervision, only the court may determine the child to be no longer in need of state supervision.

(c) The juvenile court has jurisdiction over all parties to an action regarding a child alleged or found to be in need of state supervision. The juvenile court's jurisdiction over the department is limited as provided in section 105 of this act.

(2) Personal jurisdiction attaches to a supervised child when:

(a) The child is taken into emergency custody; or

(b) The child is named in a petition filed with the court and:

(i) An order for emergency custody is entered; or
(ii) If there is no order for emergency custody, the child or the child’s responsible adult is served notice of the action as provided in section 148 of this act.

(3) The juvenile court has jurisdiction over every supervised child’s responsible adult.

(4) Personal jurisdiction does not attach to the supervised child’s responsible adult until:
(a) The child is taken into emergency custody; or
(b) The child is named in a petition filed with the court and:
(i) An order for emergency custody is entered; or
(ii) If there is no order for emergency custody, the child’s responsible adult is served with a notice of the action as provided in section 148 of this act.

(5) Personal jurisdiction over a supervised child or a responsible adult based solely on emergency custody of the protected child attaches only as long as the emergency custody continues.

(6) If an order entered by the juvenile court regarding a supervised child conflicts with an order entered by another court, the order of the juvenile court has precedence.

Sec. 136. Supervised children; department; powers and duties. (1) The department shall care for every supervised child placed with or committed to the department and shall decide what care is appropriate.

(2)(a) The department shall provide services designed to eliminate, moderate, or reduce the conduct described in section 13 of this act to every supervised child placed with or committed to the department and to the supervised child’s family.

(b) Such services may be provided to children and families without a court order if:
(i) No petition alleging a child to be in need of state supervision has been filed;
(ii) The family requests them; and
(iii) The department determines such services are appropriate and necessary.

(c) Services shall be provided as required by a disposition order regarding a supervised child.

Sec. 137. Supervised children; emergency custody; child in need of state supervision. (1) A law enforcement officer may take emergency custody of a child whenever it reasonably appears the child is a child in need of state supervision as described in section 13 or this act.

(2) A law enforcement officer taking a child alleged to need state supervision into emergency custody under this section shall, as soon as practicable, deliver the child to the department.

Sec. 138. Supervised children; emergency custody; probation violation. (1) A law enforcement officer, with a court order authorizing emer-
gency custody of a child in need of supervision who has violated the terms or conditions of his or her probation, may take emergency custody of such child.

(2) A law enforcement officer taking a supervised child into emergency custody under this section shall, as soon as practicable, deliver the child to the probation officer supervising the child.

Sec. 139. Supervised children; emergency custody; restrictions and rights; report. The following restrictions and rights apply to the emergency custody of a child under section 137 or 138 of this act:

(1) A child taken into emergency custody has the right to call or consult an attorney without unnecessary delay. If an attorney is requested, the attorney shall be permitted to see and consult with the child at the place of custody;

(2) A law enforcement officer who takes emergency custody of a child shall immediately take reasonable measures to notify the child’s responsible adult that the child is in emergency custody and the reasons the child was taken into emergency custody; and

(3) Within twelve hours after assuming emergency custody of a child, the law enforcement officer shall submit a written report describing the circumstances requiring the child's custody to the county attorney of the county where emergency custody was taken and, if emergency custody was assumed under section 137 of this act, the department's office in or nearest to the county where custody was taken.

Sec. 140. Supervised children; emergency custody; department; duties. For a child alleged to need state supervision taken into emergency custody under section 137 of this act, the department shall place the child in the least restrictive setting consistent with the best interests of the child as determined by the department and shall supervise the placement. The department shall consent only to necessary emergency medical, dental, psychological, or psychiatric treatment so long as the placement continues.

Sec. 141. Supervised children; child alleged to need state supervision; continued custody; when. (1) Within forty-eight hours, including weekends and holidays, after a child alleged to need state supervision has been taken into emergency custody under section 137 of this act, a request for continued custody may be filed with the court.

(2) The request for continued custody may be filed ex parte.

(3) The request shall state the reasons the court should grant continued custody, including the circumstances requiring continued custody.

(4) The request shall be supported by testimony or affidavit. The affidavit may be based on information and belief. No child alleged to need state supervision shall be required or asked to sign the affidavit or to testify in support of the request. If the request is to be supported
solely by testimony, a written report describing the facts and circumstances shall be filed with the request.

(5) Any party may request, or the court may order without a request, a hearing regarding continued custody. If a party requests a hearing regarding continued custody, the court shall set a hearing unless emergency custody has been continued on an ex parte basis. The hearing shall be held prior to the expiration of emergency custody.

(6) The rules of evidence shall not apply to hearings regarding continued custody.

(7) In any proceedings regarding continued custody, the state has the burden of showing that probable cause exists to believe that the child is in need of state supervision and that continued custody of the child is necessary for the child’s safety or to insure the child’s appearance at subsequent court hearings.

(8) If the court finds there is probable cause to believe the child is in need of state supervision and that continued custody of the child is necessary for the child’s safety or to insure the child’s appearance at subsequent court hearings, the court shall order continued custody for a period not to exceed three judicial days.

(9) The court’s order, whether granting or denying the request for continued custody, shall be in writing and shall state the reasons therefore.

(10) Continued custody proceedings may be conducted telephonically for good cause shown. If proceedings are conducted telephonically and testimony taken, a recording shall be made of the proceeding. Any documents required by this subsection may be filed electronically for good cause shown.

(11) An order for continued custody is not a final order.

(12) If the court orders continued custody, the department may consent only to necessary emergency medical, dental, psychological, or psychiatric treatment so long as the placement with the department continues.

Sec. 142. Supervised children; probation violation; preliminary procedure; rights of child; probable cause hearing. (1) Whenever a supervised child is placed under the supervision of a probation officer, the probation officer or a county attorney may request the court modify or revoke that probation. The request shall be in writing and shall include:

(a) The terms or conditions of probation the supervised child is alleged to have violated;

(b) The facts supporting the allegation; and

(c) A statement regarding the necessity, due to the likelihood of the child causing harm to others or to himself or failing to appear in court as required, of taking the child into emergency custody pending a judi-
cial determination of the request, including any facts supporting a request for such emergency custody.

(2) If the court determines that the request is supported by probable cause to believe the supervised child has violated the terms or conditions of probation imposed by the court, the court shall set a time and date for a hearing to determine whether probation should be revoked or modified. If the court finds the request is not supported by probable cause, it shall deny the request.

(3) If the court finds from the facts presented in the request that there is probable cause to believe the child will cause harm to himself or to others or will fail to appear as required, the court may order the child be taken into emergency custody pending a judicial determination of the request to revoke or modify probation.

(4) A request to modify or revoke the probation of a supervised child shall be served on the parties to the original action at least seventy-two hours prior to the hearing on the request.

(5) A supervised child taken into emergency custody for probation violation under section 138 of this act or under subsection (3) of this section shall not be held in emergency custody longer than twenty-hours, excluding non-judicial days, without a probable cause hearing.

(a) The rules of evidence shall not apply at the probable cause hearing.

(b) The supervised child shall have the following rights at the probable cause hearing:

(i) To be present;

(ii) To counsel, if the supervised child was represented by counsel at the hearing at which probation was imposed;

(iii) To confront and cross examine witnesses; and

(iv) To make a statement.

(6) If the court finds, from the evidence presented, that there is probable cause to believe the supervised child violated the terms or conditions of probation and that the child may cause harm to himself or others or may fail to appear as required, the court may order the child held in continued custody pending the hearing on the request to revoke or modify probation.

(7) If the court finds, from the evidence presented, that there is no probable cause to believe the supervised child violated the terms or conditions of probation, it shall deny the request to revoke or modify probation and order the child released.

(8) If the court finds probable cause to believe the supervised child violated the terms or conditions of probation, but not that the child may cause harm to himself or others or may fail to appear, the court shall order the child to appear at the hearing on the request and order the child released.

Sec. 143. Supervised children; probation violation; probation revocation or modification hearing; rights of parties. (1) A hearing to revoke
or modify the probation of a supervised child shall be conducted by the
court imposing probation when possible. If the court that ordered the
original disposition of probation is unavailable, the hearing to revoke
or modify probation may be held by any juvenile court where venue is
otherwise proper. The hearing shall be conducted on the record. The
rules of evidence shall not apply at a hearing to revoke or modify
probation.

(2) The hearing to revoke or modify probation shall be held no later
than fourteen days after a supervised child is taken into emergency
custody under section 138 of this act and no later than thirty days
after a request to revoke or modify is filed if the child is not taken into
emergency custody.

(3) The supervised child shall have the following rights at a hearing to
revoke or modify probation:
(a) To have written notice of the allegations of specific violations of
conditions of probation and of any facts in support of the allegations;
(b) To have at least seventy-two hours notice of the hearing;
(c) To be present at the hearing;
(d) To have counsel and to have counsel appointed if necessary;
(e) To confront and cross examine adverse witnesses;
(f) To present witnesses and evidence on his or her own behalf; and
(g) To make a statement on his or her own behalf.

(4) If the court finds by a preponderance of the evidence that the su-
pervised child has violated the terms or conditions of probation, the
court may modify or revoke probation and impose any disposition au-
thorized by section 154 of this act.

(5) If the court does not find by a preponderance of the evidence that
the supervised child has violated the terms or conditions of probation,
the court shall deny the request and, if the child has been held in con-
tinued custody, release the child from custody.

(6) A finding that a supervised child has violated the terms or condi-
tions of probation is a final order and may be appealed as provided in
section 212 of this act.

Sec. 144. Supervised children; custody; restrictions. (1) A child alleged
to need state supervision or a supervised child in emergency custody,
continued custody, or awaiting probation revocation proceedings shall
not be held or placed in:
(a) A facility intended or used for the detention of adults;
(b) An adult correctional facility;
(c) The secure youth confinement facility operated by the Department
of Correctional Services;
(d) A juvenile detention facility, except that a child alleged to need
state supervision or a supervised child may be held in such a facility
for a period not to exceed five days;
(e) A youth rehabilitation and treatment center; or
(f) The custody of the office.

(2) A child's responsible adult may request visitation during emergency custody or continued custody.

Sec. 145. Supervised children; emergency custody and continued custody; requirements; duration; release; violation, penalty. (1) No child alleged to need state supervision shall be held in emergency custody longer than forty-eight hours without judicial review. If a court order granting continued custody has not been issued within forty-eight hours after the child was taken into emergency custody without a court order, the child shall be released to the child's responsible adult. Willful failure to release a child in need of state supervision as required by this section shall constitute false imprisonment in the second degree under section 28-315.

(2) If no request for continued custody is filed within the time limits in subsection (1) of this section and custody is restored to the child's responsible adult, the county attorney shall provide the child's responsible adult with a written report explaining why the child in need of state supervision was taken into emergency custody. The report shall set forth the facts and circumstances creating the emergency. This report shall be provided to the responsible adult within seven days after custody of the child is restored to the responsible adult.

(3) A petition alleging the child to be in need of state supervision may be filed before the expiration of continued custody. The filing of a petition and all subsequent proceedings are governed by sections 146 to 155 of this act.

(4) If no petition alleging the child to be in need of state supervision is filed before the expiration of continued custody, the child shall be released to the custody of the child's responsible adult. Willful failure to release a child in need of state supervision as required by this section shall constitute false imprisonment in the second degree under section 28-315.

Sec. 146. Supervised children; court action; parties. Parties to a court action involving an allegation that a child is in need of state supervision are:

(1) The child;
(2) The child's guardian ad litem;
(3) The child's responsible adult;
(4) The department;
(5) The petitioner;
(6) The child's probation officer;
(7) The State Foster Care Review Board, in any case in which a supervised child is in foster care;
(8) In the case of an Indian child as defined in the Nebraska Indian Child Welfare Act:
(a) The Indian custodian of the child and the Indian child's tribe through the tribal representative;
(b) Any person who intervenes as a party;
(c) Any person who is joined as a party; and
(d) Any other person deemed by the court to be important to a resolution that is in the best interests of the child.

Sec. 147. Supervised children; petition. (1) An action seeking to have a child found to be in need of state supervision shall be commenced by the filing of a petition in the office of the clerk of the juvenile court.
(2) A petition alleging a child to be in need of state supervision shall be filed only by:
(a) The county attorney; or
(b) With the consent of the county attorney, any party.
(3) A petition alleging a child to be in need of state supervision shall include:
(a) The name of the court and county in which the action is brought;
(b) The names of the parties;
(c) A statement of the facts, in ordinary and concise language, showing the child to be in need of state supervision;
(d) Whether the child is subject to the Nebraska Indian Child Welfare Act, and if so:
   (i) The tribal affiliations of the child;
   (ii) The specific actions taken to notify the child's tribes and the results of those contacts, including the names, addresses, titles, and telephone numbers of the persons contacted. The person shall attach to the motion as exhibits any correspondence with the tribes; and
   (iii) The specific efforts that were made to comply with the placement preferences under the Nebraska Indian Child Welfare Act or the placement preferences of the appropriate Indian tribes;
(e) A request that the court determine whether support will be ordered under sections 52 to 60 of this act;
(f) A statement as to whether the supervised child is in emergency custody or continued custody. If the supervised child is in emergency custody or continued custody:
   (i) A statement as to whether the petitioner is seeking continued custody of the supervised child. If the petitioner is seeking continued custody, the court shall set a hearing to determine the issue. The hearing regarding continued custody shall be conducted as provided in section 141 of this act;
   (ii) The date, time and place of any hearing regarding the child's continued custody and a statement that at such hearing the supervised child and the supervised child's responsible adults have the rights listed in section 151 of this act;
   (iii) A copy of all documents filed with the court prior to filing of the petition.
(4) A petition alleging a child to be in need of state supervision may include:
(a) A request for emergency custody of the child alleged to be in need of state supervision; and
(b) A request for any other relief that is in the child's best interests.
(5) Every petition alleging a child to be in need of state supervision shall be made on information and belief and shall be verified as provided in subdivision (7) of section 49-1504.
(6) Upon the filing of a petition alleging a child to be in need of state supervision, the court may appoint a guardian ad litem for the child and counsel for the supervised child and the child's responsible adult.

Sec. 148. Supervised children; petition; service of process. (1) Every party to an action regarding a child in need of state supervision shall be served with a summons and a copy of the petition. The court shall endorse on the summons that the proceeding is one to find a child in need of state supervision, shall set the time and place for an initial hearing, and shall cause service to be made.
(2) Except as provided in subsection (3) of this section, service shall be made in accordance with sections 25-505.01 to 25-514.01 and:
(a) Personal or residence service under section 25-505.01 shall be effected at least seventy-two hours before the time set for a hearing; and
(b) Certified mail service under section 25-501.01 shall be mailed at least five days before the date set for a hearing.
(3) Substitute and constructive notice may be permitted by the court, as provided in sections 25-517.02 to 25-527 and:
(a) Authorization of substitute or constructive service shall not expand the time a supervised child can be held without judicial review; and
(b) When the court authorizes substitute or constructive service, the court shall set hearings so parties who are the subject of such service have adequate time to prepare, consistent with the best interests of the child and the purposes of the Nebraska Juvenile Code.
(4) A party's voluntary appearance is the equivalent to service, except that child's appearance is not the equivalent of service.
(5) A party may, either in writing or in open court on the record, waive the requirement for seventy-two-hour notice, except that no supervised child shall be deemed to have waived their right to seventy-two-hour notice unless they have consulted with counsel or a guardian ad litem and the court finds such waiver to be knowing and voluntary and in the child's best interests. The court shall personally address the child and the child's counsel or guardian ad litem before making such a finding.

Sec. 149. Supervised children; petition; initial hearing; purpose. The purposes of the initial hearing are to:
(1) Protect the best interests of the supervised child;
(2) Insure adequate notice has been provided to all parties;
(3) Advise all parties of their rights, of the contents of the petition, and of the disposition alternatives available to the court;
(4) Appoint counsel and a guardian ad litem when appropriate;
(5) Determine any custody or visitation issues;
(6) Determine support; and
(7) Set an adjudication hearing.

Sec. 150. Supervised children; petition; initial hearing; requirements. 
(1) No sooner than seventy-two hours or later than five days after service is effected as required, the court shall hold an initial hearing regarding the petition.
(2) The initial hearing shall be entirely on the record.
(3) All parties shall be present at the initial hearing. If a party has received service as required and does not appear at the initial hearing, the hearing shall not be continued unless the court finds a continuance is required in the interests of justice.

Sec. 151. Supervised children; petition; initial hearing; rights of parties. At the initial hearing, the parties shall be advised of their rights. Nothing in this section shall be construed as denying, limiting, or restricting any rights existing under either the Nebraska or United States Constitutions. Unless otherwise specified, all parties to any proceeding concerning a child alleged to be in need of state supervision shall have the right to:
(1) Receive notice;
(2) Have legal representation. The department shall be represented by the county attorney at all proceedings regarding a child in need of state supervision who has been committed to the department, as required in section 23-1201. If a conflict arises between the department and the county attorney regarding the prosecution of any case involving a child in need of state supervision committed to the department, an attorney employed or retained by the department may enter an appearance and represent the department's interests in the case;
(3) Testify;
(4) Remain silent as to any matter of inquiry if the testimony sought to be elicited might tend to incriminate the party;
(5) Be present at all hearings unless excluded or excused as provided elsewhere in the Nebraska Juvenile Code;
(6) Conduct discovery;
(7) Bring motions;
(8) Subpoena witnesses;
(9) Argue in support of or against the petition;
(10) Present evidence;
(11) Cross-examine witnesses;
(12) Request trial court review of the disposition upon a showing either of a substantial change of circumstances or that the disposition was inadequate;
(13) Bring post-adjudication or post-disposition motions;
(14) Appeal final orders of the court; and
(15) Any other rights as set forth in statute.

Sec. 152. Supervised children; petition; initial hearing; procedure. At the initial hearing:
(1) After advisement of rights as required in section 151 of this act, the court may accept an answer of admission, no contest, or denial from the supervised child or the child's responsible adult to all or any part of the petition;
(2) The supervised child and the child's responsible adult may remain mute. In such case, the court shall enter an answer of denial for the supervised child and the child's responsible adult and schedule an adjudication hearing;
(3)(a) If the answer of either the supervised child or the child's responsible adult is admission or no contest, the court shall insure the answer is knowing and voluntary, and that a factual basis exists for the answer before accepting it;
(b) In deciding whether a child's answer of admission or no contest is knowingly made, the court shall personally address the child to determine whether the child:
(i) Understands the petition;
(ii) Understands the roles of participants in the legal process, including the judge, child's attorney, prosecutor, witnesses, and guardian ad litem, and the adversarial nature of the process;
(iii) Is able to reason about available options by weighing the potential consequences of the answer;
(iv) Is able to extend thinking into the future; and
(vii) Is able to express himself or herself in a reasonable and coherent manner; and
(c) The factual basis may be established by:
(i) Facts contained in an affidavit filed with the court;
(ii) The sworn testimony of a person with knowledge of the facts establishing the child is in need of state supervision; or
(iii) The representations of the county attorney regarding the facts establishing the child is in need of state supervision, if accepted as true by the child or the child's guardian ad litem, the child's responsible adult, and the child's attorney;
(4) The court may not adjudicate a child to be a child in need of state supervision based solely on the answer of admission or no contest by the child's responsible adult. Acceptance of such answers by the court is binding only against the child's responsible adult. If the child denies the petition or stands mute, the court shall:
(a) Schedule an adjudication hearing;
(b) Appoint counsel for the child and the child's responsible adult as necessary;
(c) Appoint a guardian ad litem for the child;
(d) Enter support orders appropriate under 52 to 60 of this act; and
(e) Determine where and under what conditions the child will be placed pending the adjudication hearing;
(5) If the court accepts the supervised child's answer of admission or no contest, the allegations in the petition shall be found to be true and an adjudication based on the answer shall be entered finding the child to be in need of state supervision; and
(6) Upon the entry of adjudication finding the child to be in need of state supervision based on the child's answer of admission or no contest, the court may:
(a) Commit the child to the supervision of a probation officer; or
(b)(i) Order the probation office or the department to prepare and file with the court a proposed case plan for the care and supervision of the supervised child;
(ii) Set a disposition hearing;
(iii) Appoint counsel as necessary for the child and the child's responsible adults or adult;
(iv) Appoint a guardian ad litem for the child in need of state supervision;
(v) Determine where and under what conditions the child shall be placed pending the disposition hearing; and
(vi) Enter any support orders appropriate under sections 52 to 60 of this act and or required as reasonable efforts to preserve and reunify the family or to finalize a permanency plan.

Sec. 153. Supervised children; petition; adjudication hearing. (1) Adjudication hearings regarding children alleged to be in need of state supervision shall be conducted on the record and without a jury. The rules of evidence shall apply.
(2) If the child is held in emergency custody, the adjudication hearing shall be held within ninety days after the date the child was first taken into emergency custody.
(3) If the child is not held in emergency custody, the adjudication hearing shall be held within one hundred twenty days after the date the petition was filed.
(4) Computation of the times specified in this section shall be in accordance with section 29-1207.
(5) If the adjudication hearing is not held within the time specified in this section, the child shall be released and the petition dismissed.
(6) Dismissal of a petition for failure to hold the adjudication within the time specified in this section shall constitute a complete bar to refiling a petition based on the same set of facts.
(7) Failure of the child to move for dismissal prior to adjudication or entry of an admission or plea of no contest shall constitute a waiver of the right to speedy adjudication.
(8) The child named in the petition and the child's responsible adult shall have the rights prescribed in section 151 of this act. The child shall also have the right to have the allegations against him or her proven beyond a reasonable doubt.

(9) If the allegations are not found to be true beyond a reasonable doubt, the petition shall be dismissed. If the child named in the petition had been held in continued custody pending the adjudication, the child shall be immediately released.

(10) If the allegations of the petition are found to be true beyond a reasonable doubt, the court shall adjudicate the child to be in need of state supervision. The court may:

(a) Commit the child to the supervision of a probation officer; or

(b)(i) Order either the probation office or the department to prepare and file with the court a case plan for the care and supervision of the supervised child;

(ii) Set a disposition hearing; and

(iii) Enter any orders for support appropriate under sections 52 to 60 of this act or required as reasonable efforts to preserve and reunify the family or to finalize a permanency plan.

Sec. 154. Supervised children; disposition hearing. (1) All disposition hearings regarding children in need of state supervision shall be conducted on the record. The rules of evidence shall not apply.

(2) Every party to a proceeding regarding a child in need of state supervision shall be entitled to a copy of any case plan no less than five days prior to the disposition hearing.

(3) Every party to a proceeding regarding a child in need of state supervision shall have the right to present evidence at a disposition hearing.

(4) A case plan regarding a child in need of state supervision is presumed to be in the child's best interests and to specify the types of services and interventions reasonably likely to eliminate, moderate, or reduce the child's conduct specified in the petition. This presumption is rebuttable as provided in subsection (1) of section 104 of this act.

(5) The court shall adopt the case plan submitted by the probation officer or the department unless a party has shown by clear and convincing evidence that the case plan is either not:

(a) In the child's best interests; or

(b) Reasonably likely to eliminate, moderate, or reduce the child's conduct specified in the petition.

(6) The court may either:

(a) Place the child in need of state supervision under the supervision of the probation officer; or

(b) Commit the child in need of state supervision to the department.

(7) The court shall, if placing a supervised child under the supervision of a probation officer pursuant to subdivision (6)(a) of this section:
(a) Set the terms and conditions of probation for the supervised child. The court shall explain to the child the potential consequences of violating those terms and conditions; and
(b) Specify whether the child shall be placed in or out of his or her home. If the court orders an out-of-home placement under the supervision of a probation officer, the court shall specify the placement.
(8) The court shall, if it commits the child to the department pursuant to subdivision (6)(b) of this section:
(a) Set the types of services the department shall provide the supervised child. Subject to section 104 of this act, the department shall select the service provider; and
(b) Specify whether the child shall be placed in or out of his or her home. If the court orders an out-of-home placement for a child committed to the department, the court shall specify the type of placement, and the department shall choose the specific out-of-home placement.
(9) If any party proves by clear and convincing evidence that either the out-of-home placement or a specific service provider selected is not in the supervised child's best interests or reasonably likely to eliminate, moderate, or reduce the child's conduct specified in the petition, the court may specify another out-of-home placement or service provider. The department is responsible for the cost of services ordered by the court pursuant to this subsection.
(10) A child in need of state supervision shall not, as part of a disposition order, be placed in any facility used for the detention, safekeeping, or treatment of children alleged or found by a court to be in need of state rehabilitation.
(11) In carrying out sections 133 to 155 of this act, the court may order the parents of a child found to be in need of state supervision to participate in family counseling and other professional counseling activities deemed reasonably necessary to eliminate, moderate, or reduce the child's conduct specified in the petition or to enhance their ability to provide the child with adequate support, guidance, and supervision. The court may also order that the parents support the child and participate with the child in fulfilling a court-imposed sanction. The court may use its contempt powers to enforce this subsection.
(12) A disposition order regarding a child in need of state supervision is a final order.

Sec. 155. Supervised children; court proceedings; review; appeal. Any final order regarding a child in need of state supervision may be appealed as set forth in section 212. Reviews by a juvenile review panel as provided in sections 108 to 113 of this act do not apply to proceedings regarding children in need of state supervision.
(e) Children in need of state rehabilitation (Law violators)
Sec. 156. Law violators; sections applicable. All proceedings regarding children in need of state rehabilitation are governed by sections 156 to 189 of this act.

Sec. 157. Law violators; policy. (1) The goals of sections 156 to 189 of this act are to:
(a) Develop a juvenile justice system in the state to protect the public, impose accountability for violations of law, and equip children in need of state rehabilitation with the skills needed to live responsibly and productively; and
(b) Prevent children's criminal behavior through the support of programs and services designed to meet the needs of those children identified as being at risk of violating the law.
(2) The goals of sections 156 to 189 of this act shall be achieved by providing programs and services that:
(a) Retain and support children within their homes whenever possible and appropriate;
(b) Provide the least restrictive and most appropriate setting for children while adequately protecting the children and the public;
(c) Are community-based and are provided in as close proximity to the child's community as possible and appropriate;
(d) Provide humane, secure, and therapeutic confinement to those children who present a danger to the public;
(e) Provide follow-up and aftercare services to children when returned to their families or communities to ensure that progress made and behaviors learned are integrated and continued;
(f) Hold children accountable for their unlawful behavior in a manner consistent with their criminal conduct, their long-term treatment needs and the safety of the public;
(g) Base treatment planning and service provision upon an early, individualized assessment of the child’s treatment needs, criminal conduct, and the safety of the public; and
(h) Are family focused and include the child’s family in assessment, case planning, treatment, and service provision as appropriate.

Sec. 158. Law violators; court jurisdiction.
(1) The juvenile court shall have exclusive original jurisdiction over all children alleged to be in need of state rehabilitation.
(2) The juvenile court shall have concurrent original jurisdiction with the county court over all children alleged to have committed:
(a) A traffic offense, other than a felony;
(b) A violation of the laws governing the purchase or possession of alcohol or tobacco by children; or
(c) A violation of the laws governing hunting, fishing, or trapping.

Sec. 159. Law violators; law enforcement officer; powers and duties; emergency custody; when.
UNRAVELING THE LABYRINTH

(1) A law enforcement officer without a warrant or order of the court may take emergency custody of a child when:
(a) A child has violated a state law or municipal ordinance in the presence of the law enforcement officer;
(b) A felony has been committed and the law enforcement officer has reasonable grounds to believe the child committed it;
(c) The law enforcement officer has reasonable cause to believe that a child in need of state rehabilitation:
   (i) Has violated or is about to violate a condition of his or her parole or probation;
   (ii) That the child will attempt to leave the jurisdiction;
   (iii) Will place lives or property in danger unless taken into emergency custody; or
   (iv) Has absconded or is attempting to abscond from a placement for evaluation or commitment to the office.

(2) A law enforcement officer with a court order authorizing emergency custody of a child who has violated the terms or conditions of his or her parole or probation may take emergency custody of such child.

Sec. 160. Law violators; emergency custody; notifications required; release; when. A law enforcement officer who takes emergency custody of a child under section 159 of this act:
(1) Shall immediately take reasonable measures to notify the child's responsible adults. The person notified shall be permitted to see and consult with the child in private at the place of detention;
(2) Shall, when such child is committed to the office or under the supervision of a probation officer based on a prior placement or commitment, notify the child's parole or probation officer immediately, in no event later than four hours, after the child is taken into emergency custody; and
(3) May:
   (a) Release the child to the child's responsible adult;
   (b) Release the child to the child's parole officer, probation officer, or to the office, if the child is under the supervision of a parole or probation officer or is committed to the office based on a prior commitment; or
   (c) Maintain emergency custody of the child.

Sec. 161. Law violators; child taken into emergency custody; not considered arrest; right to an attorney. (1) No child taken into emergency custody under section 159 of this act shall be considered to have been arrested, except for the purpose of determining the validity of such custody under the Constitution of Nebraska or the Constitution of the United States.
(2) A child taken into emergency custody under section 159 of this act has the right, without unnecessary delay, to call or consult an attorney. If the child cannot afford counsel and wishes to consult with an attorney prior to being questioned, the court shall appoint counsel for
such purpose. No child thirteen years of age or younger may be questioned as a suspect about any felony unless they have consulted with an attorney prior to such questioning. This right to consult with an attorney prior to being questioned as a suspect about any felony cannot be waived. An attorney retained on or behalf of or appointed by the court for a child taken into emergency custody shall be permitted to consult with the child in private at the place of custody.

Sec. 162. Law violators; emergency custody; secure detention; restrictions. (1) When secure detention of a child taken into emergency custody pursuant to section 159 of this act is necessary, such secure detention shall occur within a juvenile detention facility except:
(a) Within a metropolitan statistical area where no juvenile detention facility is reasonably available, the child may be delivered, for detention not to exceed six hours, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the child and ascertaining the child’s health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party; or
(b) Outside of a metropolitan statistical area where no juvenile detention facility is reasonably available, the child may be delivered, for detention not to exceed twenty-four hours and while awaiting an initial court appearance, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the child and ascertaining the child’s health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party.
(2) No child under sixteen years of age in secure detention shall be held in a jail or other facility intended or used for the detention of adults, except that such child may be in secure detention in a jail or other facility intended or used for the detention of adults if: (a) There is no verbal, visual, or physical contact between the child and any incarcerated adult and there is adequate staff to supervise and monitor the child’s activities at all times; and
(b)(i) Within the time limits specified in subsection (1) of this section, a felony charge is filed against the child as an adult in county or district court. In such a case, the detention may continue beyond the specified time limits; or
(ii) The child is held for no more than six hours before and six hours after any court appearance.

Sec. 163. Law violators; emergency custody; release; notice required; violation, penalty; arrest warrant. (1) A law enforcement officer who releases a child pursuant to section 160 of this act shall:
(a) Prepare in triplicate a written notice requiring the child to appear before the juvenile court or probation officer of the county in which the child was taken into emergency custody at a time and place specified
in the notice. The notice shall contain a concise statement of the reasons the child was taken into emergency custody;
(b) Deliver one copy of the notice to the child;
(c) Require the child and the child's responsible adult to sign a written promise that such signers will appear at the time and place designated in the notice;
(d) Immediately release the child upon the execution of the promise to appear;
(e) As soon as practicable, file one copy of the notice with:
   (i) The county attorney;
   (ii) The child's juvenile parole officer, if the child has previously been committed to the office, or the child's probation officer, if the child is under the supervision of a probation officer; and
   (iii) When required by the juvenile court, with the juvenile court, a person appointed by the court for such purpose, or a probation officer.
(2) Willful failure to either appear as required by the notice or promise to appear or to surrender within three days thereafter shall be:
   (a) A Class IV felony if the offense alleged in the criminal complaint or petition was a felony; or
   (b) A Class II misdemeanor if the offense alleged in the criminal complaint or petition was a misdemeanor.
(3) The court may issue a warrant for the arrest or apprehension of a person who either willfully failed to appear as required or to surrender within three days of the date set forth in the notice and promise to appear.

Sec. 164. Law violators; emergency custody; detention, when; hearing; release, when. (1) If the law enforcement officer maintains emergency custody of a child pursuant to section 160 of this act, either a criminal complaint charging the child with a violation of the criminal law or a petition alleging the child to be in need of state rehabilitation shall be filed no later than twelve hours after the child was taken into emergency custody pursuant to section 159 of this act.
(2) The criminal complaint or petition shall be made on information and belief and shall be verified as provided in subdivision (7) of section 49-1504.
(3) No later than forty-eight hours after the child was taken into emergency custody pursuant to section 159 of this act, a court of competent jurisdiction shall:
   (a) Determine whether the criminal complaint or petition establishes probable cause to believe that the crime alleged in the complaint was committed and the child in detention committed it or the child is in need of state rehabilitation as alleged in the petition;
   (b) Document whether probable cause is established and affix the court's signature on the face of the criminal complaint or petition;
(c) Set a time and date for a hearing to determine whether the child shall be in detention, if the court determines probable cause was established. This detention hearing shall be held within twenty-four hours after the time the child was taken into emergency custody; and (d) Order the child immediately released unconditionally, if the court determines probable cause was not established.

Sec. 165. Law violators; petition. (1) An action seeking to have a child found to be in need of state rehabilitation shall be commenced by filing a petition in the office of the clerk of the juvenile court.
(2) A petition alleging a child to be in need of state rehabilitation shall only be filed by the county attorney.
(3) A petition alleging a child to be in need of state rehabilitation shall include:
(a) The name of the court and county in which the action is brought;
(b) The names of the parties;
(c) A statement of the facts, in ordinary and concise language, showing the child to be in need of state rehabilitation with reference to the criminal statute the child is alleged to have violated;
(d) A statement as to whether the child is in emergency custody or detention;
(e) If the child is in emergency custody: A statement as to whether the petitioner is seeking detention of the child. If the petitioner is seeking detention, the court shall set a hearing to determine the issue. The hearing regarding detention shall be conducted as provided in section 164 of this act, and
(f) If the child is in detention: The date, time, and place of any hearing regarding the child’s detention, a statement that at such hearing the child has the rights stated in section 170 of this act, and a copy of all documents filed with the court prior to filing of the petition.
(4) A petition alleging a child to be in need of state rehabilitation may include a statement that the state intends to seek extended juvenile jurisdiction over the child. If notice of intent to seek extended juvenile jurisdiction is included in the petition, the facts supporting such a request shall be included in the petition. If notice to seek extended juvenile jurisdiction is not included in the petition, the court shall not order extended juvenile jurisdiction.
(5) A petition may be amended any time prior to the entry of an order adjudicating a child to be in need of state rehabilitation.
(6) Every petition alleging a child to be in need of state rehabilitation shall be made on information and belief and shall be verified as provided in subdivision (7) of section 49-1504.
(7) The court shall, upon request, appoint counsel for a child upon the filing of a petition alleging the child to be in need of state rehabilitation if the child or the child’s responsible adult cannot afford counsel. If the child named in the petition is under twelve years of age, the
court shall appoint counsel if the child is not represented and cannot afford counsel regardless of whether the child requests counsel.

Sec. 166. Law violators; service of process. (1) Every party to an action regarding a child in need of state rehabilitation shall be served with a summons and a copy of the petition. The court shall endorse on the summons that the proceeding is one to find a child in need of state rehabilitation, shall set the time and place for an initial hearing, and shall cause service to be made.

(2) Except as provided in subsection (3) of this section, service shall be made in accordance with sections 25-505.01 to 25-514.01 and:

(a) Personal or residence service under section 25-505.01 shall be effected at least seventy-two hours before the time set for a hearing; and

(b) Certified mail service under section 25-501.01 shall be mailed at least five days before the date set for a hearing.

(3) Substitute and constructive notice may be permitted by the court, as provided in sections 25-517.02 to 25-527 and:

(a) Authorization of substitute or constructive service shall not expand the time a child in need of state rehabilitation can be held in detention without judicial review; and

(b) When the court authorizes substitute or constructive service, the court shall set hearings so parties who are the subject of such service have adequate time to prepare, consistent with the best interests of the child and the purposes of the Nebraska Juvenile Code.

(4) A party's voluntary appearance is the equivalent to service, except that a child's appearance is not the equivalent of service.

(5) A party may, either in writing or in open court on the record, waive the requirement for seventy-two-hour notice, except that no child in need of state rehabilitation shall be deemed to have waived their right to seventy-two-hour notice unless they have consulted with counsel or a guardian ad litem and the court finds such waiver to be knowing and voluntary and in the child's best interests. The court shall personally address the child and the child's counsel or guardian ad litem before making such a finding.

Sec. 167. Law violators; waiver of juvenile court jurisdiction; hearing; expanded juvenile jurisdiction, conditions; amenability to treatment; factors. (1) Upon a motion by the county attorney, the court shall conduct a hearing, at which the county attorney shall produce evidence to enable the court to determine:

(a) Whether probable cause exists to believe that the offense alleged in the petition has been committed and that the child named in the petition has committed it, unless such proof has been elicited at a prior hearing on continued detention of the child and such findings have been made by the same judge who is conducting the waiver proceeding; and
(b) Whether the child is amenable to treatment, considering the factors listed in this section. A child is amenable to treatment if there is a reasonable probability the child can be rehabilitated prior to the child's nineteenth birthday or, if the child is subject to expanded juvenile jurisdiction, the child's twenty-first birthday.

(2) A child may consent to expanded juvenile jurisdiction. The child's consent to expanded juvenile jurisdiction shall be knowing and voluntary. In determining whether the child's consent is knowing and voluntary, the court shall consider the factors listed in subdivision (1)(a) of section 172 of this act.

(3) Factors the court shall consider in determining whether the child is amenable to treatment are:

(a) The type of treatment to which the child would most likely be amenable;
(b) Whether there are services and facilities available to the court for treatment and rehabilitation of the child;
(c) The treatment resources available in the adult correctional system for the child if treated as an adult;
(d) The likelihood of the child's reasonable rehabilitation through the use of services and facilities that are currently available to the court;
(e) Evidence that the alleged offense included violence or was committed in an aggressive and premeditated manner. Evidence the child was in possession of a firearm during commission of the offense creates a rebuttable presumption the offense included violence and was committed in an aggressive and premeditated manner. Evidence that the child was not in possession of a firearm during commission of the offense does not create any presumption regarding this factor;
(f) The motivation for the commission of the offense;
(g) The child's age and the ages and circumstances of any others involved in the offense;
(h) The child's history, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court, and, if so, whether such offenses were crimes against the person or relating to property and other previous history of antisocial behavior, if any, including any patterns of physical violence;
(i) The sophistication and maturity of the child as determined by consideration of his or her home, school activities, emotional attitude, and desire to be treated as an adult, pattern of living, and whether he or she has had previous contact with law enforcement agencies and courts and the nature thereof;
(j) Whether the best interests of the child and the safety of the public require that the child continue in detention or under state rehabilitation beyond the child's nineteenth or twenty-first birthday, depending on whether the child is subject to expanded juvenile jurisdiction;
(k) Whether the seriousness of the offense and public safety requires isolation or restriction of the child beyond that afforded by services or
facilities available to the court, including extended juvenile jurisdiction; and
(1) Such other matters as the court deems relevant.

Sec. 168. Law violators; waiver of juvenile court jurisdiction; court findings and duties. (1) If the juvenile court finds by clear and convincing evidence that the child named in the petition is not amenable to treatment, the juvenile court shall waive jurisdiction over the child.
(2) If the juvenile court waives jurisdiction, the juvenile court shall:
(a) Set forth findings for the reason for its decision;
(b) Designate where the child shall be kept pending determination by the court that would have had jurisdiction if an adult had committed the offense;
(c) Transfer the complete file to the appropriate court; and
(d) Close the case.

Sec. 169. Law violators; waiver of juvenile court jurisdiction; effect. (1) A waiver of jurisdiction over a child pursuant to sections 167 to 169 of this act shall constitute a waiver of jurisdiction over that child for the offense upon which the motion is based as well as for all pending and subsequent offenses of whatever nature.
(2) If the child is acquitted of the offense for which the waiver has been granted, the waiver shall be vacated and shall be of no effect in any pending or subsequent case.
(3) Statements made by the child at the hearing under section 167 of this act are not admissible against the child over objection in the criminal proceedings following the transfer except for impeachment.
(4) The order granting or denying transfer of jurisdiction is not a final order.

Sec. 170. Law violators; initial hearing; preliminary procedure; rights of parties. When a petition alleges a child to be in need of state rehabilitation, the court shall, at the initial hearing, inform the parties of:
(1) The contents of the petition;
(2) The nature of the proceedings;
(3) The possible consequences or dispositions that may apply to the child's case following an adjudication of jurisdiction, including imposition of an adult sentence under section 187 of this act;
(4) Such child's right to counsel;
(5) The privilege against self-incrimination by advising the child and the child's responsible adult that the child may remain silent concerning the charges against the child and that anything said may be used against the child;
(6) The right to confront anyone who testifies against the child and to cross-examine any persons who appear against the child;
(7) The right of the child to testify and to compel other witnesses to attend and testify in his or her own behalf;
The right of the child to a speedy adjudication hearing; and
(9) The right to appeal and have a transcript for such purpose.

Sec. 171. Law violators; initial hearing; admission or plea.
After being informed of the rights in section 170 of this act, the child may:
(1) Enter a denial of the allegations in the petition;
(2) Remain mute, in which case the court shall enter a denial of the allegations in the petition;
(3) Enter a plea of no contest to any or all of the allegations of the petition. An accepted plea of no contest shall have the same effect as an admission to the allegations; or
(4) Admit all or any of the allegations in the petition.

Sec. 172. Law violators; initial hearing; admission or plea of no contest; court duties.
(1) The court may only accept an in-court admission or plea of no contest by the child to all or any part of the allegations in the petition if:
(a) The court has determined from examination of the child and those present that the child has voluntarily and knowingly waived his or her rights listed in section 170 of this act. A child under the age of fourteen who is alleged in the petition to have committed any felony cannot waive his or her rights without first consulting the child’s responsible adult. A child under the age of fourteen who is alleged in the petition to have committed a Class III or higher felony cannot waive his or her rights without first consulting an attorney. If the child or the child’s responsible adults cannot afford to retain counsel for this purpose, the court shall appoint counsel. In determining whether a waiver of any right is voluntary and knowing, the court shall consider the child’s ability to:
(i) Understand the charges;
(ii) Understand the roles of participants in the trial process, judge, defense attorney, prosecutor, witnesses, and jury, and understand the adversarial nature of the process;
(iii) Reason about available options by weighing his or her consequences, including but not limited to, weighing pleas, waivers, and strategies;
(iv) Understand and appreciate the charges and their seriousness;
(v) Understand and realistically appraise the likely outcome of the waiver;
(vi) Extend thinking into the future; and
(vii) Express himself or herself in a reasonable and coherent manner; and
(b) The court has determined a factual basis for such admission or plea of no contest exists. The factual basis may be established by:
(i) Facts contained in an affidavit filed with the court;
(ii) The sworn testimony of a person with knowledge of the facts establishing the child is in need of state rehabilitation; or

(iii) The representations of the county attorney regarding the facts establishing the child is in need of state rehabilitation, if accepted as true by the child, the child's responsible adult, and the child's attorney.

(2)(a) If the court accepts an admission or plea of no contest and finds a factual basis exists for the admission or plea of no contest, the court shall adjudicate the child to be in need of state rehabilitation, unless the court finds such an adjudication to be contrary to the interests of justice.

(b) If the court finds that such adjudication is contrary to the interests of justice, the court shall state the reasons for such finding in detail and enter a denial on behalf of the child.

(c) A finding made under this subsection is not a final order.

Sec. 173. Law violators; initial hearing; preadjudication mediation. (1) If a child appears to be a child in need of state rehabilitation because of a nonviolent act or acts, the county attorney may, prior to filing a petition, offer mediation to the child and the victim of the child's act. If both the child and the victim agree to mediation, the child in need of state rehabilitation, the child's responsible adult, and the victim shall sign a mediation consent form and select a mediator or mediation center. The county attorney shall refer the child and the victim to such mediator or mediation center. The mediation sessions shall occur within thirty days after the date that the county attorney makes the mediation referral unless the county attorney approves an extension. The child or the child's responsible adult shall pay the mediation fees. The fee shall be determined by the mediator in private practice or by the approved center. A child shall not be denied services at a mediation center because of an inability to pay.

(2) Terms of the agreement shall specify monitoring, completion, and reporting requirements. The county attorney, the court, or the probation office shall be notified by the designated monitor if the child in need of state rehabilitation does not complete the agreement within the agreement's specified time.

(3) Terms of the agreement may include one or more of the following:

(a) Participation by the child in certain community service programs;

(b) Payment of restitution by the child to the victim;

(c) Reconciliation between the child and the victim; and

(d) Any other areas of agreement.

(4) If no mediation agreement is reached, the mediator or mediation center will report that fact to the county attorney within forty-eight hours of the final mediation session excluding nonjudicial days.

(5) If a mediation agreement is reached and the agreement does not violate public policy, the agreement shall be approved by the county
attorney. If the agreement is not approved and the victim agrees to return to mediation (a) the child in need of state rehabilitation may be referred back to mediation with suggestions for changes needed in the agreement to meet approval or (b) the county attorney may proceed with the filing of a criminal charge or juvenile court petition. If the child agrees to return to mediation but the victim does not agree to return to mediation, the county attorney may consider the child's willingness to return to mediation when determining whether or not to file a criminal charge or a juvenile court petition.

(6) If the child meets the terms of an approved mediation agreement, the county attorney shall not file a criminal charge or juvenile court petition against the child for the acts for which the child was referred to mediation.

Sec. 174. Law violators; initial hearing; denial of allegations; adjudication hearing set; time restrictions. (1) If a denial to the allegations is entered by the child or by the court on the child's behalf, the court shall schedule an adjudication hearing.

(2) If the child is in emergency custody or detained, the adjudication hearing shall be held within ninety days after the date the child was first taken into emergency custody or detained.

(3) If the child is not in emergency custody or detained, the adjudication hearing shall be held within one hundred twenty days after the date the petition was filed.

(4) Computation of the times specified in this section shall be in accordance with section 29-1207. Any waiver of the right to a speedy adjudication shall be made by the child personally. The court shall address the child to determine the waiver is knowing and voluntary. In making this determination, the court shall consider the factors listed in subdivision (1) of section 172 of this act.

(5) If the adjudication hearing is not held within the time specified in this section, the child shall be released and the petition dismissed.

(6) Dismissal of a petition for failure to hold the adjudication within the time specified in this section shall constitute a complete bar to refiling a petition based on the same set of facts.

(7) The right to a speedy adjudication is not subject to waiver or forfeiture. The court shall insure that in every case either adjudication is held within the times specified in this section or the child is granted the discharge required.

Sec. 175. Law violators; adjudication; purposes. The purposes of the adjudication are to protect the public safety and the best interests of the child in need of rehabilitation and to determine whether the allegations contained in the petition are true.

Sec. 176. Law violators; adjudication; parties; requirements. (1) All parties shall be present at the adjudication. If a party, other than the
child alleged to be in need of state rehabilitation, has received service as required and does not appear at the adjudication, the hearing shall not be continued unless:
(a) The court finds the absence justified;
(b) A continuance is in the child’s best interest; and
(c) The continuance is required in the interests of justice.

(2) If a child alleged to be in need of state rehabilitation willfully fails to appear at an adjudication hearing after receiving the notice required under this act, the court may issue an order authorizing a law enforcement officer to apprehend the child. A child detained pursuant to such an order shall have the rights listed in section 170 of this act.

Sec. 177. Law violators; adjudication hearing. (1) Adjudication hearings regarding children alleged to be in need of state rehabilitation shall be conducted on the record and without a jury. The rules of evidence shall apply.
(2) The child named in the petition shall have the rights prescribed in subdivisions (4) through (9) of section 170 of this act. The child shall also have the right to have the allegations against him or her proven beyond a reasonable doubt.
(3) If the allegations are not found to be true beyond a reasonable doubt, the petition shall be dismissed. If the child named in the petition had been detained pending the adjudication, the child shall be immediately released.
(4) If the allegations of the petition are found to be true beyond a reasonable doubt, the court shall adjudicate the child to be in need of state rehabilitation. The court may immediately proceed to disposition as provided in section 178 of this act or may:
(a) Place the child with the department for an evaluation as defined in section 43-403 and order the department to prepare and file with the court a case plan for the rehabilitation, care, and supervision of the child in need of state rehabilitation; and
(b) Set a disposition hearing. The disposition hearing shall be held no later than forty-five days after the adjudication if the child in need of rehabilitation is detained and no later than sixty days after the adjudication if the child is not detained.
(c) The court shall also enter any orders required by sections 52 to 60 of this act or required as reasonable efforts to preserve and reunify the family or to finalize a permanency plan.
(5) A finding a child is not in need of rehabilitation may not be appealed. A finding that a child is in need of rehabilitation is not a final order until a disposition order is entered.

Sec. 178. Law violators; disposition options. When a child is adjudicated to be in need of state rehabilitation, the court may:
(1) If the conduct alleged in the petition consists of a nonviolent act or acts and the child in need of state rehabilitation has not previously
been adjudicated because of a violent act or acts, the court may, with agreement of the victim, order the child in need of state rehabilitation to attend mediation with a mediator or at an approved center selected from the roster made available pursuant to section 25-2908;
(2) Place the child on probation. A child on probation is subject to the supervision of a probation officer. The court shall prescribe the conditions of probation that the court finds further the child’s reformation or rehabilitation. The court shall explain the conditions of probation to the child in need of state rehabilitation and shall explain the possible consequences of the child’s failure to obey the conditions of probation. The child shall be required to demonstrate on the record his or her understanding of the conditions of probation and the possible consequences of failing to obey the conditions. The child shall sign, on a form provided by the court, an acknowledgement that the conditions of probation were explained, that the child understood the explanation, and that the child understands the possible consequences of failing to obey the conditions of probation. When the court places a child in need of state rehabilitation under the supervision of a probation officer, the court may:
(a) Permit the child to remain in his or her own home; or
(b) Cause the child to be placed in a suitable family home, facility, or institution;
(3) Commit such child to the office, consistent with the Health and Human Services, Office of Juvenile Services Act. A child under the age of twelve years shall not be placed at a youth rehabilitation and treatment center or juvenile detention facility unless he or she has violated the terms of probation or has committed an additional offense and the court finds that the interests of the child and the welfare of the public demand his or her commitment. This minimum age provision shall not apply if the act in question is murder or manslaughter;
(4) In addition to or in the place of any other authorized disposition, the court may impose a disciplinary disposition. A disciplinary disposition is a disposition which has as its primary focus the expression of public condemnation of the conduct of the child which resulted in a finding the child was in need of state rehabilitation. A disciplinary disposition may include detention not to exceed sixty days, community service not to exceed two hundred hours, a fine not to exceed two thousand five hundred dollars, or any combination of such sanctions. Fines may be paid by community service at an hourly rate determined by the court. The hourly rate shall be, at a minimum, equal to the minimum wage rate in section 48-1203. Any disciplinary disposition shall be consistent with the policy stated in section 157 of this act. The court shall specify the goal or goals listed in subsection (1) of section 157 of this act that will be furthered by the particular disciplinary disposition imposed. In fashioning the disciplinary disposition, the court shall consider the following factors: the nature of the adjudi-
cated offense; the child's age and state rehabilitation history; the extent and apparent sincerity of the child's expressed remorse regarding the adjudicated offense; and the manner and consistency of parental discipline reflected in the record. The court shall recite its consideration of these factors on the record in the presence of the child; or

(5) In addition to or in the place of any other authorized disposition, the court may impose a treatment-focused disposition. A treatment-focused disposition is a disposition that has as its primary focus providing rehabilitative services designed to prevent the reoccurrence of the conduct child which resulted in a finding the child was in need of state rehabilitation. The treatment-focused disposition shall include the child's family and shall be either recommended or assented to by the department.

(6) A disposition order entered under this section is a final order and may be appealed as provided in section 212 of this act.

Sec. 179. Law violators; disposition; restrictions. A juvenile court shall not in any case impose or suspend imposition of a sentence of death.

Sec. 180. Law violators; court authority over responsible adults. In carrying out sections 156 to 189 of this act, the court may order the responsible adults of a child in need of state rehabilitation to participate in family counseling and other professional counseling activities deemed necessary for the rehabilitation of the child or to enhance their ability to provide the child with adequate support, guidance, and supervision. The court may also order that the responsible adult support the child and participate with the child in fulfilling a court-imposed sanction. In addition, the court may use its contempt powers to enforce a court-imposed sanction.

Sec. 181. Law violators; probation violation; preliminary procedure; rights of child; probable cause hearing. (1) Whenever a child in need of state rehabilitation is placed under the supervision of a probation officer, the probation officer or a county attorney may request the court modify or revoke that probation. The request shall be in writing and shall include:

(a) The terms or conditions of probation the is alleged to have violated;
(b) The facts supporting the allegation; and
(c) A statement regarding the necessity, due to the likelihood of the child causing harm to others or to himself or failing to appear in court as required, of detaining the child pending a judicial determination of the request, including any facts supporting a request for such detention.

(2) If the court determines that the request is supported by probable cause to believe the supervised child has violated the terms or conditions of probation imposed by the court, the court shall set a time and
date for a hearing to determine whether probation should be revoked or modified. If the court finds the request is not supported by probable cause, it shall deny the request.

(3) If the court finds from the facts presented in the request that there is probable cause to believe the child will cause harm to himself or to others or will fail to appear as required, the court may order the child detained pending a judicial determination of the request to revoke or modify probation.

(4) A request to modify or revoke the probation of a child in need of state rehabilitation shall be served on the parties to the original action at least seventy-two hours prior to the hearing on the request.

(5) A child held in emergency custody for probation violation under section 159 of this act or under subsection (3) of this section shall not be held longer than twenty hours, excluding non-judicial days, without a probable cause hearing.

(a) The rules of evidence shall not apply at the probable cause hearing.

(b) The child shall have the following rights at the probable cause hearing:

(i) To be present;

(ii) To counsel, if the child was represented by counsel at the hearing at which probation was imposed;

(iii) To confront and cross examine witnesses; and

(iv) To make a statement.

(6) If the court finds, from the evidence presented, that there is probable cause to believe the child violated the terms or conditions of probation and that the child may cause harm to himself or others or may fail to appear as required, the court may order the child detained pending the hearing on the request to revoke or modify probation.

(7) If the court finds, from the evidence presented, that there is no probable cause to believe the child violated the terms or conditions of probation, it shall deny the request to revoke or modify probation and order the child released.

(8) If the court finds probable cause to believe the child in need of state rehabilitation violated the terms or conditions of probation, but not that the child may cause harm to himself or others or may fail to appear, the court shall order the child to appear at the hearing on the request and order the child released from detention.

Sec.182. Law violators; probation violation; probation revocation or modification hearing; rights of parties. (1) A hearing to revoke or modify the probation of a child in need of state rehabilitation shall be conducted by the court imposing probation when possible. If the court that ordered the original disposition of probation is unavailable, the hearing to revoke or modify probation may be held by any juvenile court where venue is otherwise proper. The hearing shall be con-
ducted on the record. The rules of evidence shall not apply at a hearing to revoke or modify probation.

(2) The hearing to revoke or modify probation shall be held no later than fourteen days after a child is held in emergency custody under section 159 of this act and no later than thirty days after a request to revoke or modify is filed if the child is not held in emergency custody or detained.

(3) The child in need of state rehabilitation shall have the following rights at a hearing to revoke or modify probation:
   (a) To have written notice of the allegations of specific violations of conditions of probation and of any facts in support of the allegations;
   (b) To have at least seventy-two hours notice of the hearing;
   (c) To be present at the hearing;
   (d) To have counsel and to have counsel appointed if necessary;
   (e) To confront and cross examine adverse witnesses;
   (f) To present witnesses and evidence on his or her own behalf; and
   (g) To make a statement on his or her own behalf.

(4) If the court finds by a preponderance of the evidence that the child has violated the terms or conditions of probation, the court may modify or revoke probation and impose any disposition authorized by section 178 of this act.

(5) If the court does not find by a preponderance of the evidence that the child has violated the terms or conditions of probation, the court shall deny the request and, if the child has been held in emergency custody or detained, release the child.

(6) A finding that a child in need of state rehabilitation has violated the terms or conditions of probation is a final order and may be appealed as provided in section 212 of this act.

Sec. 183. Law violators; violation of juvenile disposition order; court powers. If the court finds by a preponderance of the evidence that a child previously found to be in need of state rehabilitation and who is under probation, parole, or commitment to the office has violated a juvenile disposition order or has subsequently been found again to be in need of state rehabilitation or guilty of committing a new offense or finds by clear and convincing evidence that the child is not amenable to state rehabilitation in the juvenile system, the court may:

(1) Amend the disposition to any juvenile disposition authorized in section 178 of this act; or

(2) Exercise its discretion to impose any adult sentence available in district or county court, including probation, suspended imposition of sentence, and imprisonment. A sentence of imprisonment shall not exceed forty years, except that a child adjudicated for murder in the first degree may be sentenced for any term up to and including life.

Sec. 184. Law violators; extended juvenile jurisdiction; request for; hearing; burden of proof. (1) The state may request extended juvenile
jurisdiction designation in a petition to find a child in need of state rehabilitation or in a separate motion if:
(a) The child is alleged in a petition to have committed a felony in any degree;
(b) The child is alleged in a petition to have committed a misdemeanor involving the use of a weapon;
(c) The child is alleged in a petition to have committed a misdemeanor sexual offense and the victim was at least two years younger than the alleged offender; or
(d) The child has previously been found by any court of competent jurisdiction to have committed a violation of law punishable by one or more years of imprisonment.

(2) The child's attorney may file a motion to request extended juvenile jurisdiction if the state could have filed pursuant to this section.

(3) When a party requests an extended juvenile jurisdiction designation, the court shall hold a designation hearing no later than sixty days after the request is filed with the court. If the child is in detention, the designation hearing shall be held no later than thirty days after the request is filed with the court. The time shall be computed in accordance with section 29-1207.

(4) The party requesting the extended juvenile jurisdiction designation has the burden to prove by clear and convincing evidence that such designation is warranted.

Sec. 185. Law violators; extended juvenile jurisdiction; determination; factors. The court shall make written findings and consider all of the following factors in making its determination whether to designate a child as an extended juvenile jurisdiction offender:
(1) The type of treatment to which the child would most likely be amenable;
(2) Whether there are facilities or programs available to the court which are likely to rehabilitate the child prior to the expiration of the court's juvenile jurisdiction;
(3) The motivation for the commission of the offense;
(4) The age of the child and the ages and circumstances of any others involved in the offense;
(5) The previous history of the child, including whether the child had been convicted of any previous offenses or adjudicated in juvenile court, and, if so, whether such offenses were crimes against the person or relating to property, and other previous history of antisocial behavior, if any, including any patterns of physical violence;
(6) The sophistication and maturity of the child as determined by consideration of the child's home, school activities, emotional attitude and desire to be treated as an adult, pattern of living, and whether the child has had previous contact with law enforcement agencies or courts and the nature thereof;
(7) Whether the best interests of the child and the safety of the public require that the child continue in detention or under probation, parole, or commitment to the office for a period extending beyond the child’s minority and, if so, the available alternatives best suited to this purpose;

(8) The seriousness of the alleged offense and whether public safety requires prosecution as an extended juvenile jurisdiction offender;

(9) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(10) Whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;

(11) The culpability of the child including the level of planning and participation in the alleged offense;

(12) Whether the child acted alone or was part of a group in the commission of the alleged offense; and

(13) Any other factors deemed relevant by the court.

Sec. 186. Law violators; extended juvenile jurisdiction; findings; rights; waiver; final order. (1)(a) If the juvenile court designates the child as an extended juvenile jurisdiction offender, the court shall enter its written findings, inform the child of the right to a jury and set a date for adjudication.

(b) The child may waive the right to a jury only after being advised of his or her rights and after consultation with the child’s attorney.

(c) Any waiver of the right to a jury shall be in writing and signed by the child, the child’s attorney, the child’s guardian ad litem, if one has been appointed and the child’s responsible adult. The court shall inquire on the record to ensure that the waiver was made in a knowing, and voluntary manner. In making this determination, the court shall consider the factors listed in subdivision (1)(a) of section 172 of this act.

(d) The state shall also have the right to a jury at the adjudication hearing in an extended juvenile jurisdiction case.

(e) All provisions of the Nebraska statutes, including the rules of criminal procedure, not in conflict with the Nebraska Juvenile Code, that regulate criminal jury trials in county or district courts shall apply to jury adjudications for children subject to extended juvenile jurisdiction.

(2) If the court denies the request for extended juvenile jurisdiction the court shall enter its written findings and proceed with the case as a child in need of state rehabilitation proceeding.

(3) A decision regarding designation as an extended juvenile jurisdiction offender is a final order and may be appealed as provided in section 212 of this act.
(4) A request for extended juvenile jurisdiction shall not extend the time limits for holding an adjudication hearing in section 174 of this act.

(5) A child designated as an extended juvenile jurisdiction offender has a right to counsel at every stage of the proceedings, including all reviews. This right to counsel cannot be waived.

Sec. 187. Law violators; extended juvenile jurisdiction offender; dispositions; adult sentence imposed; when. (1) If a child is found to be in need of state rehabilitation as an extended juvenile jurisdiction offender, the court may enter any of the juvenile dispositions authorized by section 178 of this act and suspend the imposition of any adult sentence authorized by law pending juvenile court review. (2) The state may at any time request that the juvenile court impose an adult sentence if an extended juvenile jurisdiction offender:
(a) Is determined to have violated a juvenile disposition order as provided in section 185 of this act;
(b) Has been adjudicated to be in need of state rehabilitation or found guilty of committing a new offense; or
(c) Is determined by the court after a hearing to be not amenable to state rehabilitation in the juvenile system. Any hearing to determine amenability to treatment shall be conducted as specified in section 167 of this act.

Sec. 188. Law violators; extended juvenile jurisdiction; disposition modification. (1) A child may file a motion with the court to modify the extended juvenile jurisdiction disposition at any time. If the child's initial motion is denied, the child shall wait six months from the date of the denial to file a new motion for modification. (2) The court may grant the child's motion to modify the extended juvenile jurisdiction disposition if the court finds by clear and convincing evidence: (a) Such a modification is in the child's best interests; (b) the child has been rehabilitated; and (c) such a modification is consistent with public safety. (3) The party filing a motion to modify an extended juvenile jurisdiction disposition bears the burden of proof.

Sec. 189. Law violators; extended juvenile jurisdiction; discharge; assessment hearing; dispositions; treatment. (1) The court has sole authority to discharge a child subject to extended juvenile jurisdiction. Any party may request discharge at any time prior to expiration of the disposition order. The court shall schedule a hearing to determine whether discharge shall be granted. The filing party has the burden of proving by clear and convincing evidence that discharge of the child is in the best interests of the child and public safety. (2)(a) If no review hearing has been requested six months prior to the child's eighteenth birthday, the court shall conduct a discharge assess-
ment hearing to determine whether to discharge the child, amend the extended juvenile jurisdiction disposition, or impose an adult sentence.

(b) In making its determination the court shall consider:
(i) The experience and character of the child before and after the juvenile disposition, including compliance with the court's orders;
(ii) The nature of the offense or offenses and the manner in which the offense or offenses were committed;
(iii) The recommendations of the professionals who have worked with the child;
(iv) The need for protection of public safety; and
(v) The opportunities provided to the child for rehabilitation and the child's efforts toward rehabilitation.

(c) If the state requests imposition of an adult sentence at a discharge assessment hearing, the state shall prove by clear and convincing evidence that the imposition of an adult sentence is required to protect public safety.

(d) Following a discharge assessment hearing the court may:
(i) Discharge the child;
(ii) Amend or add any juvenile disposition; or
(iii) Exercise its discretion to impose any adult sentence available in either district or county court, including probation, suspended imposition of sentence, or imprisonment. A sentence of imprisonment imposed under this section shall not exceed forty years, except for a child adjudicated for murder in the first degree who may be sentenced for any term up to and including life.

(3) Children committed to the Department of Correctional Services pursuant to extended juvenile jurisdiction are subject to adult parole as any other inmate within the Department of Correctional Services. Children adjudicated for murder in the first degree are subject to adult parole supervised by the Department of Correctional Services, not juvenile parole supervised by the office.

(4) A child receiving an extended juvenile jurisdiction adult sentence not requiring commitment to the Department of Correctional Services shall be treated as any other person receiving such a sentence except they remain subject to the jurisdiction of the juvenile court.

(5) A child receiving an extended juvenile jurisdiction adult sentence shall receive credit for time served in a secure juvenile detention facility or a youth rehabilitation and treatment center. Credit for time served shall be computed as required by section 83-1,106.

(e) Emancipation of children (Emancipated children)

Sec. 190. Emancipated children; sections applicable. Proceedings regarding the emancipation of children are governed by section 190 to 196 of this act.
Sec. 191. Emancipated children; policy. (1) The purposes of sections 190 to 196 of this act are:
(a) To provide a clear statement defining emancipation and its consequences; and
(b) To permit a child to obtain a court declaration of emancipation.
(2) Sections 190 to 196 of this act are not intended to interfere with the integrity of the family or the rights of parents and their children.

Sec. 192. Emancipated children; service of process; parties. (1) Upon the filing of a petition for emancipation, every party shall be served with a summons and a copy of the petition. The court shall endorse on the summons that the proceeding is one for emancipation of a child, shall set the time and place for an initial hearing, and shall cause service to be made.
(2) Except as provided in subsection (3) of this section, service shall be made in accordance with sections 25-505.01 to 25-514.01 and:
(a) Personal or residence service under section 25-505.01 shall be effected at least seventy-two hours before the time set for a hearing; and
(b) Certified mail service under section 25-501.01 shall be mailed at least five days before the date set for a hearing.
(3) Substitute and constructive notice may be permitted by the court, as provided in sections 25-517.02 to 25-527. When the court authorizes substitute or constructive service, the court shall set hearings so parties who are the subject of such service have adequate time to prepare, consistent with the best interests of the child and the purposes of the Nebraska Juvenile Code.
(4) The child’s responsible adults shall be parties to the proceedings and shall be given an opportunity to be heard.
(5) If the child has been committed to the department or a petition has been filed to commit the child to the department, the department shall be a party to the proceeding.

Sec. 193. Emancipated children; petition. (1) A child may petition the court in the judicial district in which the child resides at the time of the filing for an order of emancipation. The petition shall state:
(a) The child’s name and date of birth;
(b) The child’s address;
(c) The names and addresses, if known, of the child’s responsible adults;
(d) The names and addresses of any guardians or custodians of the child;
(e) Specific facts in support of the emancipation criteria in subsection (2) of this section; and
(f) Specific facts as to the reasons why emancipation is sought.
(2) In order to become an emancipated child by court order, a child at the time of the order shall:
(a) Be sixteen years of age and under eighteen years of age;
(b) Have lived separate and apart from the child's responsible adult for three months or longer;
(c) Be managing his or her own financial affairs;
(d) Have demonstrated the ability to be self-sufficient in his or her financial and personal affairs, including proof of employment or his or her other means of support; and
(e) Hold a high school diploma or its equivalent or be earning passing grades in an educational program approved by the court and directed towards the earning of a high school diploma or its equivalent.

(3) A child cannot file a petition for emancipation unless the child has lived in Nebraska three months or longer.

Sec. 194. Emancipated children; hearing. (1) Upon the filing of the petition for emancipation, the court shall schedule a hearing.
(2) Any action under sections 190 to 196 of this act may be consolidated with any other action in the juvenile court involving the interest or welfare of the child.
(3) The burden of proving facts necessary to sustain the petition shall be on the child and the standard of proof shall be by a preponderance of the evidence.
(4) At the hearing of the petition, the court shall address the child personally and advise him or her of the consequences of emancipation.
(5) The court may request copies of records in the custody of the school district, the probation office, the department, or any other public or private agency to assist in making its determination. The court may further request a recommendation from the probation officer or any other public or private agency that may have communicated with the child regarding the petition.
(6) At the time of the hearing under this section the court shall consider the best interests of the child in accordance with the following criteria:
(a) Whether emancipation will create a risk of harm to the child;
(b) The likelihood the child will be able to assume adult responsibilities;
(c) The child's adjustment to living separate and apart from the child's responsible adult; and
(d) The opinion and recommendations of the child's responsible adult.
(7) The court may appoint a guardian ad litem for the child seeking emancipation.

Sec. 195. Emancipated children; order; appeal. (1) After completion of the hearing and consideration of the evidence, the court shall make findings and issue its order. If the court finds that the child meets the criteria in subsections (2) and (3) of section 193 of this act and that emancipation would be in the best interests of the child, the court shall issue an order of emancipation.
(2) The court may require an emancipated child to report periodically to the court or to another person specified by the court, regarding the child's compliance with section 193 of this act. Failure to report as required may result in the emancipation order being vacated upon notice to the parties.

(3) An order of emancipation shall be conclusive evidence that the child is emancipated.

(4) Any judgment or order allowing or denying emancipation is a final order and may be appealed as provided in section 212 of this act.

Sec. 196. Emancipated children; order of emancipation; effect. (1) Any order of guardianship or custody shall be vacated when the court issues an order of emancipation. Other orders of the court may be vacated, modified, or continued in the emancipation proceeding if such action is necessary to effectuate the order of emancipation. Child support orders relating to the support of the child shall be vacated, except for the duty to make past-due payments for child support, which, under all circumstances, shall remain enforceable.

(2) The order of emancipation shall recognize the child as an adult for all purposes that result from reaching the age of majority, including:

(a) Entering into a binding contract, litigation, and settlement of controversies including the ability to sue and be sued;
(b) Buying or selling real property;
(c) Establishing a residence except that an emancipation order may not be used for the purpose of obtaining residency and in-state tuition or benefits at the University of Nebraska or the Nebraska state colleges;
(d) Being prosecuted as an adult under the criminal laws of the state;
(e) Terminating parental support and control of the child and parental rights to the child's income;
(f) Terminating parental tort liability for the child;
(g) Indicating the child's emancipated status on driver's license or identification card issued by the state.

(3) The order of emancipation shall not affect the status of the child in the applicability of any provision of law which requires specific age requirements under the state or federal constitution or any state or federal law including laws that prohibit the sale, purchase, or consumption of intoxicating liquor to or by a person under twenty-one years of age.

(4) A child who is emancipated by the lawful procedure of another state shall retain that status in Nebraska and shall enjoy the benefits of this section while in Nebraska.

(5) The method of emancipation of a child provided for in sections 190 to 196 of this act is in addition to and not in substitution of any other method of emancipation provided by common law.

(f) Children in need of state mental health treatment
Sec. 197. Mental health commitment of children; sections applicable. All proceedings regarding the mental health commitment of children are governed by sections 197 to 211 of this act.

Sec. 198. Mental health commitment of children; policy. (1) Sections 197 to 211 of this act shall be construed to promote the legislative intent and purposes of such sections, which are to:
(a) Provide prompt necessary protection and mental health treatment of children in need of state mental health treatment; and
(b) Safeguard the rights to due process for children and their families through judicial review.
(2) Legally emancipated minors in need of mental health commitment shall be considered adults and shall not be committed under sections 197 to 211 of this act.

Sec. 199. Mental health commitment of children; emergency custody; certificate. (1) A child may be taken into emergency custody by a law enforcement officer without a warrant or order of the court when the law enforcement officer believes the child to be in need of state mental health treatment and that the harm described in section 10 of this act is likely to occur before proceedings can be instituted before the juvenile court.
(2) If the law enforcement officer takes emergency custody of a child under this section, the law enforcement officer shall place the child at a mental health center for evaluation and emergency treatment.
(3) At the time of the emergency placement at a mental health center the law enforcement officer responsible for taking emergency custody of the child shall prepare a certificate alleging:
(a) The child is in need of state mental health treatment;
(b) The harm described in section 10 of this act is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the child; and
(c) A summary of the child's behavior supporting the allegations.
(4) The certificate shall be in a form prescribed by the department.
(5) A copy of the certificate shall be forwarded to the county attorney.

Sec. 200. Mental health commitment of children; emergency custody; notifications; temporary placement. (1) A law enforcement officer taking a child into emergency custody under section 199 of this act shall notify the child's responsible adult of the child's placement. In determining the appropriate temporary placement of a child, the law enforcement officer shall select the placement that is least restrictive of the child's freedom so long as such placement is compatible with the best interests of the child and the public safety.
(2) Any time a child is taken into emergency custody and temporarily placed at a mental health center, a mental health professional shall evaluate the mental condition of the child as soon as reasonably possi-
ble but not later than thirty-six hours after the child’s admission, unless the child was evaluated by a mental health professional immediately prior to the child being placed in emergency custody and the custody is based upon the conclusions of that evaluation. The mental health professional who performed the evaluation prior to the emergency custody or immediately after the emergency custody shall, without delay, convey the results of his or her evaluation to the county attorney.

(3) If it is the judgment of the mental health professional that the child is not in need of state mental health treatment, the mental health professional shall immediately notify the county attorney of that conclusion. The county attorney shall either request a preliminary review of the evidence by the court within forty-eight hours of such notification or order the immediate release of the child from emergency custody. Such release shall not prevent the county attorney from proceeding on a petition alleging the child to be in need of state mental health treatment.

Sec. 201. Mental health commitment of children; emergency custody; preliminary review; adjudication hearing; time restrictions. (1) (a) The court shall conduct a preliminary review of the evidence to determine if probable cause exists for continued custody of the child.

(b) This preliminary review shall occur no later than forty-eight hours after the child was taken into emergency custody.

(c) If the court finds that probable cause does not exist, the court shall issue an order of release for the child.

(d) Upon a finding of probable cause, the court shall make a written order detailing its findings and may order the continued custody of the child at the mental health center.

(e) The court shall appoint counsel for the child if he or she has not retained counsel and fix a date for a full hearing. The hearing shall be held within seven days after the date the child was taken into emergency custody or was admitted to the mental health center, whichever day is sooner.

(2) A child taken into emergency custody under section 199 of this act shall have the right to an adjudication hearing within seven days unless the matter is continued. Continuances shall be liberally granted at the request of the child or the child’s guardian ad litem, attorney, or responsible adult. Continuances may be granted to permit the child an opportunity to obtain voluntary treatment.

Sec. 202. Mental health commitment of children; payment of costs. (1) All costs of custody and placement under sections 197 to 211 of this act shall be the responsibility of the county where the child was taken into custody.

(2) The court may enter an order of support as in sections 52 to 60 of this act if requested by the county attorney.
Sec. 203. Mental health commitment of children; petition; notice. (1) A county attorney may file a petition with a court alleging a child to be in need of state mental health treatment. The petition shall state:
   (a) The name, date of birth, and location of the child; and
   (b) The facts supporting the allegation the child is in need of state mental health treatment, including the conclusions of any evaluations conducted by a mental health professional.
(2) Upon receipt of a petition alleging a child to be in need of state mental health treatment, the court shall set a date and time for the adjudication, not later than either seven days after the filing of the petition or after the child was taken into emergency custody, whichever day is sooner.
(3) The court shall assign a place for the adjudication hearing and shall cause reasonable notice thereof to be given to the child, the child's responsible adult, and the mental health center named in the petition.
(4) The notice shall inform the parties that:
   (a) They have a right to be present at the adjudication;
   (b) They have a right to present evidence and to cross-examine witnesses testifying at any hearing upon such petition;
   (c) The court has appointed an attorney and a guardian ad litem to represent the child, and the names, addresses, and telephone numbers of such attorney and guardian ad litem; and
   (d) The child's responsible adult may be represented by an attorney and if they cannot afford an attorney, that the court shall appoint an attorney to represent them.
(5) The notice to the mental health center shall inform such center of the time and place of the hearing and request that if such facility is unable to admit such child, it shall so inform the court immediately.

Sec. 204. Mental health commitment of children; access to records.
(1) Prior to a hearing under sections 197 to 211 of this act, counsel for the child and counsel for the child's responsible adult, respectively, shall be afforded access to all relevant records and shall be entitled to take notes from those records.
(2) If a child is committed at the time any hearing is held under sections 205 to 211 of this act, the mental health center shall make available at such hearing for use by the court or his or her counsel and by counsel for the child's responsible adult all records in its possession relating to the child's need for commitment.

Sec. 205. Mental health commitment of children; hearing; priority; location; requirements. (1) Commitment hearings shall take precedence over all other matters before the court, except pending cases of the same type.
(2) At the request of counsel for such child or if in the opinion of at least one physician the child could be a danger to himself or herself or
others or it would be detrimental to the child's health and welfare to travel to the court facility hearing the application, then such hearing shall be held at the mental health center in which the child is in custody. In that event, such center shall provide adequate facilities for such hearing.

(3) The court hearing the matter shall require a sworn certificate from at least two impartial physicians selected by the court, one of whom shall be a physician specializing in psychiatry. Both physicians shall be licensed to practice medicine in this state and shall have practiced medicine for at least one year. The certificates shall include a statement from each physician that he or she has personally examined such child within ten days of the hearing.

(4) The child shall be present at the commitment hearing, except that court may exclude the child from such portions of the hearing at which testimony is given which the court determines would be seriously detrimental to the child's emotional or mental condition.

(5) If the child is medicated at the time of the commitment hearing, a representative from the mental health center shall inform the court of such fact and of the common effects of such medication.

(6) All interested parties have the right to present evidence and cross-examine witnesses who testify at the commitment hearing.

Sec. 206. Mental health commitment of children; commitment; when.

(1) If, after hearing the evidence, the court finds by clear and convincing evidence that the child suffers from a mental disorder and is in need of commitment for treatment of the mental disorder, that treatment for the mental disorder is available, and that commitment is the least restrictive available alternative to receive treatment, the court shall commit the child for a definite period not to exceed six months to a mental health center to be named in the court's order. If the court does not make such finding, the child shall be released.

(2) Unless already at the mental health center, the order shall direct some suitable person to convey the child to the mental health center together with a copy of the court's order of commitment. In appointing a person to execute such order, the court shall give preference to a near relative or friend of the child, so far as it deems safe, practicable, and judicious. All costs for transportation shall be paid in accordance with section 202 of this act.

Sec. 207. Mental health commitment of children; commitment; transfer to another mental health center.

(1) Any child who has been committed by any court to a mental health center may be transferred to any other mental health center upon agreement of the respective mental health centers from and to which it is desired to make such transfer.

(2) All transfer agreements shall be in writing, executed in triplicate and in accordance with a form prescribed by the Attorney General, which form shall be uniform throughout the state. One copy of the
transfer agreement shall be filed for record in the court that committed the child and one copy shall be retained in the files of each of the mental health centers participating in the transfer.

(3) A transfer agreement shall have the same effect as an order of the court committing the person named in the order.

(4) No transfer shall be made until the child's responsible adult has received written notification. The responsible adult of any child so transferred, or the child's next friend, may make application to the court that made the order of commitment, for a revocation or modification of the transfer agreement. Such application shall act as a stay of a proposed transfer. The court shall provide notice of the time and place of hearing on the application as the court finds reasonable. After the hearing, the court may revoke, modify, or affirm the proposed transfer.

Sec. 208. Mental health commitment of children; commitment; release; requirements. The mental health center to which the child was committed or transferred shall release the child when, based upon determination of the child's physician, the mental health center concludes that the child is no longer in need of inpatient care at the mental health center. The mental health center shall notify the court that committed the child to a mental health center and all parties to the action at least five days prior to the child's release of the center's intent to release the child. The notification shall include a statement of reasons for the proposed release and a copy of the aftercare plan required by section 210 of this act.

Sec. 209. Mental health commitment of children; recommitment. (1) No later than three days prior to the expiration of a period of commitment, any person may bring an application for recommitment.

(2) The application for recommitment shall be filed in the court that heard the original commitment application.

(3) An application for recommitment shall be brought in conformity with this section and may result in a further commitment for a definite period not to exceed six months.

(4) The committed child is entitled to the same rights and procedures as on the original petition for commitment.

(5) If an application for recommitment is filed, the original commitment or recommitment order shall be extended for a sufficient time to hold a hearing under this section, except that the order shall not be extended for more than five days beyond the expiration of the original commitment or recommitment.

(6) Recommitment hearings shall take precedence over all other matters before the court, except other pending recommitment cases and commitment hearings, which shall take precedence over all cases.
Sec. 210. Mental health commitment of children; aftercare plan. A child in need of state mental health treatment, upon being considered for release from commitment, shall have an aftercare plan developed. The plan shall include educational or training needs if these are necessary for the child's well-being.

Sec. 211. Mental health commitment of children; records; confidentiality; violation, penalty. All records, including the petition, of all proceedings brought under sections 197 to 211 of this act are confidential and shall not be disclosed without an order of the court. The court shall not order disclosure unless the child's best interests are furthered by such disclosure. Any unauthorized release or publication of such records is a Class III misdemeanor.

(g) Nebraska Juvenile Code; appeals; setting aside an adjudication.

Sec. 212. Juvenile court; appeals. (1) A party may appeal any final order of a juvenile court to the Court of Appeals in the same manner as an appeal from the district court to the Court of Appeals. The appellate court shall conduct its review within the same time and in the same manner prescribed by law for review of an order, judgment, or decree of the district court, except that review of juvenile review panel decisions shall be conducted as provided in sections 108 to 113 of this act. All appeals from the juvenile court shall be advanced for argument before the appellate court, which shall decide the matter as speedily as possible.

(2) When a juvenile court action has been instituted before a juvenile court, the original jurisdiction of the court shall continue except as provided in the Nebraska Juvenile Code. All orders remain in full force and effect pending final disposition of the appeal unless stayed by the appellate court.

(3) The appellate court, upon application and hearing, may stay any order on appeal. The appellate court shall enter any order for the custody of a child which the appellate court determines to be in the child's best interests. Such orders shall only be entered after an appeal is perfected and such order ceases to be of force and effect upon return of jurisdiction to the trial court.

(4) If the appellate court finds the child to be in need of state protection, supervision, rehabilitation, or mental health treatment or affirms a child's emancipation, the appellate court shall affirm the disposition of the juvenile court unless it is shown by clear and convincing evidence that the disposition of the juvenile court is not in the child's best interests.

(5) If the appellate court reverses the order of the juvenile court and finds a child not to be in need of state protection, supervision, rehabilitation, or mental health treatment or sets aside a child's emancipati-
tion, the appellate court shall vacate all orders of the juvenile court arising out of that adjudication.

(6) An appeal of a case regarding a child in need of state rehabilitation in which the child has been placed in jeopardy may only be taken by exception proceedings pursuant to sections 29-2317 to 29-2319. However, decisions regarding the transfer of a case from juvenile court to county or district court, the granting or denial of extended juvenile jurisdiction, or the revocation of probation may be appealed as provided in this section.

(7) In all appeals from a juvenile court, the judgment of the appellate court shall be certified without cost to the juvenile court for further proceedings consistent with the determination of the appellate court.

Sec. 213. *Juvenile court; setting aside adjudication; procedure; records, sealed; violation; contempt.* (1) If a child is adjudged to be a child in need of state supervision or a child in need of state rehabilitation and has satisfactorily completed his or her disposition requirements, any interested party may request the court which entered the adjudication to set aside that adjudication.

(2) In determining whether to set aside the adjudication, the court shall consider:
   (a) The behavior of the child after the adjudication and his or her response to supervision or rehabilitation programs;
   (b) Whether the setting aside of the adjudication will depreciate the seriousness of the child's conduct or promote disrespect for law; and
   (c) Whether the failure to set aside the adjudication may result in disabilities disproportionate to the conduct upon which the adjudication was based.

(3) After hearing, the court may grant the request and issue an order setting aside the adjudication when in the opinion of the court the order will be in the best interest of the petitioner and consistent with the public welfare.

(4) When the court issues an order setting aside the adjudication, the order shall also require that all records relevant to the adjudication be sealed. Such records shall not be available to the public except upon the order of the court for good cause shown. The court order may include all records of the court, law enforcement officers, county attorneys, or any other person which may have such records. Notice of hearing to set aside the adjudication and seal the records shall be given to the county attorney and any person that may be affected by such order by delivering by hand or by registered or certified mail a copy of the request and the order of the court which states the time for hearing to the last-known address of such person at least ten days before the date for hearing. Any person who fails to comply with the order of the court or knowingly reveals information covered by such order may be held in contempt of court, except that this section does
not prohibit law enforcement agencies from maintaining data to assist law enforcement officers, county attorneys, and sentencing judges in the investigation of crimes and the prosecution and sentencing of criminal defendants.

[Sections 214 to 239 amend existing statutes to harmonize with new Nebraska Juvenile Code.]

[This section will be assigned in Chapter 43, article 1]

Sec. 240. Relinquishment of parental rights; procedure; revocation.

(1)(a) Except as otherwise provided in this subsection, a voluntary relinquishment of parental rights shall be by a written instrument executed in open court. A record of the testimony related to the execution of the relinquishment shall be made.

(b) If the person from whom a relinquishment is required is in the armed services or is in prison, the relinquishment may be executed and acknowledged before an individual authorized by law to administer oaths.

(c) If the relinquishment is given by an authorized representative of a licensed child placement agency that has jurisdiction of the child to be adopted, the relinquishment may be executed and acknowledged before an individual authorized by law to administer oaths.

(d) If the relinquishment is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the relinquishment was executed in accordance with the laws of that state or country or the laws of this state and shall not proceed unless it finds that the relinquishment was so executed.

(2) A relinquishment by a parent or guardian shall be accompanied by a verified statement signed by the parent or guardian that contains all of the following:

(a) That the parent or guardian has received counseling related to the adoption of the child or waives the counseling with the signing of the verified statement;

(b) That the parent or guardian has not received or been promised any money or anything of value for the relinquishment of the child, except for lawful payments that are itemized on a schedule filed with the relinquishment;

(c) That the validity and finality of the relinquishment is not affected by any collateral or separate agreement between the parent or guardian and the department, or the parent or guardian and the prospective adoptive parent;

(d) That the parent or guardian understands that it serves the welfare of the child for the parent to keep the department or the licensed child placement agency informed of any health problems that the parent develops that could affect the child; and
(e) That the parent or guardian understands that it serves the welfare of the child for the parent or guardian to keep his or her address current with the department or the licensed child placement agency in order to permit a response to any inquiry concerning medical or social history from an adoptive parent of a minor adoptee or from an adoptee who is eighteen years of age or older.

(3) A relinquishment executed under subdivision (1)(a) of this section by a parent or a guardian of the child shall not be executed until after an investigation the court considers proper and until after the judge has fully explained to the parent or guardian the legal rights of the parent or guardian, the fact that the parent or guardian by virtue of the relinquishment voluntarily relinquishes permanently his or her rights to the child, and, if the child is over five years of age, that the court has determined that the child is best served by the relinquishment.

(4) Upon the requirements of subsections (1) through (3) of this section, the court immediately shall issue an order terminating the parental rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated, the court shall issue an order committing the child to the department or the licensed child placement agency to which the relinquishment was given.

(5) Entry of an order terminating the rights of both parents under subsection 4 of this section terminates the jurisdiction of the district court over the child in any divorce or separate custody action.

(6) Upon petition of the same person or persons who executed the relinquishment and of the department or licensed child placement agency to which the child was relinquished, the court with which the relinquishment was filed may grant a hearing to consider whether the relinquishment should be revoked. A relinquishment shall not be revoked if the child has been placed for adoption. A record of testimony related to a petition to revoke a relinquishment shall be made.